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To:	Clare Charlson, Principal Research Analyst, South Dakota Legislative Research Council
From:	Sydne Enlund, Policy Specialist, NCSL
Date:	August 23, 2019
Subject:	Leveraging Telehealth and Telemedicine for Mental Health Services

Dear Ms. Charlson:

Thank you for contacting NCSL regarding the use of telehealth for mental and behavioral health services. We understand you are looking for information and examples of what states are doing regarding this topic. In this document, you will find background information on telehealth services for different settings (rural, correctional facilities, and emergency rooms), prescribing practices via telehealth services, certification and training programs for mental health providers for telehealth, and sample state legislation or actions related to mental health services via telehealth.

We hope this information is useful. Please don't hesitate to reach out with any follow-up questions. Thank you.

Sincerely,

Sydne Enlund

Background

Many behavioral health providers utilize telehealth services to increase access to necessary mental health care. This is especially important for individuals who experience additional barriers when obtaining care in certain settings such as rural communities, correctional facilities, and emergency rooms.

- *Rural communities* – According to the Rural Health Information Hub, rural communities are using telehealth to provide a variety of behavioral and mental health services including case consultations from psychologists, peer support specialists or peer providers, treatment options like counseling or medication-assisted therapy (MAT), and more. State actions to increase access to these services include improving rural broadband, reimbursement for telehealth services, and licensing.

- *Correctional facilities* – Providing telehealth services in correctional facilities increases access to behavioral health treatment for inmates (especially those in remote areas), eases security risks, and increases the number of behavioral health providers working with incarcerated populations. For example, Texas conducts 127,000 telehealth visits a year to state prisons through the University of Texas Medical Branch with all behavioral health visits occurring via telehealth. The California Correctional Health Care Services provides mental health care via telepsychiatry with approximately 70 doctors treating patients in 30 facilities. Each doctor sees an average of 12 patients daily. The entire program is financed through the state, using $397 million of the $10.6 billion California correctional budget.

- *Emergency rooms* – Telepsychiatry services can provide much needed support for emergency rooms lacking psychiatric providers. By utilizing telehealth technology, hospitals can decrease bed delays and the waiting-period for psychiatric consultation[i]. The South Carolina Department of Mental Health Emergency Department Telepsychiatry Program is a statewide program allowing for emergency departments to engage a psychiatrist to assess a patient via telehealth. Since its inception in 2007, the program has expanded to 24 participating hospitals and 22 offsite psychiatrists. Today, the program is funded by a combination of state appropriations, grants, and earned revenue.

Training and Licensing Information

States strive to increase the number of licensed behavioral health providers, thus the need for more provider trainings. Various states are adopting interstate compacts in telepsychiatry to expediate the licensure process for professionals. This allows licensed behavioral health professionals to provide services via telehealth in other states[ii]. Additionally, the federal SUPPORT for Patients and Communities Act includes funding to train rural providers on Project ECHO, which allows providers to consult with each other across state lines without running into licensure issues. The project began as a way to build capacity among primary care providers based in rural and underserved areas. Through weekly telehealth clinics, primary care clinicians receive support and advice from a specialty care team. This model reduces the isolation of rural providers, increases their satisfaction, expands patient access and has been shown to achieve care comparable to that delivered in a specialty clinic[iii].

State Examples: Training and Licensing

Below are a few examples of state legislation regarding training and licensing programs related telebehavioral health. *Please note that this list is not comprehensive and we can provide more examples upon request*.

State	Legislation	Summary
Georgia	GA H 31	Provides appropriations for the fiscal year beginning July 1, 2019 and ending June 30, 2020. The budget utilizes $234,000 in existing funds to increase telehealth in rural areas. An increase in funds is also provided for a grant program for hospitals in counties with populations less than 35,000 for CMS-required upgrades to emergency rooms for behavioral health patients (5 grants with a $25,000 match requirement).

Nebraska	NE LB 1034	Allows for the joining of the Psychology Interjurisdictional Compact (PSYPACT) and allows licensed psychologists to practice telepsychology and conduct temporary in-person, face-to-face visits across state boundaries without requiring that individual to become licensed in every state[iv]. 12 states have enacted PSYPACT laws and 3 states and DC have pending PSYPACT legislation.
Utah	HB 308	Requires the Division of Substance Abuse and Mental Health to create a telehealth mental health pilot project grant program. It allocated $590,000 from the state's General Fund. Demonstrations, grants, and pilot programs like Utah's were the second most common legislation aimed at bolstering telehealth services in the 2018 legislative session[v].

Telehealth Prescribing Practices

State statutes and regulations vary widely in their telehealth prescribing practices (or "online prescribing"). In most states, a patient-provider relationship is required before a provider can write a prescription. However, states have different standards for establishing such a relationship. According to the Center for Connected Health Policy (CCHP), "most states consider using only an internet/online questionnaire to establish a patient-provider relationship inadequate. States may also require that a physical exam be administered prior to a prescription being written, but not all states require an in-person examination, and some specifically allow the use of telehealth to conduct the exam." Most states do allow licensed physicians to prescribe non-controlled substances via telehealth.

One of the more complicated aspects of online prescribing is the prescription of controlled substances via telehealth. In 2008, Congress passed the Ryan Haight Online Pharmacy Consumer Protection Act, which prohibits the distribution, delivery, or dispensing of a controlled substance through the internet without a valid prescription. The CCHP reports that valid prescriptions "must be issued for a legitimate medical purpose in the usual course of professional practice, meaning that, with limited exceptions, a doctor must conduct at least one medical evaluation of the patient in person or via telemedicine." Some states allow online prescribing of controlled substances within the limits established by the Ryan Haight Act, while others restrict the prescription of controlled substances through telehealth.

In light of the ongoing opioid epidemic, legislators have shown increased interest in the ability to deliver medication-assisted therapy (MAT) to individuals with a substance abuse disorder via telehealth. The medications used for MAT are controlled substances, meaning that patients may have difficulty accessing these medications through telehealth. In 2018, Congress passed the SUPPORT for Patients and Communities Act, which directs the United States Attorney General (AG) to develop regulations regarding the prescription of controlled substances through telehealth. The AG must promulgate the regulations within a year.

State Examples: Telehealth Prescription Practices

Below are a few examples of state legislation regarding telehealth prescription practices. For a complete list of current, related legislation, please see the CCHP State Telehealth Laws and Reimbursement Policies Report. *Please note that this list is not comprehensive and we can provide more examples upon request*.

State	Law or Regulation	Summary
Arizona	Ariz. Rev. Stat. Ann. §32-1401(tt)	Physicians may not issue a prescription to a patient without having previously established a doctor-patient relationship or first conducting a physical or mental health status examination. This examination can be conducted during a real-time telehealth encounter with audio and video capability.
Connecticut	Conn. Gen. Stat. §19a-906	Providers may not prescribe any schedule I, II or III controlled substance through telehealth, except a schedule II or III controlled substance other than an opioid drug for treating a psychiatric disability or substance use disorder.
Florida	FL Admin Code 64B15-14.0081	Controlled substances may not be prescribed through the use of telehealth except for treating psychiatric disorders.

Georgia	GA Rules & Regulations 360-3-.02(5)	Prescribing controlled substances based solely on a consultation via electronic means is prohibited. However, this rule does not "prohibit a licensee who is on-call or covering for another licensee from prescribing up to a 72-hour supply of medications for a patient of such other licensee nor shall it prohibit a licensee from prescribing medications when documented emergency circumstances exist."
New Jersey	N.J. Rev. Stat. §45:1-62(e)	Prescribing Schedule II controlled substances through the use of telehealth is allowed after an initial in-person examination. A subsequent in-person visit is required every three months for the duration of time that the patient is being prescribed the Schedule II controlled substance.
Wyoming	Wyo. Stat. §33-26-402(a(xxxiii))	A physician may be subject to review and discipline if they are found to be prescribing a controlled substance through telehealth without a documented physician-patient relationship.

[i] https://www.healthcareitnews.com/news/telehealth-brings-psychiatrists-inspira-health%E2%80%99s-emergency-rooms
[ii] https://cdn.ymaws.com/asppb.site-ym.com/resource/resmgr/PSYPACT_Docs/PSYPACT_Resource_Kit_2.11.20.pdf
[iii] https://echo.unm.edu/
[iv] https://cdn.ymaws.com/asppb.site-ym.com/resource/resmgr/PSYPACT_Docs/PSYPACT_Resource_Kit_2.11.20.pdf
[v] https://www.telehealthpolicy.us/telehealth-policy/legislation-and-regulation-tracking#