

TELEPSYCHIATRY UPDATE


Donna Vanderpool, MBA, JD
Director of Risk Management
Professional Risk Management Services (PRMS)

SPA and APPA
October 2023

I have no financial relationships with
ineligible companies to disclose

DISCLAIMERS

- Nothing presented here is legal advice
- There are *many* telemedicine questions still without answers
- There is little consistency in how states are addressing telemedicine
- You may need to check with your liability insurance company
- Things can change daily
 - › What is true today may not be true tomorrow



Top 10 Myths about Telepsychiatry

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By Donna Henderson, MD
 Dr. Henderson is Vice President, Risk Management, at PRMS, Inc.

The technology for remote treatment is advancing rapidly. The regulatory environment surrounding telepsychiatry is also evolving, but at a much slower technology. As introduced in this journal years ago by my colleague Charles D. Smith, "Telepsychiatry and Risk Management" (1), there is still a lot of confusion even within—states address telemedicine requirements. This discrepancy is largely myth around the topic. Eventually, we are starting to see some states are generally consistent, regardless of the state, allowing us to clear up some misunderstandings about telepsychiatry.


MYTH#1
 Services are deemed to be rendered where the psychiatrist is located.

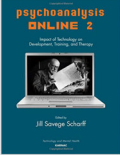
Reality: All states are clear that a healthcare provider's state of treatment. This fact has several implications, including:

1. If the patient is in a different state than the provider's state, the provider's state licensing board should be contacted for approval. Some states of states require some type of approval. (See Myth #10). Note that providers do not want to be held liable regarding insurance implications.
2. The provider will need to comply with all relevant laws, including licensing requirements, state to state.



Free Preview





AGENDA

Federal Law

- Controlled Substances
- HIPAA

State Law

- Licensure
- Prescribing
- Standard of Care

Special Topics

- In-person Visits
- College Students
- International Issues
- Liability Insurance Issues



FEDERAL LAW

- 1971 – Federal law - DEA registration required at each practice location
- 1977 – DEA regulations – implementing law requiring DEA registration at each practice location
 - › Unless just prescribing at more than one location in state
- 2007 – DEA issues clarification saying DEA registration is required at each practice location
- 2009 – Federal law – Ryan Haight Act
 - › Requires one in-person visit prior to prescribing controlled substances

FEDERAL LAW

- Controlled Substances Act (as amended by RHA)
 - “No controlled substance that is a prescription drug...may be delivered, distributed or dispensed by means of the Internet without a **valid prescription.**”
 - › Notes:
 - “dispense” is defined in §802(10) to include prescribing
 - “by means of the Internet” includes telemedicine

FEDERAL LAW

- Controlled Substances Act (as amended by RHA)
 - “Valid prescription means a prescription that is issued for a legitimate medical purpose in the usual course of professional practice by –
 - › A practitioner who has conducted **at least 1 in-person medical evaluation of the patient**, or a covering practitioner
 - In-person medical evaluation means a medical evaluation that is conducted with the patient in the physical presence of the practitioner”

FEDERAL LAW

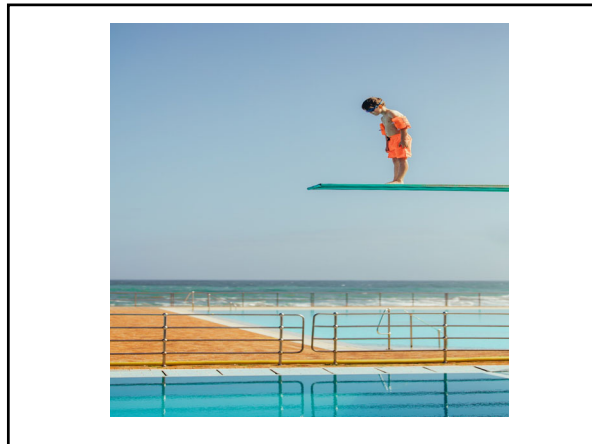
- Controlled Substances Act (as amended by RHA)
 - Exception to the in-person visit requirement is “telemedicine”
 - › *But as defined by the CSA*

FEDERAL LAW

- Controlled Substances Act (as amended by the RHA)
 - 7 definitions of telemedicine / 7 exceptions to in-person visit
 1. Patient in facility with federal DEA registration – but need your own DEA registration in patient’s state
 2. Patient in presence of a treater with DEA registration in patient’s state – but need your own DEA registration in patient’s state

FEDERAL LAW

- Controlled Substances Act (as amended by the RHA)
 - 7 definitions of telemedicine / 7 exceptions to in-person visit
 3. Indian Health Service
 4. Public health emergency
 5. Special registration from Attorney General
 6. Medical emergency
 7. *Other circumstances, as deemed by Attorney General and Secretary*



TIMELINE FOR FEDERAL REGULATION OF CONTROLLED SUBSTANCE PRESCRIBING

2020

- The Secretary of HHS declared a federal COVID Public Health Emergency (PHE) on January 31, 2020
- It renewed it every 90 days since
- Implications of this PHE include waivers of DEA requirements for the duration of the PHE:
 - For one in-person visit requirement per the Ryan Haight Act
 - For a DEA registration in the patient's state to prescribe controlled substances

DEA PROPOSED REGULATION (MARCH 2023)

- Focuses on the in-person visit requirement
- No telemedicine registration - ?
- Introduces possibility of "qualifying telemedicine referral"
 - › Referring treater with DEA registration, after having in-person visit, can issue referral to prescriber
 - That prescriber can prescribe CS without an in-person visit
- To prescribe Schedule II
 - › Prior in-person visit
 - › OR qualifying telemedicine referral

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DEA PROPOSED REGULATION (MARCH 2023)

- To prescribe non-narcotic Schedule III-V:
 - › Can do a one-time 30 day prescription without in-person visit
 - › After that, needs a medical evaluation – 2 options:
 - Prescriber participates remotely in audio-visual meeting with the non-prescribing DEA registered practitioners seeing patient in-person, OR
 - Qualifying telemedicine referral
- Other pieces proposed
 - › Specifics for additional notations on prescription
 - › Etc.
- Separate regulation for prescribing buprenorphine

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CURRENT STATUS – DEA REGS

- May 3, 2023 – DEA says final regulation will not be done before the end of PHE
 - › Temporary extension of PHE waivers for prescribing CS coming
 - Waiving requirement to have one in-person visit prior to prescribing controlled substances, and
 - Waiving requirement to have DEA registration in patient's state, if different from prescriber's state

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CURRENT STATUS – DEA REGS

- May 9, 2023 – DEA issued a temporary extension of PHE waivers for prescribing CS
 - › Until November 11, 2023
 - If patient and prescriber have established treatment relationship by November 11, 2023, same waivers continue until November 11, 2024
 - If treatment relationship is established after November 11, 2023, these waivers are not available

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DEA Hosts Public Listening Sessions on Telemedicine Regulations

MEDIA ADVISORY - UPDATED

WASHINGTON – The Drug Enforcement Administration will host public listening sessions to receive comments from healthcare practitioners, experts, advocates, patients, and other members of the public to inform DEA's regulations on prescribing controlled substances via telemedicine.

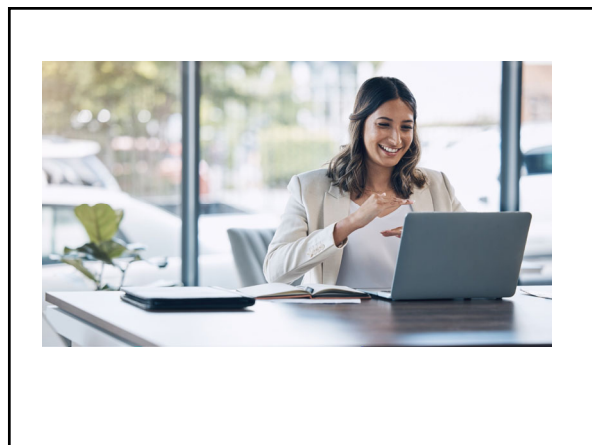
The listening sessions will be held in person and livestreamed with remote participation available.

WHAT: Public Listening Sessions on Telemedicine Regulations
WHO: Open to the public
WHEN: September 12-13, 2023
WHERE: DEA Headquarters
 700 Army Navy Drive
 Arlington, Va. 22202

Note: Registration for members of the public to attend in person or make oral presentations has now closed. The event will be livestreamed and publicly available.

FOR NEWS MEDIA: News media wishing to attend in person must RSVP to DEA.Public.Affairs@dea.gov by 5 p.m. on September 11, 2023. Members of the media should arrive no later than 8 a.m. on September 12 and 13 for setup.

For more information, visit [Federal Register: Practice of Telemedicine: Listening Sessions](https://www.federalregister.gov/practice/telemedicine-listening-sessions).
<https://www.dea.gov/press-releases/2023/08/07/dea-hosts-public-listening-sessions-telemedicine-regulations>



FINAL DEA REGULATION

- What will NEW PROPOSED REGULATION say?
- What will the final regulation say?
 - › Options for in-person visit requirement?
 - › DEA registration needed in patient's state, if different?
- Is the DEA really not going to do the telemedicine registration??
- When will it be issued?





HIPAA REQUIREMENTS

- Need to comply with HIPAA to ensure patient information is kept confidential and secure
 - › Need business associate agreement from telemedicine platform vendor promising to protect patient information
 - › State AG can enforce federal HIPAA regulations
- State law also requires patient information to be kept secure and confidential

AGENDA

Federal Law	<ul style="list-style-type: none"> Controlled Substances HIPAA
State Law	<ul style="list-style-type: none"> Licensure Prescribing Standard of Care
Special Topics	<ul style="list-style-type: none"> In-person Visits College Students International Issues Liability Insurance Issues

STATE LICENSURE

- Issue since 2006 (*Hageseth* case) – but unrecognized
 - › CA asserted jurisdiction over physician in CO who prescribed antidepressant to patient in CA
 - Criminal conviction and civil suit
 - › Results:
 - Physician services rendered via telemedicine are deemed to take place where patient is located
 - Patient's state has jurisdiction over unlicensed physicians' treatment of patients in its state
 - Need to comply with laws (including re: licensure) in patient's state AND laws in physician's state

STATE LICENSURE REQUIREMENTS MATTER!

- You are in a regulated profession
 - › You can only practice where you meet licensure requirements
 - › Risk = unauthorized practice of medicine
- Consequences of being found to be engaged in the unauthorized practice of medicine
 - › That state may discipline you
 - › States where you are licensed may discipline you
 - › You have no liability insurance coverage for illegal acts
- You need to meet licensure requirements even if you are not prescribing

STATE ISSUE - LICENSURE

- State law where you are PLUS state law where patient is
 - Patient's state of residency is irrelevant
- States vary
 - Special telemedicine license
 - Exception to licensure in statute
 - Limited number of sessions per year
 - Licensing board may allow sessions for continuity of care without license

CCHP

Look up policy by:

Topic

Federal

State

CCHP is the National Telehealth Policy Resource Center

The Center for Connected Health Policy is a nonprofit, nonpartisan organization working to maximize telehealth's ability to improve health outcomes, care delivery, and cost effectiveness. Our expertise in telehealth policy was recognized in 2012, when we became the federally designated National Telehealth Policy Resource Center.

LEARN MORE ABOUT OUR WORK

<https://www.cchpca.org/>

Understanding telehealth policy

Get to know how the laws, regulations, and Medicaid programs work in your state.

How it works

Resources & reports

Ask a policy expert


Telehealth policy finder

Know what you're searching for? Find the policies and regulations that impact you.

<https://www.cchpca.org/>

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We track telehealth-related laws and regulations across three categories and 19 unique topics. Click on a topic to see how it's applied in your state.

Professional Requirements

- DEFINITIONS >
- CONSENT REQUIREMENTS >
- ONLINE REQUIREMENTS >
- CROSS-STATE LICENSING >
- LICENSING COMPACTS >
- PROFESSIONAL BOARD STANDARDS >
- MISCELLANEOUS >

<https://www.chcpa.org/all-telehealth-policies/>

PROFESSIONAL REQUIREMENTS

Cross-State Licensing

When telehealth is used, it is considered to be rendered at the physical location of the patient, and therefore a provider typically needs to be licensed in the patient's state. A few states have interstate or telehealth specific agreements that allow an out-of-state provider to render services via telemedicine in a state where they are not located, or allow a clinician to provide services via telehealth in a state if certain conditions are met (such as agreeing that they will not open an office in that state). Still other states have laws that don't specifically address telehealth and/or interstate licensing, but make allowances for practicing in neighboring states, or in certain situations where a temporary license might be issued provided the specific state's licensing conditions are met.



CLICK THE MAP TO SCROLL DOWN TO THE STATE

<https://www.chcpa.org/topic/cross-state-licensing-professional-requirements/>

Florida

Last updated 01/26/2023

A health care professional not licensed in this state may provide health care services to a patient located in this state using telehealth if the health care professional registers with the applicable board, or the department if there is no board, and provides health care services within the applicable scope of practice established by Florida law or rule.

See law for specific provider requirements.

An out-of-state provider must have professional liability coverage or financial responsibility that includes coverage for telehealth services provided to patients not located in the provider's home state. A health care professional registered under this section may not open an office or provide in-person services. The Department is required to publish all registrants on its website with specific requirements outlined in the law.

SOURCE: [DL Statute 456.42](#) & [Florida Board of Medicine / Issued Jan 2023](#)

<https://www.chcpa.org/topic/cross-state-licensing-professional-requirements/>

As of the effective date of this rule, the Board will no longer issue what was previously termed a "telemedicine license." Individuals previously granted a telemedicine license under the former version of this rule may apply to have the license converted to a full license. Such individuals must complete the application for a full license and provide all necessary documentation, though no new application fee will be required as long as application is made within two years of the effective date of this rule. See rule for details for individuals who do not convert to a full license.

SOURCE: [TN Rule Annotated_Rule 0880-02-16 \(Accessed Mar. 2023\)](#).

The TN Osteopathic Board will still issue a telemedicine license. See rule for details.

SOURCE: [TN Rule Annotated_Rule 1050.02.17\(2\) \(Accessed Mar. 2023\)](#).

<https://www.cchpca.org/Tennessee/?category=professional-requirements&topic=cross-state-licensing-professional-requirements>

Arizona
Professional Requirements

DEFINITIONS
CONSENT REQUIREMENTS
ONLINE PRESCRIBING
CROSS-STATE LICENSING
LICENSURE COMPACTS
PROFESSIONAL BOARDS
STANDARDS
MISCELLANEOUS

Cross State Licensing

A health care provider who is not licensed in Arizona may provide telehealth services to a person located in Arizona if the health care provider complies with all of the following:

1. Registers with the state's applicable health care provider regulatory board of agency that licenses comparable health care providers on an application prescribed by the board or agency that contains certain elements (see law text).
2. Before prescribing a controlled substance to a patient, registers with the controlled substances prescription monitoring program.
3. Pays the registration fee as determined by the applicable health care provider regulatory board or agency.
4. Holds a current, valid and unrestricted license to practice in another state that is substantially similar to a license issued in Arizona to a comparable health care provider and is not subject to any past or pending disciplinary proceedings in any jurisdiction. The health care provider shall notify the applicable health care provider regulatory board or agency within five days after any restriction is placed on the health care provider's license or any disciplinary action is initiated or imposed. The health care provider regulatory board or agency registering the health care provider may use the national practitioner databank to verify the information submitted.

<https://www.cchpca.org/arizona/?category=professional-requirements&topic=cross-state-licensing-professional-requirements>

DEFINITIONS
CONSENT REQUIREMENTS
ONLINE PRESCRIBING
CROSS-STATE LICENSING
LICENSURE COMPACTS
PROFESSIONAL BOARDS
STANDARDS
MISCELLANEOUS

A health care provider who is not licensed to provide health care services in Arizona but who holds an active license to provide health care services in another jurisdiction and who provides telehealth services to a person located in Arizona is not subject to the registration requirements of this section if either of the following applies:

- The services are provided under one of the following circumstances:
 - in response to an emergency medication condition.
 - in consultation with a health care provider who is licensed in Arizona and who has the ultimate authority over the patient's diagnosis and treatment.
 - To provide after care specifically related to a medical procedure that was delivered in person in another state.
 - To a person who is a resident of another state and the telehealth provider is the primary care provider or behavioral health provider located in the person's state of residence.
- The health care provider provides fewer than ten telehealth encounters in a calendar year.

SOURCE: [AZ Revised Statute Sec. 36-3006 \(Accessed Jan. 2023\)](#).

<https://www.cchpca.org/arizona/?category=professional-requirements&topic=cross-state-licensing-professional-requirements>

**NORTH CAROLINA § 90-18
PRACTICING WITHOUT LICENSE**

(c) The following shall not constitute practicing medicine or surgery as defined in this Article:

...

(18) The practice of medicine by any nonregistered physician residing in another state or foreign country who is contacted by one of the physician's regular patients for treatment by use of any method of communication while the physician's patient is temporarily in this State.

**MEETING LICENSURE REQUIREMENTS
IN PATIENT'S STATE**

- **Option #1** – determine if you can continue treating patient in state where you are not licensed
 - › Initial research – exception to licensure?
 - › Contact licensing board to confirm license is actually needed, stressing:
 - NOT currently doing it
 - Existing patient
 - Board certification(s)
 - If only for a limited time
 - If not prescribing CS, or any meds

**MEETING LICENSURE REQUIREMENTS
IN PATIENT'S STATE**

- **Option #2** – get licensed in that state
 - › BUT...likely will not be able to prescribe controlled substances in that state
 - Need federal DEA registration in that state, but that requires a brick and mortar office in patient's state
- **Option #3** – wing it and hope no consequences
 - › Understand the known risk
 - › Additional risk is possible

MEETING STATE LICENSURE REQUIREMENTS

- If you cannot meet licensure requirements:
 - › You do not want to be found engaged in the unauthorized practice of medicine
 - Insurance issues
 - Discipline from all relevant boards
 - › You need to terminate the treatment relationship
 - Unless patient can come into your state to be treated

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Find a Psychiatrist

A specialized directory in the diagnosis, treatment, and prevention of mental illness and substance abuse disorders. Psychiatrists are uniquely qualified to understand the complex interaction between mental and physical health since their training includes four years of medical school and at least three additional years in a psychiatric residency. By using the Psychiatrist Locator you agree to the terms in the Usage Agreement.

Psychiatrists listed regularly agree to the database. Therefore, this is not representative of the number of psychiatrists throughout the nation or in any geographic area.

QUICK SEARCH

Zip Code: 5 miles / 8 km

Country: State: City:

SEARCH

ADVANCED SEARCH <http://finder.psychiatry.org/>


CONSULTS - STATE LICENSURE REQUIREMENTS

- Consultations by out-of-state physicians
 - › With other physicians – NOT with patients
 - › Still need to ensure you are meeting licensure requirements
 - › Many states have exception for consults
 - But may have conditions
 - › All seem to require "occasional basis" or "periodic" or "episodic" or "does not provide consultation in this state on a regular or frequent basis"
 - › Some specify other physician retains responsibility for treatment



STATE ISSUE – PRESCRIBING CONTROLLED SUBSTANCES

- States have various restrictions
 - › Not allowing CS to be prescribed via telemedicine
 - › Limits on when CS can be prescribed via telemedicine
 - ex: FL allows for psychiatric diagnosis
 - ex: NH only allows for SUD treatment (except methadone)
 - › Requiring in-person visit prior to prescribing CS via telemedicine
 - › Requiring subsequent in-person visits when prescribing CS via telemedicine





Professional Requirements

- DEFINITIONS >
- ONLINE PRESCRIBING >
- CROSS-STATE LICENSING >
- LICENSE COMPACTS >
- PROFESSIONAL BOARD STANDARDS >
- MISCELLANEOUS >




We track telehealth-related laws and regulations across three categories and 18 unique topics. Click on a topic to see how it's applied in your state.

<https://www.cchpca.org/all-telehealth-policies/>

[LICENSEE PORTAL](#)
[LICENSE SEARCH](#)
[CONTACT](#)
[SEARCH](#)

[LICENSING](#)
[CONSUMERS](#)
[ABOUT](#)
[RESOURCES](#)

Prescribing via Telemedicine

- + A prescriber may prescribe a legend drug, medical supplies, or a controlled substance via telehealth if the prescriber is authorized to do so under state and federal law.
- + A prescription for a controlled substance may only be issued via telehealth if:
 - + The telehealth visit includes synchronous audio or audio-visual communication using HIPAA-compliant equipment with the prescriber;
 - + The prescriber has had at least one in-person encounter with the patient within the preceding 12 months; and
 - + The prescriber has established a legitimate medical purpose for issuing the prescription within the preceding 12 months.
- + The in-person encounter may be satisfied by the in-person assistance of personnel licensed by the Board of Medical Examiners or Board of Nursing at the originating site when the prescriber is evaluating the patient from a distant site using video communication.

<https://www.abme.gov/resources/licenses/telemedicine>

[illegible]

TELEMEDICINE STANDARD OF CARE

- Is the same standard of care that would apply if the patient was physically in the physician's office or facility
- Most states have explicitly addressed
 - › By statute
 - Ex: FL 766.201

"The prevailing professional standard of care shall be that level of care, skill, and treatment which, in light of all relevant surroundings circumstances, is recognized as acceptable and appropriate by reasonably prudent similar health care providers."
 - › By licensing board position statement

ALABAMA BOARD OF MEDICAL EXAMINERS & MEDICAL LICENSURE COMMISSION

LICENSEE PORTAL LICENSE SEARCH CONTACT SEARCH

LICENSING CONSUMERS ABOUT RESOURCES

Practitioners' Responsibilities

- A physician has the same duty to exercise reasonable care, diligence, and skill whether providing services in-person or via telehealth, including when appropriate, to:
 - Establish a diagnosis.
 - Disclose the diagnosis and evidence for it.
 - Discuss the risks and benefits of treatment options.
 - Provide a visit summary to the patient and information how to obtain appropriate follow-up and emergency care if needed.
- A physician-patient relationship must be established either at the initiation of the patient or referral by the patient's established physician.
- Before providing telehealth medical services, the physician must:
 - Verify the patient's identity;
 - Require the patient to identify his or her physical location, including city and state;
 - Disclose the identity and credentials of the physician and any other personnel; and
 - Obtain the patient's consent for the use of telehealth and document it in the patient's medical record.

<https://www.abme.gov/resources/licenses/telemedicine>

STANDARD OF CARE TOPICS TYPICALLY ADDRESSED IN STATE TELEMEDICINE LAWS

- Informed consent
- Medical records
- Confidentiality and security
- Physician-patient relationship
- Follow-up care
- Verification of patient's identity
- Etc.

Informed consent for telehealth treatment

Patient's name:

Name of medical record (if different):

Date of birth (MM/DD/YYYY):

Please note that ongoing telehealth treatment with a telehealth provider is not available at all times. If you are physically located outside of the state of Massachusetts, at the start of your visit, your provider will ask you for the address where you are receiving telehealth services in order to ensure that you are located in Massachusetts in a location where such services are currently available, and to ensure there is an accurate location for you in case of an emergency.

If telehealth will not work for you for any reason, please let us know and alternative support options can be considered. As always, 24/7 phone support is available to you by calling MIT Medical's Student Health and Counseling Services (SHACS) at 617-495-3100.

Before your telehealth visit, please read the below consent for telehealth treatment.

1. You retain the option to withdraw or withhold consent at any time without affecting your rights to future care or treatment or risking the loss or withdrawal of any program benefits to which you would otherwise be entitled.
2. The laws that protect the confidentiality of your medical information also apply to telehealth. The information disclosed by you during the course of your treatment is generally confidential. Exceptions to confidentiality may include the requirements to protect your the public from serious harm, report abuse or neglect of children, the elderly, or people with disabilities, and respond to an order from a court or other legal process such as a subpoena.
3. MIT contracts with Corner as its remote service platform provider, which is the third-party platform by which telehealth services are provided. Corner accepts all audio, video, and screen sharing data as a means of providing your personally identifiable information. Despite these efforts there are risks associated with telehealth. These may include, but are not limited to, the possibility that transmission of your medical information could be disrupted or otherwise be insecure, the transmission of your medical information could be intercepted by unauthorized persons, and/or recording/monitoring by Corner and your provider can occur. In addition, telehealth-based services and care may not provide the same results as in-office care or face-to-face service. If you are your provider believe you need to be able to see, hear, or feel your provider, you may be referred to in-person care or able to receive such service. Finally, there are potential risks associated with any form of medical health treatment, and despite your efforts and the efforts of your provider, your condition may not improve, and/or some cases may even get worse.
4. The benefits of telehealth may include removing transportation and travel barriers, minimizing time constraints, and providing greater opportunity to prepare to advance for treatment services.

Informed consent for telehealth treatment (final edit)

THE APPROPRIATE USE OF TELEMEDICINE TECHNOLOGIES IN THE PRACTICE OF MEDICINE

Report of the FSMB Workgroup on Telemedicine
Adopted by the FSMB House of Delegates, April 2022

INTRODUCTION

In April 2014, the Federation of State Medical Boards (FSMB) adopted the *Model Policy for the Appropriate Use of Telemedicine Technologies in the Practice of Medicine*, superseding the *Model Guidelines for the Appropriate Use of the Internet in Medical Practice (2002)*. At the time of its adoption, the *Model Policy (2014)* addressed current regulatory challenges associated with the provisions of telemedicine. Since then, the utilization of telemedicine has dramatically increased, resulting in not only advancements in telemedicine technologies, but also identification of fewer or more pressing challenges to effective telemedicine utilization.

There are numerous factors contributing to the continued increase of telemedicine being used as a component of the practice of medicine. The greatest of these catalysts by far has been the global COVID-19 pandemic and resulting national public health emergency (PHE). Prior to the declaration of a PHE by the United States, telemedicine visits accounted for a small percentage of total care visits, but within the first six months of the PHE, total telemedicine visits increased by more than 2,000 percent. Certain specialties, such as psychiatry, endocrinology and neurology,

<https://www.fsmb.org/Advocacy/Advocacy/Telemedicine/Telemedicine.aspx#page=0&telemedicineapp01-2022.html.pdf>

**Best Practices in Videoconferencing-Based Telemental Health
(April 2018)**



The American Psychiatric Association

and



The American Telemedicine Association

STANDARD OF CARE NOTE

- Relevant in medical malpractice litigation
- NOT RELEVANT in regulatory actions
 - › Does NOT matter what others are doing
 - › Only matters whether you followed the law

AGENDA

Federal Law

- Controlled Substances
- HIPAA

State Law

- Licensure
- Prescribing
- Standard of Care

Special Topics

- In-person Visits
- College Students
- International Issues
- Liability Insurance Issues

IN-PERSON VISIT REQUIREMENTS

- Federal requirement – controlled substances
- State requirements
 - › Controlled substances
 - › Unrelated to controlled substances
- Payor requirements
- Clinical necessity

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LICENSEE PORTAL LICENSE SEARCH CONTACT SEARCH

LICENSING CONSUMERS ABOUT RESOURCES

In-Person Visit Requirement

- ✦ If a physician or practice group provides telehealth services more than four times in a 12-month period to the same patient for the same medical condition without resolution, the physician shall either:
 - ✦ See the patient in person within a reasonable amount of time, which shall not exceed 12 months; or
 - ✦ Appropriately refer the patient to a physician who can provide the in-person care within a reasonable amount of time, which shall not exceed 12 months.
- ✦ The provision of telehealth services that includes video communication to a patient at an originating site with the in-person assistance of a licensed physician, physician assistant, certified registered nurse practitioner, certified nurse midwife, or other person licensed by the Alabama Board of Nursing shall constitute an in-person visit for this purpose.
- ✦ This requirement does not apply to the provision of mental health services as defined in state law (Ala. Code § 22-50-1).

<https://www.albme.gov/resources/licensees/telemedicine>



PATIENTS IN COLLEGE WHERE YOU ARE NOT LICENSED

- Three scenarios:
 - › There is no plan to see the patient while away at school – the patient will be seen when home on breaks
 - › You expect the patient will only need one remote session with you while out of state
 - › You plan on meeting regularly for remote sessions with your patient out of state
- Even if you meet licensure requirements, you likely will not be able to prescribe controlled substances out of state after November 11, 2023



**** Check with your liability insurance company ****

- ## INTERNATIONAL TELEMEDICINE
- ** Check with your liability insurance company *****
- If you are outside of the country
 - ▷ Need confirmation that no license is needed from that country
 - Then need confirmation that your state licensing board is OK with the plan
 - ▷ You cannot prescribe controlled substances
 - ▷ You cannot bill Medicare if you are outside of the country
 - Could be the same for other payers

INTERNATIONAL TELEMEDICINE

**** Check with your liability insurance company ****

- If the patient is outside of the country
 - › Need confirmation that no licensure in the patient's country is needed
 - Then need confirmation that your state licensing board is OK with the plan
 - › Prescribing controlled substances likely not possible
 - › Determine clinical appropriateness



Telehealth Professional Liability Insurance

Providing Telehealth Services across State Lines

Providers who practice telehealth across State lines may experience barriers with liability coverage. Carriers who are licensed to provide liability coverage in a limited number of states are not able to cover telehealth services rendered in a state in which they are not licensed.¹

¹ In Maryland, Medical Mutual, the top liability insurance provider, is only licensed to cover physicians practicing in Maryland, the District of Columbia, or Virginia, and can only cover telehealth if the patient and the provider are located in one of those three locations.

Maryland Health Care Commission, March 2018
 mhcc.maryland.gov
 Accessed June 12, 2020

INTERNATIONAL TELEMEDICINE

**** Check with your liability insurance company ****

- Professional liability insurance – PRMS policy
 - › Won't cover suit brought outside of US
 - › If sued in US:
 - Won't deny coverage just because psychiatrist or patient was outside of US
 - Will deny coverage for any standard reason
 - › Ex: Foreign country found physician to be practicing without a license; policy doesn't cover unlawful acts / unauthorized practice of medicine