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## Insuring the Future of Mental Healthcare:

### *Liability Exposures of Telemedicine and Emerging Therapies*

As we embark on a new year, it's crucial to stay abreast of the evolving landscape of mental healthcare. Telemedicine has not only revolutionized traditional treatment approaches; it has also paved the way for innovative therapies like ketamine and psilocybin. As brokers, we must explore these changes and their implications for our industry.

### The Roots and Rise of Telemedicine

Telemedicine has been widely used in psychiatry for many years, however, the COVID-19 pandemic dramatically increased its use. In 2019, only 0.3% of all patient-provider interactions were telehealth visits, according to research published in [JAMA Network Open](#). In 2020, 23.6% of all interactions were telehealth visits as well as nearly half of all behavioral health encounters.

Today, telemedicine remains a popular choice. A 2023 report from the [Assistant Secretary for Planning and Evaluation](#) stated that 22% of adults surveyed said they had used telehealth in the last four weeks.

Telehealth's continued popularity is a testament to its many benefits.

- **Accessibility:** Telemedicine creates care accessibility for those in remote or underserved areas. It also helps those with mobility and transportation challenges.
- **Convenience:** Patients can receive care at home, reducing stigma and exposure to infections. Busy people may find it easier to fit telehealth into their schedules. The 2023 U.S. Telehealth Satisfaction Study from [J.D. Power](#) found that convenience and speed were the primary reasons for using telehealth.
- **Cost Effectiveness:** Telemedicine reduces incidental healthcare expenses such as transportation and lost wages. Research published in [JAMA Network](#) found that telehealth used for cancer care resulted in savings of \$147.40 to \$186.10 per visit.
- **Comfort:** Many patients feel more at ease in their own environments. According to [Fortune](#), providers can get a more authentic sense of the patient's identity when they see patients in their homes.

## Facilitating Alternative Treatments

The shift toward remote therapy has also opened doors for more innovative treatment approaches. [The U.S. Department of Health and Human Services \(HHS\)](#) has explored various ways in which telehealth can expand access to behavioral health services with individual therapy, group therapy, and substance use disorder treatment. In addition to remote sessions, patients can utilize asynchronous communication through chats or emails and use apps to track and monitor their moods.

Another use of telehealth may be the administration of new treatments like ketamine and psilocybin. In recent years, interest in using these drugs to treat mental health conditions has surged.



- **Ketamine:** Once primarily an anesthetic, ketamine has emerged as a promising treatment for depression. According to [Harvard Health Publishing](#), ketamine may be effective for treatment-resistant depression. Unlike selective serotonin reuptake inhibitors (SSRIs), which may take weeks to provide relief, ketamine can provide relief in as little as 40 minutes. Healthcare providers may offer ketamine products through IV treatments under medical supervision, nasal sprays, or lozenges, also called troches.
- **Psilocybin:** A naturally-occurring psychedelic drug and the active compound in magic mushrooms, psilocybin may have potential for treating various mental health issues. The [John Hopkins Center for Psychedelic and Consciousness Research](#) says psilocybin has been successful in helping longtime smokers quit and easing anxiety in people with life-threatening cancer. It may also help people struggling with alcohol abuse. Future studies will explore the potential of psilocybin in treating PTSD, Alzheimer's disease, opioid addiction, depression, anorexia nervosa, and post-treatment Lyme disease syndrome.

Telemedicine enables patients to benefit from the therapeutic applications of these drugs in the comfort of their own homes while still being monitored by a healthcare provider. According to [Psychology Today](#), the number of people receiving ketamine via telemedicine has soared since the COVID-19 pandemic.

## Regulatory Issues Regarding Ketamine and Psilocybin

Ketamine's journey from an anesthetic to a potential game-changer in mental health treatment is remarkable. However, its use comes with significant safety and liability challenges.

**ESKETAMINE IS THE S(+)  
ENANTIOMER OF KETAMINE. IT IS ALSO CALLED (S)-KETAMINE OR S(+)-KETAMINE.**

Ketamine has been approved by the FDA since 1970, but psychiatric uses are still off label. In 2019, the [FDA](#) approved an esketamine nasal spray that could be used in doctor's offices and clinics to treat depression. However, the [FDA](#) notes that ketamine has not received approval to treat psychiatric disorders. Although compound ketamine products have been marketed for various psychiatric disorders, the FDA does not approve or evaluate compounded drugs.

Using medications off label increases liability risks. Plus, ketamine use may lead to serious side effects. The [Department of Justice](#) says ketamine is a Schedule III controlled substance and its abuse is illegal. People who use ketamine may experience hallucinogenic effects for 45 to 90 minutes, but impairment of the person's senses, judgment, and coordination may last up to 24 hours. In some cases, ketamine may cause depression, delirium, amnesia, impaired motor function, high blood pressure, and potentially-fatal respiratory problems.

Psilocybin is currently illegal and classified as a Schedule I substance, according to the [Department of Justice](#). However, the [FDA](#) has issued guidance for clinical trials using psychedelics. [National Geographic](#) says psychedelic drugs could gain FDA approval soon.

## Changes Are Coming

Significant research on ketamine and psilocybin is underway – and the results have been promising. Healthcare professionals are already using ketamine, whereas psilocybin use may become common in the near future.

These developments necessitate a reevaluation of health insurance coverage to ensure that telehealth services (including sessions involving ketamine and psilocybin therapies, when legally permissible) are covered.

Some organizations are already taking the first steps. According to [Verywell Health](#), the American Medical Association recently approved insurance billing codes for psychedelic therapy. However, more work is needed.

As research continues and clinical practices evolve, the role of these therapies in mental health treatment is likely to become better defined.

## The Impact on the Medical Malpractice Insurance Industry

Despite its many advantages, telemedicine introduces new liability and medical malpractice exposures such as patient privacy, cyber security, and ensuring the quality of therapeutic relationships. When providers use telemedicine to administer alternative therapies, the exposures become even more complex.

**ACTOR MATTHEW PERRY DIED OF THE ACUTE EFFECTS OF KETAMINE, ACCORDING TO THE LOS ANGELES COUNTY MEDICAL EXAMINER. HE WAS UNDERGOING KETAMINE INFUSION THERAPY AT THE TIME OF HIS DEATH.**

Source: [The Washington Post](#)

The medical malpractice insurance industry is adapting. Some medical malpractice insurers, albeit a limited number, are offering specialized coverage options for practices including ketamine therapy. These offerings come with stricter underwriting requirements and checklists. Underwriting questions may include:

- 1. Who is performing the service? What training does this person have?**
- 2. What type of ketamine is the patient receiving (intravenous, nasal, or oral)?**
- 3. What type of monitoring does the patient receive during the treatments?**
- 4. Is there an emergency step-up procedure in case of an incident during treatment?**
- 5. What is the aftercare plan? Typically, ketamine is part of a wider mental healthcare plan.**

These insurers are also collaborating with healthcare providers to develop guidelines and protocols that ensure the safe administration of ketamine to reduce potential malpractice claims.

## The Road Ahead

The mental health treatment landscape is rapidly changing – both due to the popularity of telemedicine and to new treatments like ketamine and psilocybin. As brokers, we can help educate our clients about their evolving exposures and offer access to comprehensive coverage that help address the risks of emerging therapies.

RT ProExec specializes in providing access to professional liability, medical malpractice liability and combo packages to help protect mental healthcare providers. If you need assistance with structuring and tailoring coverage for your provider clients' needs, we are here to help you navigate.

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