

Telehealth/Telemedicine

Question

I would like to expand my office practice through the use of telehealth/telemedicine. Do you have a checklist of items to consider before I proceed? Does MedPro Group provide professional liability insurance coverage for telehealth?

Answer

Telehealth – also commonly called telemedicine – refers to the use of medical information exchanged from one site to another via electronic communications. Telehealth includes consultative, diagnostic, treatment, and educational services. The exchange of information can take place in real time, or information can be forwarded and analyzed at a later time.

Telehealth is subject to both state and federal regulations, including the Health Insurance Portability and Accountability Act of 1996 (HIPAA), U.S. Food and Drug Administration (FDA) standards, and state licensing requirements.

Your insurance agent or broker can help answer questions about professional liability insurance coverage for telehealth activities. If you do not have an agent or broker, contact MedPro Group at 1-800-463-3776 and ask for assistance with this coverage issue. When considering whether to expand into telehealth, ask your personal attorney to assist you in reviewing the following:

- State licensing practice act(s), telehealth regulations, and privacy laws:
 - Is a face-to-face evaluation with the patient required?
 - What are the requirements for prescribing medications as part of telehealth?

- What are the requirements in the state where the patient resides?
- How do state privacy laws compare with HIPAA requirements?
- Telehealth equipment (interactive audio and video):
 - Does the telehealth equipment company require routine access to protected health information (PHI)?
 - If yes, the practice and the equipment vendor should have a business associate agreement (BAA) in place.
 - If no, does the equipment qualify for a BAA exception (i.e., conduit exception)? If yes, the equipment can be used if a risk assessment confirms that reasonable and addressable security is in place. The risk assessment should be in writing.
 - Does the FDA regulate the telemetry software or device?
 - Have you tested the equipment prior to purchase? For example, is there adequate bandwidth for videos and images? Do videos and images have adequate resolution? Does the practice have a back-up plan in the event of equipment failure?
- Written patient selection criteria and guidelines. Do selection criteria and guidelines consider:
 - Complexity of treatment?
 - The patient's ability to acquire and use electronic equipment?
 - The provider's ability to refer the patient to a local provider?
 - Clinical algorithms for emergency treatment, referrals, coordination of care with other providers, and communication of critical results?
- Informed consent:
 - Are the risks and benefits of telehealth discussed with the patient and documented in the health record?

- Does the informed consent discussion include:
 - Limitations of the technology (e.g., it may not replicate a face-to-face assessment, emergency treatment cannot be provided, etc.)?
 - Potential for transmission failure, which may require an in-person meeting or rescheduled video consult?
 - Potential for security issues, even with current security protocols?
 - Consent to communicate
- Marketing/advertising:
 - Is advertising for telehealth services compliant with Federal Trade Commission rules, state regulations, and state medical board requirements?

Other factors to consider when developing a telehealth program include patient access (appointments, etc.); documentation of telehealth services; credentialing of providers; electronic prescribing services; referrals and consultations; supervision of allied health professionals; reimbursement; and ongoing changes to state and federal regulations.

For additional resources on telehealth/telemedicine, please see MedPro's publication titled *Risk Resources: Telehealth/Telemedicine*.

This document should not be construed as medical or legal advice. Because the facts applicable to your situation may vary, or the laws applicable in your jurisdiction may differ, please contact your attorney or other professional advisors if you have any questions related to your legal or medical obligations or rights, state or federal laws, contract interpretation, or other legal questions.

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