

Key Considerations for Telemedicine



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- 1) Contact the Medical Board in every state where you plan to treat patients. Generally, states require full licensure to treat residents and may also have requirements for telemedicine encounters. During the COVID-19 pandemic, most states have relaxed licensing requirements as well as telemedicine regulations to encourage medical professionals to cross state lines to assist in the emergency. The Federation of State Medical Boards maintains a database of licensing requirements and waivers, but SVMIC recommends contacting the state board for applicable licensure and telemedicine regulations.
- 2) Review the Board regulations for the state where the patient is located. Medical boards in some states have published guidance for telemedicine. [Different state laws](#) and regulations may cover areas such as licensure, informed consent, confidentiality, prescribing, and payment applicable to telemedicine practice.
- 3) Contact SVMIC about coverage for telemedicine. Generally, telemedicine is covered

under your SVMIC policy when:

- You are practicing within the scope of your licensure;
- You are following the telemedicine guidelines, if any, of your state medical board;
- Providing care to an established patient; and
- Establishing a relationship with a new patient who resides within the state in which coverage has already been agreed upon by SVMIC.*

*To provide telemedicine to new patients outside your SVMIC coverage area, contact the Underwriting Department.

NOTE: If a claim arises, you will likely be sued in the state where the patient is located and would have to defend it there.

4) Know how a provider-patient relationship is established by telemedicine. Some states may have specific laws, regulations, or guidance addressing how a provider-patient relationship is created by way of telemedicine in the jurisdiction. Be aware of any special rules for treating minor patients via telemedicine. For example, in Tennessee, patients under the age of eighteen (18) must have a facilitator present to be treated via telemedicine. The facilitator also has additional responsibilities.

5) Be sure you are comfortable with the standard of care for the visit. In some states, the applicable standard of care is addressed by statute or regulation. In general, you should conduct a telehealth visit in a manner like an in-person office visit:

- Adequately assess the patient's complaints
- Conduct an adequate exam
- Develop a diagnosis
- Make recommendations
- Develop a follow-up plan
- Make appropriate referrals

6) The physician or other provider should have access to all appropriate patient records for the encounter or be able to obtain enough information from the patient to form a medical opinion.

7) Be aware that if the care rendered via telemedicine violates licensing rules and regulations, there may be an exclusion from malpractice coverage.

8) Contact the patient's healthcare insurance carrier to ensure they will pay for this visit. It is important to advise the patient up front that they may be personally responsible for payment, which may help limit any surprise billing, and help ensure they will pay later.

9) Address the practice of telemedicine with your own group/employer to ensure telemedicine is allowed. The group may already have policies and procedures that should be followed to avoid a defense issue if your care is later challenged.

10) It is important to remember that the telemedicine visit, like an in-person office visit, should be within the physician's or other provider's scope of practice (diagnosis, consultation, treatment, follow-up, and other aspects).

11) Both the provider and the patient must utilize adequately sophisticated technology to enable the remote provider to verify the patient's identity and location with an appropriate level of confidence.

12) The HHS Office of Civil Rights will "exercise enforcement discretion and waive penalties for HIPAA violations against health care providers that serve patients in good faith through everyday communications technologies, such as FaceTime or Skype, during the COVID-19 nationwide public health emergency."

Therefore, even without meeting the usual encryption requirements for healthcare communication, practices considering greater use of telehealth using readily available, non-specialized interfaces, like FaceTime and Skype, may do so.

Even with relaxed HIPAA technology enforcement during the COVID-19 pandemic, remember that provider-patient conversations are confidential. It is the provider's responsibility to discuss the question of confidentiality and identify who is in the room with the patient as well as the provider.

13) Obtain consent from the patient to treat them via telemedicine.

- This conversation may be documented as written or verbal, depending on state requirements. A simple consent form or verbal conversation should suffice.
- A macro may be developed to assist with the documentation.
- Electronic communication risks include, but are not limited to, possible disruption or virtual communication failures, unauthorized third-party access, difficulties in forwarding, intercepting, and possible distortion due to technical failures.
- Document any consent discussion.
- The provider should verify and authenticate the patient's identity.
- Some states require documentation of the virtual platform used by provider-patient.
- A telehealth informed consent form can be downloaded from the [SVMIC website](#).

14) Document thoroughly. Pay attention to performing an appropriate examination, using clinical judgment, and developing a differential diagnosis. Your documentation should support the care provided and follow-up discussion with the patient. Some state boards require specific documentation. For example, in Tennessee, you must document that the encounter was conducted via telemedicine, and you must indicate the technology used.

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- 15) Telemedicine is not appropriate for all conditions. Refer patients for in-person treatment when indicated. Do not attempt to practice medicine via telemedicine if diagnostic testing or consultation with a specialist would be required at an in-person visit (unless you can accommodate those needs).
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