

# TELEMEDICINE & PROFESSIONAL LIABILITY



*Telemedicine creates a unique variety of circumstances that can affect the practice of medicine. Establishing guidelines helps ensure patient safety and reduce risk while delivering care at a distance.\**

## When talking about telemedicine, semantics matter:

- **Telemedicine**—the delivery of healthcare at a distance
- **Telehealth**—the delivery of health-related education using technology
- **Virtual medicine**—receiving health-related education without human intervention
- Know your state's definitions to ensure compliance.

## When creating guidelines for your telemedicine practice:

- Every decision must account for privacy, confidentiality, and continuity of care.
- Consider technology safeguards and limitations.
- Coordinate care with other telemedicine providers.
- Focus on what will help the patient and provide the best possible care.
- Take responsibility for all medical decisions and document them in the patient record.
- Document what you did and why, especially if you deviate from typical practice procedures.

## When determining best practices for your telemedicine practice, ensure your methods:

- Measure technical capacity
- Understand diagnostic accuracy
- Review diagnostic impact
- Evaluate the therapeutic impact
- Document how technology impacted medical decisions

## Liability Considerations for Telemedicine Physicians

- There is a lack of data available about telemedicine claims.
- Technology can interrupt the continuity of care. Have a plan in place to address this.
- Consolidate all communications in a unified patient record.
- Know what establishes the physician/patient relationship.
- Determine when physical exams may be required to meet the standard of care.
- Develop informed consent guidelines specific to telemedicine.

- Review your policy before assuming you have telemedicine coverage.
- Some states allow practice of medicine across state lines, but some still consider this practicing without a license. Learn your state's laws—and those where you will be practicing.
- Venue determines access to the patient compensation fund. Find out if you can still use this coverage.
- Time lapses in documentation increases risk. Update the medical record in a timely fashion.
- EHR metadata on mobile devices can easily be compromised. Know where your metadata is being stored, and who can alter it.

## Liability tips for telemedicine groups:

- Verify each physician's coverage before they join your practice.
- Coverage can be customized by location, scope of duty.
- Providing liability coverage for your physicians reduces risk and is more cost-effective than having them provide their own coverage.
- Lack of coordinated coverage threatens joint defense. Purchase from a single carrier to avoid this risk.

*\*No guideline can guarantee accurate diagnosis or a successful patient outcome, or establish a standard of care. Stay informed and in constant communication with the telemedicine group and other physicians to maintain up-to-date guidelines for practice.*



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## Overview

Telemedicine use is rapidly expanding and changing the way physicians practice medicine. In our video series, “Telemedicine & Professional Liability” ProAssurance staff members explore telemedicine liability risk from the underwriting, claims, and risk management perspective.

## What is Telemedicine?

The terms telemedicine, telehealth, and virtual medicine are often used interchangeably in articles. But while these terms are similar, they carry different meanings in the industry. Patrick O’Doherty explains these differences and the importance of using the correct vocabulary to define your practice.

## 24/7 vs Scope of Duty

Principal policyholders know details about their insurance policy, but physicians under that policy may not know about potential coverage limitations. Patrick O’Doherty reminds physicians to review their policy before practicing telemedicine to avoid coverage gaps.

## Coverage for Telemedicine Groups

Coverage for telemedicine groups needs to cover a large, diverse group of physicians with a variety of different needs. Patrick O’Doherty discusses the cost and defense benefits for telemedicine groups that provide physician coverage.

## Venues, Torts, PCFs

Telemedicine patients are often in different locations than the treating physician. This may raise legal questions regarding whether the physician is practicing medicine in a state in which he or she may not be licensed. This may also impact what benefits, such as patient compensation funds, they may access. Patrick O’Doherty explains some common issues that arise when telemedicine doctors practice across state lines.

## The Claims Coding Challenge

Should coding and billing for telemedicine claims be restricted to cases which are majority-driven by the use of telemedicine technology? Patrick O’Doherty discusses the challenges of coding telemedicine claims—and the difficulties this presents when gathering telemedicine data.

## Metadata

Metadata helps track the time and user associated with each activity on an electronic device. This is an essential part of any electronic health record should a malpractice suit occur. Patrick O’Doherty explains the importance of properly consolidating and storing the metadata for a telemedicine practice.

## Legal Considerations

Medical and technological developments in telemedicine are outpacing updates to the law—particularly when it comes to issues of geographic location and timeliness of the medical services delivered. Aaron Hamming outlines some common legal considerations telemedicine physicians must consider to protect their practice.

## Guidelines of Practice

There are not yet formal, uniform standards for telemedicine practice, but several medical organizations have developed practice guidelines. Physicians may use these resources to determine the best methods for administering care. Gina Harris reviews three key items to consider when developing telemedicine rules for your practice.

## Adopting Telemedicine

The ultimate goal of telemedicine, like any type of medical care, is to improve the patient’s health and well-being. As this field develops, physicians will need to communicate to determine how best to achieve this outcome. Gina Harris discusses measurements physicians can track to help determine best practices for telemedicine.

## Risk Management Considerations

Telemedicine physicians will practice in different geographic locations, and with a variety of communication methods and devices. This creates a unique set of circumstances which much be addressed from a legal standpoint. Aaron Hamming discusses common risk management considerations physicians must remain aware of when practicing telemedicine.

## Ethics in Telemedicine

A physician’s ethical obligations are consistent across their practice, but telemedicine creates unique circumstances which may impact how those ethics are applied. The physician must be able to make careful decisions that account for privacy, confidentiality, and continuity of care. Gina Harris describes the AMA’s ethical guidelines, and how physicians are working to establish ethical parameters to guide telemedicine practice.

## Medical Device Risk Management

Telemedicine devices are often traditional medical devices that have been given connectivity or properties so they may interact with other devices. Defining telemed products can be difficult because the FDA does not recognize a discrete category of products that are considered telemedicine products. Sara Dyson discusses some of the difficulties which may arise when designing a device for telemedicine use—particularly in the home setting.