

Telemedicine: Legal and Licensure Implications

Necessity isn't just the mother of invention; it's also the mother of implementation. Telehealth use exploded during the pandemic as physicians urgently and nimbly adjusted to the rapidly changing circumstances and made every effort possible to continue caring for patients. If you are using telemedicine, you've no doubt been working through many of the clinical issues related to this platform. But it's equally important to remember that an audio or video telehealth visit is generally held to the same legal requirements and standards of an in-person visit. Here are a few issues to consider from a risk management point of view regarding telehealth.

1. ARE YOU PRACTICING MEDICINE?

The answer is invariably YES. **A telehealth visit, whether video or audio, is clearly the practice of medicine.** And if you are practicing medicine, you MUST have a license in the state where the patient is at the time of the visit.

2. ARE YOU LICENSED IN THE STATE WHERE THE PATIENT IS AT THE TIME OF THE VISIT?

Generally, you are required to be licensed where the patient is located at the time of the visit. Due the pandemic you may not need licensure if an emergency order in the state waives the requirement.

[Check the list of state-by-state orders on telemedicine due to covid.](#)

IMPORTANT: This list is updated regularly and should be checked EVERY day if you plan to rely on an emergency order for telehealth regulatory flexibilities. If you have a patient in a state with no order, and you do not have a license to practice in that state, you could be charged in that state by their medical board with the practice of medicine without a license.

3. DO YOU HAVE MALPRACTICE COVERAGE IN THE STATE WHERE THE PATIENT IS LOCATED?

Just because you have a license or an emergency order that allows you to practice in a given state, it doesn't mean that your malpractice carrier will have coverage for you in that state. This is a really important issue to understand. For example, if you are insured by Medical Mutual, you only have coverage in the surrounding states. If you get sued or charged with practicing medicine without a license in a non-covered state, you wouldn't have medguard coverage for the board complaint or coverage for the malpractice case. Obviously, that would be a dangerous and risky way to practice. Be sure to check with your malpractice carrier.

4. DON'T FORGET CONSENT AND OTHER REQUIREMENTS.

As with any in-person visit, consent and other legal requirements for a visit are required for every telehealth encounter.

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5. HIPAA IS RELAXED - FOR NOW.

HIPAA privacy requirements are relaxed due to the pandemic, but they will return possibly as soon as the end of this year. Make sure you are ready and able to be compliant. Not all telehealth platforms are compliant with HIPAA. If you are using a non-compliant product (such as FaceTime), reach out to MedChi and we can help you select a new product before the rules change.

6. ASK FOR HELP

MedChi has a lot of good help on telehealth on our website at www.medchi.org, and Medical Mutual has a [short FAQ on telehealth here](#).

As normalcy returns, it is very important to ensure that you are not taking undue risk. Please reach out to MedChi if you need help with any of these issues.

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