

PROFESSIONAL NOTES

FOR MENTAL HEALTH PROFESSIONALS

USE OF ELECTRONIC MEDIA

It has become increasingly popular for professional clinicians to make use of electronic media in their provision of services. Electronic media in use include: telephones, both land lines and cellular lines (analog and digital), voice mail boxes and answering machines, facsimile (fax) machines, pagers, the Internet and e-mails, on-line therapy, computerized record keeping, video and telephone conferencing, and radio and television shows.

Each of these mediums requires special attention to issues of security around the professional legal and ethical mandate to protect client privacy and confidentiality, and measures to reduce the risk of breaching other legal and ethical responsibilities.

The kinds of services offered using electronic media are varied and involve differing levels of risk of violating ethical and legal mandates. Services currently being offered via telecommunication media include:

- Information and referral
- Marketing Evaluation and referral (as when responding to emergency and crisis situations)
- On-line therapy and counseling which can be either an adjunct to a traditional face- to-face therapy or as the sole form of therapy
- Consultation and advisement
- Coaching
- Supervision Training and continuing education
- Conveying information
- Electronic payment transactions

Advantages to the use of telecommunication media include increasing access to services by persons unable to access traditional on site services, such as the disabled, the elderly, homebound individuals, and those in geographical areas where services are unavailable or restricted. In addition, telecommunications provide for a convenient and efficient exchange of information that can accommodate the need for immediate contact or contact outside of usual business hours. However, the use of telecommunications in providing professional social work services requires the management of significant legal and ethical issues. The degree of risk for violating ethical principles varies with the kind of services being offered. Broad ethical principles around beneficence and non-maleficence operate

in handling ethical and legal obligations to protect privacy and confidentiality, as well as record keeping practices, obtaining informed consent from qualified individuals, verifying identities, handling of crises and emergencies, providing back-up coverage, and practicing outside of license jurisdiction.

Cellular and cordless phones are unsecured and require measures to be taken to meet standards of protecting client confidentiality. Sensitive information, such as names and diagnoses, should not be transmitted by cellular or cordless phones. It is advisable to inform clients of potential breaches to confidentiality when using cellular or cordless phones, and to have a policy of limiting conversations to clients via mobile and cordless phones and changing to land lines when possible.

Voice mail and answering systems should be password protected. Since access to messages is open and uncertain, information left on these devices should be judicious and not breach confidentiality. High risk, sensitive information may cause damage to clients or others. It is advisable to ask clients if messages can be left on their home answering device.

Standards for safe facsimile usage have been proposed by information system specialists. They advise that first, a cover sheet should contain a large and visible disclaimer warning recipients that the fax is a legal document which is privileged and confidential. If they are not the person to whom the fax is addressed, they may not read it, and if they received the fax in error, they should call a phone number which is supplied. Second, practitioners should have a written policy stating that after entering the fax number, the number will be verified on the digital readout of the fax machine before sending the fax. Third, when faxing high-risk records successful transmittal should be checked by calling the recipient for verification of receipt.

Ethical and legal responsibilities to protect confidentiality are particularly difficult for computer-based services. The use of encryption, firewalls and the latest technology for protecting privacy should be employed, but these precautions are not fail proof. In addition, clients should be informed of the limitations to their confidentiality when they choose to use telecommunications. A template disclaimer on each communication is advisable stating that this is a legal document which is privileged and confidential and not to be read by unauthorized people.

Computerized records should be password secured so that access can be limited to authorized people only. Regular back-ups should be made to protect against loss of the record. All disks should be stored in a locked file. Confidential information should be removed before taking equipment for repairs or disposing of the computer.

For computer delivered services it is advisable to consult an attorney to obtain legal advice about disclaimers and interstate practice issues. It has not been determined whether the services are being performed at the site of the client or of the service provider. In the event of a grievance, it is unclear who would have jurisdiction, and it is unclear where the practitioner needs to be licensed. Therefore, it is safest to only work

with residents of Colorado where you are licensed.

Practitioners should check with their professional liability insurance carrier for coverage of telecommunications delivered services. Medical insurance policies may not reimburse for telecommunication services, or may limit the form of reimbursement.

The definition of psychotherapy and social work practice in the Colorado Mental Health Practice Statute (Title 12, Article 43) should be reviewed to determine whether the type of service being provided is defined as psychotherapy. Disclaimers may be affected by this definition, which is very broad and inclusive. For example, an assertion that the service being provided is "coaching" may not hold up when the statute definition of psychotherapy is applied. If a practitioner's communication exchange with a client falls within the state's definition of psychotherapy, it is considered psychotherapy regardless of how the services are marketed.

When contracting with the client, be clear about the services being offered, how appointments, both regular and crises, will be handled, and how fees will be set and payments will be made. Disclosures should include the clinicians credentials, and qualifications for providing the services, the kinds of services being offered, and any disclaimer statements. In addition, disclosures should be made about the uncertainty of benefit coverage for telecommunication services, potential limitations to confidentiality, limitations to clinical care in emergency services and types of problems which can't be managed, policies about the types of record keeping and how records will be stored, arrangements for an on-call clinician when in-person contact is necessary and how different levels of care will be handled, ways the clinician can be contacted and expected response times, and recourse for disputes using licensing boards and professional associations. Links or addresses of licensing boards and certifying bodies should be provided to facilitate consumer protection.

Since sessions are conducted predominately in writing, data may be more extensive than for in-person contacts, and this may pose a greater threat to the client's privacy and confidentiality. The clinician has a responsibility to protect the record from unauthorized access, as well as from destruction. Release of records and any client information is the same as for in-person contact.

When contracting with an electronic media service company, practitioners must be clear about ownership and storage of records. Caution must be taken not to sign away the ethical responsibility that professionals have to protect clients' records. Assess the company handling of the interstate issue.

Establishing the identity of participants, both the recipients and the providers of services, is difficult, but essential for reasons of informed consent and confidentiality. It is difficult to establish who is communicating in electronic media, but technology should be in place to assure identity within a reasonable level of certainty. For the provider of telecommunication services the age of the recipient is vital in order to obtain informed consent from someone capable of giving it. For the client the credentials of the service

provider are important, and credential verification is essential.

Credentials should include education, training, and experience related to providing Telecommunication services. Establishing competency requires specialized skills in use of the media to evaluate clients and thus provide appropriate services, and in professional use of the self via the media. Specialized knowledge of technology, such as encryption, and of practice standards issues should be obtained.

Telecommunications have some inherent limitations which require limiting services for some types of problems, such as family violence problems, psychotic disorders, suicidal problems, and when the client's health and safety is in jeopardy. In addition, clients may lack keyboard skills and the ability to communicate in writing.

All clients should be carefully assessed for the need of in-office care. A geographically available on-call clinician should be secured to handle emergencies and necessary in-person contacts. Handling emergencies and high-risk clients is especially difficult in telecommunications delivered services. However, viable assessments must be made, and emergencies must be covered.

The client must be prepared for the experience by discussing how to handle misunderstandings arising from the lack of visual and auditory cues. Instructions should be provided for coping with technological failure.