

7 TELEHEALTH POLICY ISSUES



Other Than Reimbursement

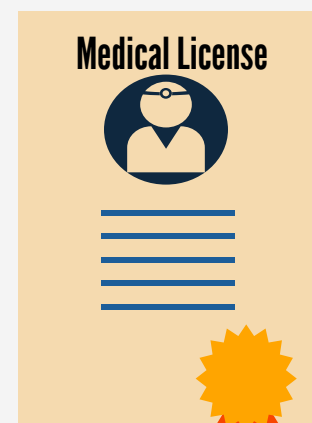


Much of the existing telehealth policy at the state and federal level is related to reimbursement. However, there are other policy issues an organization should consider when starting a telehealth program.

01 | LICENSING



When starting a telehealth program, be sure that the providers you are engaging are licensed in your state, since each state has its own licensing policies, laws, and/or regulations for health care providers. Generally, if providing health services to a person within the state's borders, a provider will need to be licensed in that state. Beyond the licensing laws themselves, some payers, such as Medicaid, may have requirements that in order to be reimbursed, the provider must be licensed in the state. There may be some exceptions, such as if the consultations are infrequent or if the provider is associated with a visiting sports team. However, these exceptions are few.



To help address this barrier, state licensure compacts have become more prevalent in the last few years. Each of these compacts function differently; for example, the Nurse Licensure Compact allows a nurse to be licensed in one compact state and provide services in another compact state without having to get a license from the second state. With the Medical Licensure Compact for physicians, a doctor will still need to get a license in another compact state from the one he or she is licensed in, but the process would be expedited. You can check what compact your state belongs to on CCHP's state telehealth policies, laws and regulations map at www.cchpca.org.

Visit cchpca.org to see what compact your state is a member.

02 | LICENSING BOARDS

It is important to keep in mind that licensing and regulatory boards are responsible for issuing licenses, providing guidelines and regulating their licensees. Providers should be aware of what may be required of them from the applicable licensing board. Increasingly, these boards have begun creating another level of telehealth policy by issuing rules or guidelines on how telehealth is used by their licensees. Many of these policies have generally reflected the same obligations a provider would have had if he or she provided services in-person.



NOTE

Providers should be aware of what will be required of them from the applicable licensing board

What are the requirements?

Some requirements that boards may place on licensees include:

Confirming the identity of the patient.

Informing the patient that they have the right to refuse service via telehealth.

Ensuring that information from the telehealth visit is sent to the patient's primary care provider.

03 | CREDENTIALING & PRIVILEGING

Closely related to licensing are credentialing and privileging issues. If a practitioner is providing services at a healthcare facility, she may need to be credentialed and privileged by that facility. This involves a potentially lengthy process of checking background information and other records. It could be costly in both time and resources.



The Center for Medicare and Medicaid Services (CMS) approved regulations to allow hospitals and critical access hospitals (CAH) to credential by proxy which means a clinic can rely on the information the provider's home organization completed in their credentialing

process. The Joint Commission paralleled these guidelines.

Additionally, states may have other specifications that may need to be met that this process may not cover. You can contact your telehealth resource center through the National Consortium of Telehealth Resource Centers for more information.

Useful Links:

The Joint Commission

The National Consortium of Telehealth Resource Centers

IMPORTANT POINT!

This process allows a clinic to contract with another hospital, CAH or telemedicine entity to provide services via telehealth and rely on the credentialing work done by the telehealth entity on the provider they wish to use, if certain conditions are met. This is an optional process and a clinic need not adopt it.



04 | MALPRACTICE

While many questions regarding malpractice and telehealth revolve around lawsuits, the number of those cases have been low and about provider error rather than issues with the technology. Though not required, malpractice insurance coverage is recommended when providing telehealth services



KEEP IN MIND:

Telehealth providers should verify :

1 Does my malpractice policy cover services delivered via telehealth?

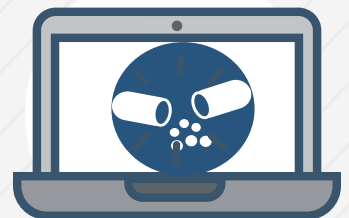
2 If providing services in another state, will my malpractice coverage work in that other state?

05 | PRESCRIBING & PATIENT PROVIDER RELATIONSHIP

You will need to check your state laws and policies to see what approach your state has taken.

To write a prescription, a patient-provider relationship must have already been established. States vary on how and if telehealth can be used to establish a patient-provider relationship. Some are silent on the issue and may have very vague policies. Others are more explicit and allow the use of telehealth to establish such a relationship, but may have caveats such as it should be established via live video, but not through store-and-forward.

Closely related to establishing a patient-provider relationship is the use of telehealth to prescribe. The federal government controls the prescribing of controlled substances via **The Ryan Haight Act which dictates how telehealth (telemedicine is the term used in the Act) can be used to prescribe a controlled substance.** There are very narrow exceptions in the Ryan Haight Act that a provider can use to prescribe using telehealth without having done an initial in-person examination. Prescribing of non-controlled substances is state law and the establishment of a patient-provider relationship, the policies can vary. One thing state laws cannot change is the prescribing of controlled substances as federal law will trump state law.



06 | PRIVACY & SECURITY



Technology alone cannot guarantee Health Insurance Portability and Accountability Act (HIPAA) compliance because to meet the requirements, human action is required. In addition, HIPAA does not have specific requirements related to telehealth.

A provider/organization must meet the same standards set by HIPAA as if the service had been provided in-person; in order to meet those requirements, different or additional steps may need to be taken.



For example, Business Associate Agreements (BAA) are needed if an outside entity that a provider/organization is engaging with may have access to or be exposed to protected health information (PHI). The provider/organization is working with a company to provide some technological or connectivity service that it would not have engaged if only in-person services were offered. The outside entity's work may provide them access or expose them to PHI. In that case, a BAA may need to be signed.

ALSO IMPORTANT:

- HIPAA is the lowest level of privacy and security an organization must meet. Many states have additional or more stringent privacy and security laws.
- Additionally, states may have specific vendor laws that may not be directed at health services, but nonetheless impact them.



07 | FQHCs & RHCs



Due to the federal requirements on Federally Qualified Health Clinics (FQHCs) and Rural Health Clinics (RHCs), their ability to provide services via telehealth can be complicated and confusing. **How Medicare policy translates to Medicaid in regard to telehealth increases this confusion as there are varying policies on how telehealth and FQHCs/RHCs are treated in Medicaid programs.**

Under Medicare policy, FQHCs and RHCs are limited to only acting as an originating site (where the patient is located) in a telehealth interaction. They cannot act as a distant site provider (the specialist). This restrictive policy may or may not be replicated at the state level in Medicaid.

Medicaid programs are not required to replicate these restrictive FQHC/RHC policies though some do. Other Medicaid programs may have more expansive telehealth policies such allowing an FQHC to provide specialist services via telehealth. Like with many other policy issues, one should check with the state Medicaid program to understand how and if they allow FQHCs and RHCs to use telehealth.

EXAMPLE



Georgia allows an FQHC to act as BOTH a distant and originating site. However, Wyoming only allows FQHCs and RHCs to act as originating sites.



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