

Telehealth Legal Considerations

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Telehealth Legal Considerations in Florida

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Telehealth Legal Questions

Must a physician be licensed in the state where the patient is located in order to practice Telehealth?

May a physician prescribe medications for a patient through Telehealth?

May a physician prescribe controlled medications through Telehealth?

What medical records must a Telemedicine physician maintain? What are the guidelines regarding patient access to personal medical records?

What are the privacy concerns for a Telemedicine physician? What are the privacy rules and regulations associated with Telehealth?

Definition of Telehealth and Telemedicine

- Telehealth or Telemedicine is the provision of health care services by the exchange of medical information from one site to another site through the use of electronic and telecommunications technologies.

Definition of Telehealth and Telemedicine (cont.)

- Telehealth or Telemedicine is not the provision of health care services through an audio only, telephone, e-mail message, text message, facsimile transmission, mail or parcel service, or any combination of those means.

Benefits of Telehealth

- Telehealth can increase access to health care services particularly to patients in remote and underserved areas.
- Telehealth may improve clinical outcomes by providing patients more access to specialists.

Benefits of Telehealth (cont.)

- Telehealth can decrease health care costs by:
 - Providing more specialized care to patients.
 - Providing better care to patients in the home and improving patient compliance.
 - Providing care to patients in other residential settings thereby avoiding costly and time-consuming transports to receive necessary care.

Benefits of Telehealth (cont.)

- Telehealth can decrease health care costs by (cont.):
 - Providing better access to preventive and routine health care early to patients in remote areas thereby reducing the need for more expensive care later.
 - Providing health care providers better access to information and education allowing them to provide better care to patients and thus reducing costs.

Drawbacks of Telehealth

- Technology Requirements
 - Costs of new technology
 - Lost productivity as providers learn to use new technology.
 - Compatibility between different technologies in different locations.

Drawbacks of Telehealth (cont.)

- Diminished relationships between health care providers and their patients.
- Organizational and bureaucratic (credentialing) issues between health care providers and health care facilities.
- Legal issues for health care providers - State Licensure.

Drawbacks of Telehealth (cont.)

- Medical records requirements
 - Content of medical records.
 - Privacy issues for patient information exchanged through telehealth.
 - Patient access to health care records maintained by telehealth providers.

State Licensing

Practicing Across State Lines

- **Unlicensed Practice** – Generally a physician must be licensed in the state where the patient is receiving health care services.
- **States with no licensure exemptions for physician-to-physician out-of-state consultations:** Massachusetts, Michigan, North Dakota, Pennsylvania and South Dakota.
- **States that allow licensure reciprocity for bordering states:** Maryland, New York, Virginia, and the District of Columbia.
- **States that currently grant conditional or telemedicine licenses to out-of-state physicians:** Alabama, Louisiana, Minnesota, Montana, Nevada, New Mexico, Ohio, Oregon, Tennessee, and Texas. ¹

Malpractice

- Does the provider's insurance coverage include Telehealth, or practice in the jurisdiction where the patient is located?

Scope of Telehealth Practice

- May a provider prescribe medications, or controlled medications, through Telehealth?
 - Particularly important for physician assistant and nurse practitioner providers
- 21 U.S.C. Section 802(54) – Allows
- State Laws – May not allow

Florida State Rules

- **Rule 64B8-9.0141 and Rule 64B15-14.0081**
- **Note: The limitations on Telemedicine do not apply to emergency medical services and emergency medical conditions as specified in the rules.**
- A physician providing medical services to a patient in Florida must be licensed in Florida.
- Telemedicine does not include provision of health care services through an audio only telephone, e-mail messages, text messages, facsimile transmissions, U.S. Mail or other parcel service, or any combination thereof.
- Controlled substances cannot be prescribed through the use of Telemedicine, except for patients that are hospitalized in a facility licensed under Chapter 395, FS.

Florida State Rules (cont.)

- Physicians and physician assistants shall not provide treatment recommendations, including issuing a prescription, via electronic or other means, unless the following elements have been met:
 - A documented patient evaluation, including history and physical examination to establish the diagnosis for which any legend drug is prescribed.
 - Discussion between the physician or the physician assistant and the patient regarding treatment options and the risks and benefits of treatment.
 - Maintenance of contemporaneous medical records meeting the requirements of Rule 64B8-9.003.

Florida State Rules (cont.)

- Internet Prescribing Prohibited.
- Prescribing medications based solely on an electronic medical questionnaire constitutes the failure to practice medicine with that level of care, skill, and treatment which is recognized by reasonably prudent physicians as being acceptable under similar conditions and circumstances, as well as prescribing legend drugs other than in the course of a physician's professional practice.

Medical Records Requirements

Content of Medical Records

- Telehealth practitioner must maintain medical records.
- Medical records shall contain sufficient information to identify the patient, support the diagnosis, justify the treatment and document the course and results of treatment accurately. This information includes:
 - Patient history
 - Exam/test results
 - Records of drugs prescribed, dispensed, or administered
 - Reports of consultations and hospitalizations
 - Copies of records or reports or other documentation obtained from other health care practitioners at the request of the physician and relied upon by the physician in determining the appropriate treatment of the patient. 64B8-9.003, F.A.C.

Medical Records Requirements (cont.)

- All providers must maintain legible medical records that identify the licensed physician or the physician extender and supervising physician by name and professional title who is or are responsible for rendering, ordering, supervising, or billing for each diagnostic or treatment procedure and that justify the course of treatment of the patient, including, but not limited to, patient histories; examination results; test results; records of drugs prescribed, dispensed, or administered; and reports of consultations and hospitalizations. 458.331(1)(m), FS.

Privacy Issues

- Health Insurance Portability and Accountability Act (HIPAA)
 - HIPAA is the minimum requirement as to the confidentiality of patient records maintained by telehealth providers.
 - Telehealth providers also need to ensure that the health information electronically transmitted while providing telehealth services are secure from any breach of security. The HIPAA standards for the electronic transmission of information followed to protect patient confidentiality.

42 C.F.R. Part 2

- Telehealth providers providing substance abuse and treatment services must maintain records in accordance with higher standards of 42 C.F.R. Part 2.

State Privacy Laws

- Many jurisdictions have higher standards for patient privacy than the HIPAA standards.
- Telehealth practitioners in those jurisdictions must comply with the more stringent requirements of the jurisdiction in which they are practicing.



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