



Your Practice and Telemedicine

Article

02.22.2023

Reprinted with permission from *Birmingham Medical News* (February 2023).

The COVID-19 pandemic gave way to a rapid increase in virtual care for patients. Now nearly three years on, the American Medical Association found in a recent study that eighty-five percent (85%) of physicians continue to offer telehealth visits.^[1] Further, Doximity, a telemedicine platform, found that the Birmingham metropolitan area possessed the sixth highest telemedicine adoption rate in the United States.^[2] The trends are clear: telemedicine is here to stay. Whether your practice has currently implemented a telemedicine program or is interested in implementing a program in the future, physicians should be aware of several important legal considerations.

Alabama Specific Considerations

In line with Alabama's July 2022 telemedicine practice law, the Alabama Board of Medical Examiners requires the following related to physician licenses for the practice of telemedicine in the state:

- If the patient is located in Alabama, the physician must possess a full and active license to practice medicine in Alabama.
- The location of the medical services provided is controlled by the physical location of the *patient*, rather than the location of the physician.
- Certain telehealth services do not require an Alabama license, these include:
 - When a physician is licensed in another state or D.C.; *and* services are irregular or infrequent; or

RELATED PROFESSIONALS

Catherine G. "Cat" Kirkland

RELATED CAPABILITIES

Health Care

Health Care Business, Governance & Transactional

Your Practice and Telemedicine

- Services are provided in consultation with an Alabama licensed physician, limited to ten days in a calendar year, or necessary medical care is provided to a patient being transported into Alabama.

In addition to these requirements, the Board also sets forth a variety of physician responsibilities and requirements related to telemedicine. For example, while Alabama law allows a physician-patient relationship to be formed virtually without an in-person exam, 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.”

To ensure compliance with the Alabama rules, physicians should:

- Review Alabama Acts No. 2022-302 and regularly monitor Board telehealth requirements.
- Establish procedures to ensure compliance. For example, a practice may want to set alerts for patients who regularly receive telehealth visits to ensure that after four visits for the same condition, that patient sees the doctor in-person.
- Keep careful documentation evidencing how the patient encounter occurred.

It is also important to note that these rules are Alabama specific. Unfortunately, there is not a uniform rule for telemedicine practice around the United States. If an Alabama-licensed physician desires to treat a patient physically located outside of Alabama, that physician must review and ensure compliance with the laws and rules of where that *patient* is physically located before proceeding.

Other Legal Considerations

Beyond licensing and state law requirements, physicians also need to be aware of various other considerations, including the treatment of patient information, changes to telemedicine once the public health emergency (PHE) ends, and physician liability concerns.

Ensure Liability Coverage

Most physician liability coverage policies include telemedicine coverage, but some do not. As a practical consideration, every physician providing telemedicine services should ensure that they have appropriate coverage and that this coverage extends to wherever the physician provides telehealth services (for example, if the physician virtually treats patients physically located outside of Alabama).

Protection of Patient Information

From a patient information perspective, physicians must ensure appropriate cybersecurity is in place and that The Health Insurance Portability and Accountability Act of 1996 (HIPAA) and any other state-specific patient information laws are followed. Regarding state specific rules in particular, if you are located in Alabama, but are treating a patient located elsewhere, you may be legally required to comply with privacy rules from the patient’s home state.

Your Practice and Telemedicine

What Happens When the PHE Ends

HHS currently affords a fair amount of flexibility and leniency to telemedicine services as a result of the COVID-19 pandemic. Once the PHE expires, many of these flexibilities will expire within 151 days—barring agency or Congressional action. It is widely expected for Congress to permanently extend some of these practices, but it is impossible to predict what will happen. For example, barring Congressional action after the PHE 151-day grace period, Medicare may no longer reimburse telehealth services that occur at a patient's home (as opposed to a patient located in a hospital /nursing home setting). Medicare will also cease reimbursement for telehealth visits furnished by physician therapists, occupational therapists, speech language pathologists, and audiologists. Medicare will also no longer cover audio-only visits for physical health encounters. HHS currently maintains a webpage outlining telehealth policy changes that will occur after the COVID-19 PHE ends. Physicians providing telehealth services should 1) pay attention to when the PHE ends, 2) monitor HHS' telehealth policies and potential permanent changes, and 3) update and change telemedicine policies as needed.

[Click here to read the article on Birmingham Medical News.](#)

[1] American Medical Association, 2021 Telehealth Survey Report

[2] Doximity, State of Telemedicine Report, Second Edition, February 2022