Legal Issues for Telehealth Services

20 August 2020

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Webinar housekeeping

- All attendees will be on mute and their cameras turned off for the entire webinar.
- We have BD tech support live to assist with any technical issues.
- Use the chat function for any comments/technical issues.
- Use the Q&A function for specific questions related to the webinar content.
 Questions will be addressed at the end of the webinar.
- There will be a post-webinar survey link sent at the end of the webinar. We value attendee feedback. Presentation slides will also be sent to all attendees.
- We will also have a QR code linking to our feedback survey towards the end of the presentation so you can provide instant feedback.
- This webinar is being recorded.



Disclaimer

The information contained in this presentation is intended as **general commentary only** and should not be regarded as legal advice.

Should you require specific advice on the topics or areas discussed please contact the presenters directly.



Is Telehealth appropriate?

- Nature of the consultation (appropriate serious? proximity to health service?).
- Nature of client aged/impaired/disability/cultural factors/IT literacy.
- Nature of issues emerging.
- Is the client supported on site, if necessary.
- Consider and plan for risks.
- Prepare for disclosures/changes during a telehealth session.
- Your competence/comfort with IT.
- When to "call it" → heath service visit/ambulance?



System Clarity & Failure

- Quality of sound and picture.
- Ability to detect body language and expression.
- Follow up after system break or failure.
- Plan back up arrangements (phone?).
- Limits on ability to observe/assess clinical indicators.





Preparation & Consent

- Confirm for telehealth (and explain purpose and limitations).
 - Consent, risks, limitations of assessment/diagnosis (send information sheet?).
- Confirm for treatment (informed consent).
- Provide information in advance? Formal policy/information sheet?
- Recording? Need consent?
- Location appropriate (family, overhearing, duress?).
- Are you secure? Working from home overhearing.

Confirm Identity

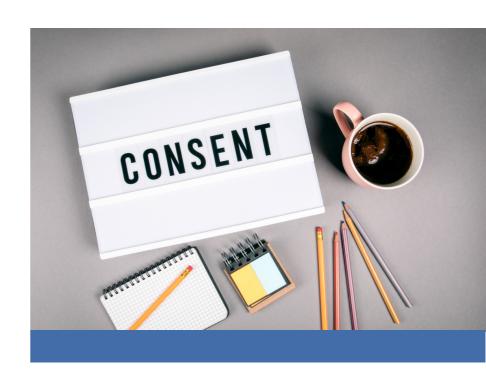
- New client?
- Information for billing.





Privacy

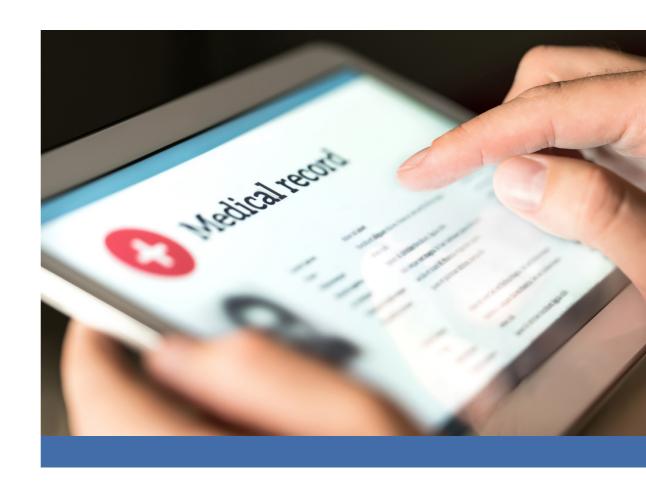
- Secure systems to ensure privacy (Zoom?).
- Does the client have privacy in place?
- Balance between support/privacy/pressure in place.
- Recording? Consent to participate.





Record Keeping

- All notes and records as usual.
- Extra observations (body language, comprehension, concerns).
- Be cognisant of limitations.
- Ensure access.





Limitations

- Be alert/aware:
 - honesty/frankness
 - visual cues
- Warning signs?
- Follow up:
 - writing
 - phone
 - further consultation
 - family/carers?
 - further referral?





Liability – Standard of Care

- Same legal obligations as face-to-face/normal duty of care.
- Additional obligations due to limitations/higher risks? Higher duty?
 - Be aware/alert/things missed.
- Clear advice on changes to be alert to when to call again? Visit doctor? Call an ambulance?
- Clinical emergency (client details/location/emergency contact).
- Confirm insurance.



Professional conduct – AHPRA Telehealth Guidance 27 July 2020

- Also: Medical Practitioners Medical Board of Australia, Guidelines for Technology-based consultations (16 January 2012).
- Seek advice from your insurer/medical indemnity provider ensure telehealth is covered by your policy.
- Understand regulatory requirements eg. health records, scripts, privacy, MBS.
- Same expectations re. professional conduct Codes of Conduct apply.

HCCC v Goyer [2019] NSWCATOD 121

Amongst other things, the practitioner admitted:

"practising telemedicine and prescribing for patients without performing a physical examination is not best practice and in some instances is not good practice."

And

"without the ability to conduct a full physical examination, "we" were "missing out on potentially important information on the patient's current medical state. During telemedicine it can also be the case that a patient may not be as likely to share all their medical details with you as a practitioner – and looking at the medical records that were subsequently obtained, it is clear that some patients did not disclose full medical history."



Regulatory changes





MBS - overview

- 1. Health Insurance Act 1973; Health Insurance (Section 3C General Medical Services COVID-19 Telehealth and Telephone Attendances) Determination 2020.
- 2. COVID-19 Temporary MBS Telehealth Services available since 13 March 2020 for out-of-hospital patients only.
- 3. Expanded >279 telehealth item numbers. Must be safe and **clinically appropriate**. Video or audio?
- 4. Since 20 July 2020 GPs and non-vocationally recognised doctors working in a general practice must have existing relationship with patient.
- 5. Applies to GPs, other medical practitioners, specialists and consultant physicians (including psychiatrists), nurse practitioners, participating midwives, allied health professionals and allied mental health providers.
- 6. Patient must be present.
- 7. Pathology and diagnostic requests.

MBS - billing

- 1. GPs and OMPs must bulk bill for certain categories.
- 2. Specialist and allied health services do not need to bulk bill **informed financial consent.**
- 3. Consider if face to face consult necessary in addition.
- 4. Until 30 September 2020.
- 5. Full item descriptions on MBS online/MBS Changes Factsheet.

Prescriptions and telehealth

- COVID-19 National Health Plan: Interim arrangements for prescriptions for supply of medicines.
- Do not apply to Schedule 8 poisons or medicines in Appendix D of Poisons Standard.
- Will cease when temporary telehealth measures cease.
- 3 steps:
 - i. Paper prescription created during telehealth consultation (signed as normal/valid digital signature).
 - ii. Prescriber may create copy of signed prescription to pharmacy of choice or email/text copy (eg. photo or pdf).
 - iii. Prescribers email, text or fax digital copy directly to the pharmacy of the patient's choice. Prescriber must retain paper prescription for 2 years, pharmacist must retain copy for 2 years.



Electronic Prescribing (ePrescribing) - Overview

- Alternative to paper prescriptions not replacement.
- Prescription Delivery Service must be enabled.
- Electronic and paper prescriptions must comply with legislative requirements.
- Two models:
 - i. Token Model (progressively available).
 - ii. Active Script List Model (from August 2020).





Regulatory Framework (PBS)

- Essentially provided by changes to the National Health (Pharmaceutical Benefits)
 Regulations 2017 (made under the National Health Act 1953).
- Requirements under the Regulations.
- 3. Four instruments under these Regulations:
 - Form of the Electronic Prescription 2019 information fields required for electronic prescription.
 - ii. Electronic Prescription Information Technology Requirements 2019 system requirements to participate in electronic prescribing.
 - iii. Form of the PBS Hospital Medication Chart requirements for paper and electronic forms of medication charts for use in hospitals.
 - iv. Form of National Residential Medication Chart requirements for paper and electronic forms of medication charts for use in RACFs.

Key messages

- 1. Understand what you can and cannot do.
- 2. Manage expectations communication and informed consent.
- 3. Is it appropriate for **this particular** patient?
- 4. Keep good records.
- 5. Consider privacy.
- 6. Don't forget the full picture.
- 7. Keep the consult under review.
- 8. Keep up to date seek advice if necessary.

Q&A – Your Russell Kennedy Contacts



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Feedback

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