

Question:

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

Answer:

Telemedicine — the use of medical information exchanged from one site to another via electronic communications — 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.

Telemedicine 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 telemedicine activities. If you do not have an agent or broker, contact MedPro Group at 800-4MEDPRO (1-800-463-3776) and ask for assistance with this coverage issue. When considering whether to expand into telemedicine, ask your personal attorney to assist you in reviewing the following:

- State licensing practice act(s), telemedicine regulations, and privacy laws:
 - Is a face-to-face evaluation with the patient required?
 - What are the requirements for prescribing medications as part of telemedicine?
 - What are the requirements in the state where the patient resides?
 - How do state privacy laws compare with HIPAA requirements?
- Telemedicine equipment (interactive audio and video):
 - Does the telemedicine 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 telemedicine discussed with the patient and documented in the medical 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 by email when applicable?
- Advertising: Is advertising for telemedicine services compliant with FTC rules, state regulations, and state medical board requirements?
- Other considerations: Other factors to consider when developing a telemedicine program include patient access (appointments, etc.); medical records; electronic prescribing services; supervision of allied health professionals, reimbursement; ongoing changes to state and federal regulations; compliance program; audio and visual quality control testing program; and specialty recommendations.

Resources:

- American Telemedicine Association: Telemedicine Practice Guidelines — <http://www.americantelemed.org/resources/telemedicine-practice-guidelines/telemedicine-practice-guidelines#.VZrCyPIVhBc>
- Centers for Medicare & Medicaid Services:
 - Telehealth — <http://www.cms.gov/Medicare/Medicare-General-Information/Telehealth/index.html>
 - Telehealth Services Fact Sheet — <http://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNProducts/downloads/TelehealthSrvcsfctsht.pdf>
- Health Resources and Services Administration: How Do You Begin to Set Up Telehealth Services? — <http://www.hrsa.gov/healthit/toolbox/RuralHealthITtoolbox/Telehealth/howdoyoubegin.html>
- National Institute of Standards and Technology: An Introductory Resource Guide for Implementing the Health Insurance Portability and Accountability Act (HIPAA) Security Rule — <http://csrc.nist.gov/publications/nistpubs/800-66-Rev1/SP-800-66-Revision1.pdf>
- Center for Connected Health Policy National Telehealth Policy Resource Center: Laws and Reimbursement Policies — <http://telehealthpolicy.us/laws/list>

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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