

# Skills-based Videoconferencing



***ENHANCED PROFESSIONAL  
LEARNING SERIES***



Mountain Plains ATTC (HHS Region 8)

**ATTC**

Addiction Technology Transfer Center Network  
Funded by Substance Abuse and Mental Health Services Administration



# Legal and Jurisdictional Issues

Week 3



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# Learning Objectives

- Gain knowledge of jurisdictional issues in Tele-Behavioral Health.
- Understand the need for a secure environment for practice of Tele-Behavioral Health.
- Demonstrate the ability to discuss informed consent and confidentiality as it pertains to Tele-Behavioral Health.



# What are Teleservices

“The use of electronic technology to provide health care and services to a patient when the provider is in a different location.”

*- Center for Connected Health Policy,  
The National Telehealth Policy Resource Center*

## Who Regulates?

### Medicare

Regulated by the **Federal**  
government

### Medicaid

Regulated by both **Federal**  
and **State** governments

### Self-Insured Health Plans

Regulated by the **Federal**  
government

### Fully-Insured Health Plans

Must comply with both  
**Federal** and **State**  
governments

# Policies

## Federal

- **HIPAA Flexibility**
- **Regulate 42 CFR**
- **Telehealth Waivers**
- **Cost Sharing**

## State

- **Ensures compliance with State Regulations**
  - ❖ **Privacy**
  - ❖ **Consent to Treat**
- **Treatment across state lines**

# Importance of Knowing

- HIPAA & 42 CFR are **federally** mandated privacy laws.
- Consent to Treat is a **state** law.
  - Drives use of appropriate technology.
  - Drives policy and procedures for informed consent or release of information.
  - Drives documentation policy and procedure related to liability of storage.
  - Drives ability to provide services across state lines.
- In order to provide teleservices you must have an “informed consent”.
- In order to share patient information you must have “consent to disclose”.



# HIPAA

**Applies to** covered entities (healthcare providers, health plans, healthcare clearinghouses) and BAs

- Protects privacy and security of general health information

**Purpose:** to protect health data integrity, confidentiality, and accessibility

**Permits** disclosures without patient consent for treatment, payment, and healthcare operations

# 42 CFR Part 2

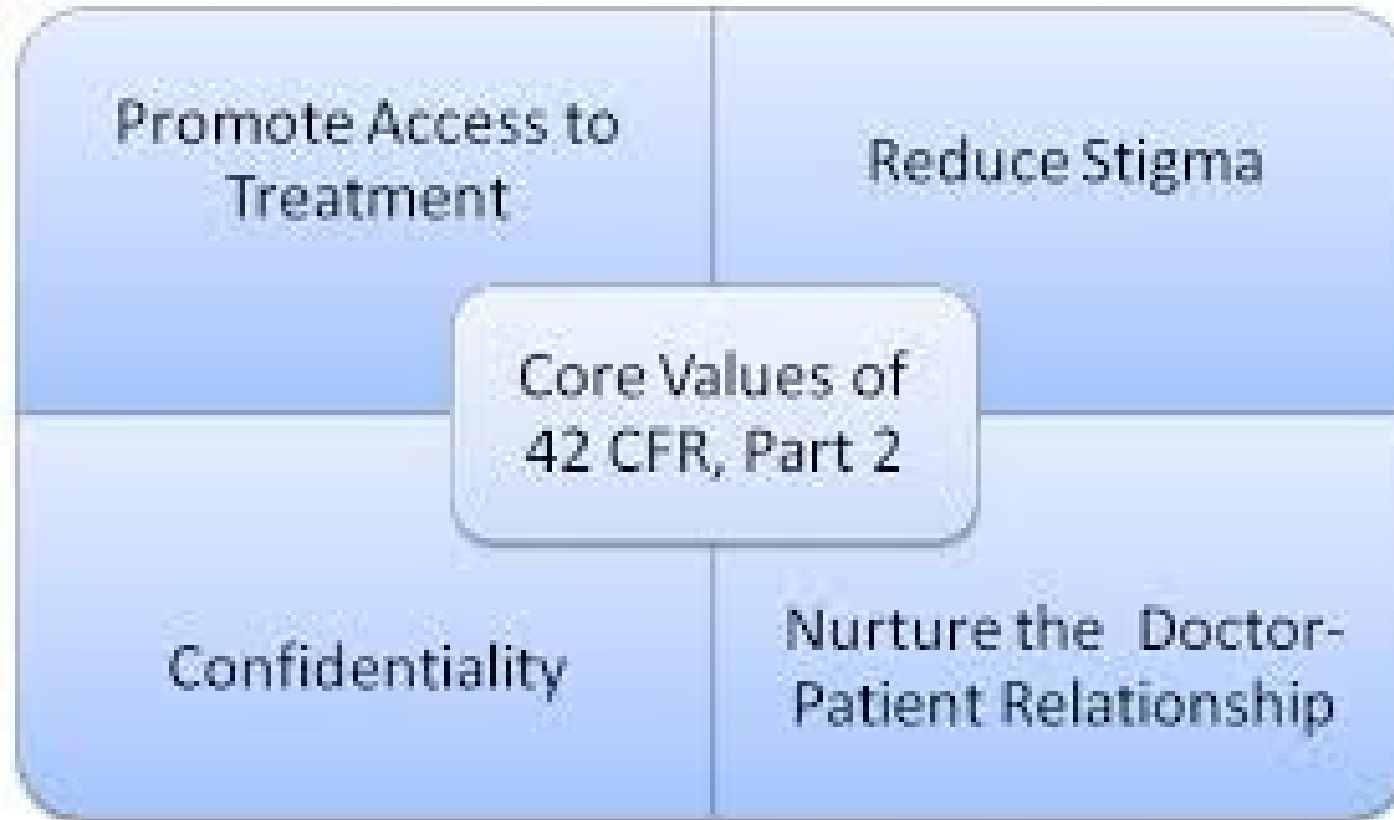
**Applies to** SUD patient records from federally-assisted “Part 2 programs”

- Protects privacy and security of records identifying individual as seeking/receiving SUD treatment

**Purpose:** to encourage people to enter and remain in SUD treatment by guaranteeing confidentiality

**Requires** patient consent for treatment, payment, and healthcare operations, with limited exceptions

# CFR 42 Part 2



# Confidentiality

*Confidentiality =  
I can't tell anyone  
what I know*

*Anonymity =  
I don't know*

# Acceptance of Tele-Behavioral Health

- Reimbursement and Funder Issues
  - Insurance
  - Medicaid
  - CFBHN
  - Grants
- Judicial Issues

# COVID-19 Changes

- Protocols
- Policies
- Expanded billing
- Lifted Restriction on patient location
- Included Federally Qualified Health Centers (FQHCs)
- Use of Telephone
- Changed billing codes/modifies



# HIPAA Compliance in Behavioral Tele-Health

- How does the Platform Secure the Virtual Environment
- ZOOM Security Measures

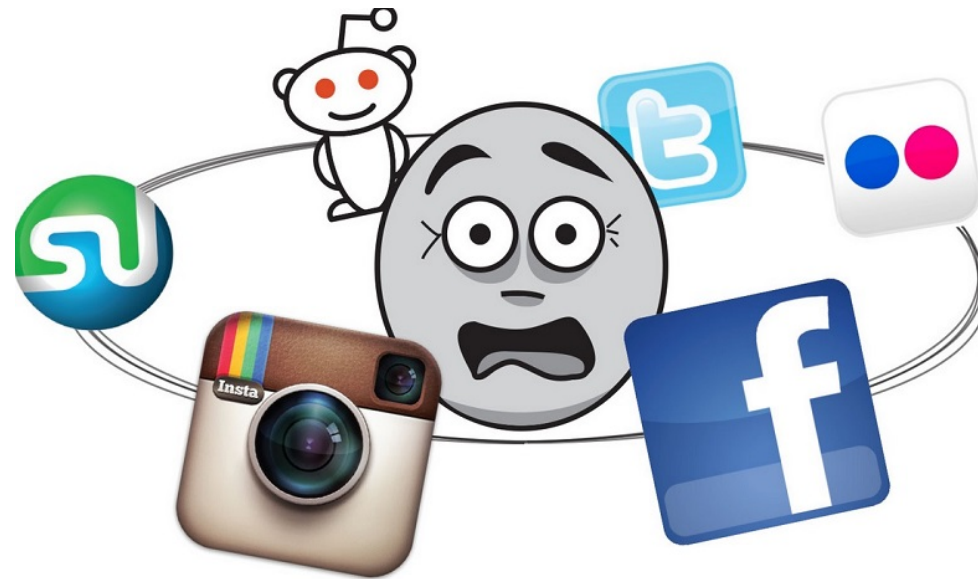
# Informed Consent

## Informed Consent

- Nature of Treatment
  - Risks
  - Benefits
  - Alternatives
- Opportunity for Questions

What are the risks and benefits of Behavioral Tele-Health?

# Having a Social Networking Policy as part of ones informed consent





# Social Networking Policy

- Cyber/aDigital natives One American teenager was reported to have sent and received 6,473 text messages in one month (St. George, 2009).
- Cyber/Digital immigrants
- On-line life questions for assessments

Video conferencing

Text

E-mail

Phone

# Legal Issues to Consider

- Duty to warn-Second Life issues
- Therapist/Counselor Liability insu  
Health
- Fee Structure
- Invalid pre-screening of clients



# Legal Issues to Consider (continued)

- Truth in advertising-who is providing the service?
- Competence-What is the counselors' qualifications?
- Dual relationships-subsequent sessions outside of agency.
- Valid treatment-How to inform?
- Consistent standards for licensure

# Additional Information on State Regulations/Reimbursement

- <http://www.telehealthresourcecenter.org/toolbox-module/cross-state-licensure>
- Epstein, Becker, Green-50 State Survey of Telemental/Telebehavioral Health
- <https://www.healthit.gov/providers-professionals/faqs/are-there-state-licensing-issues-related-telehealth>
- [https://www.zurinstitute.com/telehealth\\_across\\_state\\_lines-zur.html#overview](https://www.zurinstitute.com/telehealth_across_state_lines-zur.html#overview)
- <http://cchpca.org/state-laws-and-reimbursement-policies>
- <http://www.ncsl.org/documents/health/telehealth2015.pdf>

# Assignment-Mock Zoom Session





# Acknowledgements

- Dianne Clarke, PhD, CAP
- Sandnes Boulanger, CSW, MCAP, CET
- Maryellen Evers, LCSW, CAADC, CMFSW
- National Frontier and Rural Addiction Technology Transfer Center (NFAR ATTC)
- National Frontier and Rural Telehealth Education Center (NFARtec)