

Navigating the Legal Boundaries of Telehealth

Article By:

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It may seem like telehealth emerged overnight during the COVID 19 pandemic. However, telemedicine has been developing for centuries.

Depending on how you define telehealth, you could say it has been around for hundreds of years. [The exact date of the first use of telecommunication for medical purposes is unknown](#). Some literature suggests that information about the bubonic plague was transmitted across Europe via smoke signals. During the Civil War, the electronic telegraph was used to order medical supplies and to transmit a report of casualties. Telemedicine as we know it today [originated](#) from the National Aeronautics and Space Administration's (NASA's) manned space flight programs over 50 years ago to serve astronauts on long-duration missions. By the 1990s, telehealth was used to provide remote healthcare care to specific occupations, such as workers on ships.

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Today, in a post pandemic society, telehealth is a broad term for providing clinical and non-clinical health care services using both text and video transmission. Telehealth has revolutionized the healthcare industry, providing patients with unprecedented access to medical care from the comfort of their homes. However, this digital transformation has also introduced a myriad of legal challenges varying from state to state. Here are just a few of these legal complexities that need to be navigated by healthcare providers offering telehealth services:

Licensure requirements: Licensure requirements for physicians are state-specific. Physicians practicing telemedicine across state lines must comply with licensing regulations in multiple

jurisdictions. Many states have entered into [multi-state licensure compacts](#) streamlining the licensing process while preserving state oversight. This allows certain providers to practice across state lines as long as they remain in good standing with their home jurisdiction. Some states allow out-of-state providers to provide telehealth services after completing [registration requirements](#). These requirements usually include paying an annual fee, not opening an office for in-person treatment, and maintaining professional liability insurance.

Standards of Care: [Family physicians practicing telehealth do not have specific professional standards of care in most states](#). Should the standard of care with telehealth be the same as it is for in-person visits? Diagnostic limitations, such as, the inability to conduct a comprehensive physical examination during a telehealth visit, must be taken into consideration as they can complicate diagnostic accuracy.

Privacy and Confidentiality: Telemedicine involves the transmission of sensitive patient information over digital platforms, raising significant concerns about data security. All telehealth communications and data storage must comply with the [Health Insurance Portability and Accountability Act \(HIPAA\)](#). This includes secure transmission of health information and proper use of telehealth platforms. Vulnerabilities can be introduced with the use of third-party telehealth platforms. These platforms must comply with HIPAA regulations, such as having robust authentication processes and secure data encryption. In the event of a data breach, an appropriate legal response, including notification requirements and mitigation strategies must be devised.

Consent: Care must be taken to ensure informed consent is properly obtained and documented from patients using telehealth services. [Specific guidelines](#) have been created in many states outlining how consent for telehealth services should be obtained by physicians and other medical professionals. Consent may include verifying the patient's identity and location and should include disclosure of potential limitations and risks of telehealth. If any protected health information is to be shared with other physicians and clinicians, consent to share such information should also be obtained. Documentation of informed consent whether it be written or verbal must be included in the patient's medical record.

Online Prescribing: [Each state handles online prescribing of controlled substances differently](#) with a lot of incongruity between the states. While online prescribing of controlled substances is not allowed in the most restricted states, other states require an in-person evaluation within a specific timeframe. The establishment of a patient-physician relationship is the only requirement in the least restricted states. This can be established via telehealth even if the prescribing provider has never conducted an in-person medical evaluation of the patient. In March 2023, the Drug Enforcement Administration (DEA) and Department of Health and Human Services (HHS) issued a [temporary rule](#) extending the allowance of prescribing controlled substances in these instances until December 2024 to avoid lapses in care.

Reimbursement and Billing: Reimbursement for telehealth services continues to evolve. While most insurance providers offer [coverage for telehealth](#), reimbursement may vary depending on the service offered, the state, and the payer. The complicated policies of telehealth reimbursement, including compliance with insurance regulations and payer requirements must be navigated by providers to ensure that billing practices comply with such laws as [the Anti-Kickback Statute and the False Claims Act](#) to avoid accusations of abuse or fraud.

Technology and Platform Use: Agreements with telehealth platform vendors require review to ensure protection of patient data and compliance with legal requirements. The technology used must

also meet legal standards for functionality and security.

Telehealth offers convenience and accessibility to patients and represents a notable advancement in healthcare delivery. However, it also presents complex legal challenges that must be navigated. Understanding the nuances of jurisdictional issues, privacy concerns under HIPAA, and the standard of care in telemedicine versus in-person visits is essential for healthcare providers.

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