

Telehealth: Legal and Licensure Implications

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 Professionals Advocate, you only have coverage in the contiguous states. If you get sued or charged with practicing medicine without a license in a non-covered state, you wouldn't have coverage for the board complaint or coverage for the malpractice case. Obviously, that would 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. Please find the following information from HHS for a list of approved technology vendors: <https://www.hhs.gov/hipaa/for-professionals/special-topics/emergency-preparedness/notification-enforcement-discretion-telehealth/index.html>.

6. ASK FOR HELP

If you have any questions, please contact Professionals Advocate at 800-492-0193.