

# Telemedicine and COVID-19

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The COVID-19 pandemic [changed the practice of medicine](#) in multiple ways. Physicians are called on to treat patients in novel settings with increasingly scarce resources. Among some of the more visible changes is the requirement to integrate physical distancing measures into routine medical encounters. This challenge has paved the way for an exponential increase in the number of physicians using telemedicine to treat patients. A recent report estimates that 46 percent of patients currently use telemedicine, and that patients and the healthcare industry will spend \$250 billion on virtual healthcare by the end of 2020.<sup>1</sup>

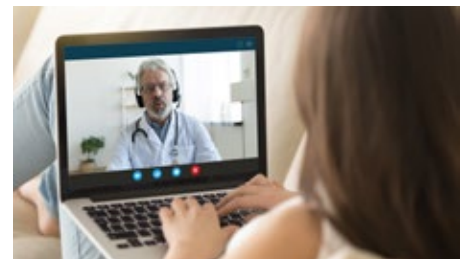
This article will review the practice of telemedicine and how it is changing in response to the pressures of the COVID-19 pandemic. Because the regulatory environment is currently in a state of flux, this article will also review sound risk management principles to consider as you introduce telemedicine into your current practice.

## Telemedicine Defined

Many physicians are still developing an understanding of telemedicine despite its current rise in popularity. While the terms **telehealth** and **telemedicine** are often used interchangeably, telehealth more broadly refers to the use of communication technologies to deliver health-related services, while telemedicine specifically refers to remote clinical services. In addition to the following Department of Health and Human Services (HHS) definitions, Patrick O'Doherty, Vice President of ProAssurance's Custom Physicians Division, [discusses these differences](#) in ProAssurance's telemedicine [video series](#). Consider these definitions when discussing telehealth and telemedicine:



**Telehealth:** The use of electronic information and telecommunications technologies to support long-distance healthcare, patient and professional health-related education, public health, and health administration.<sup>2</sup>



**Telemedicine:** Remote diagnosis and treatment of patients by means of telecommunications technology.<sup>3</sup>

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### Types of Telemedicine<sup>4</sup>

Telemedicine can be practiced in many forms, depending on patient needs and available technology.

- **Live (synchronous) videoconferencing:** A two-way audiovisual link between a patient and a care provider.
- **Store-and-forward (asynchronous) videoconferencing:** Transmission of a recorded health history to a health practitioner, usually a specialist.
- **Remote patient monitoring (RPM):** The use of connected electronic tools to record personal health and medical data in one location for review by a provider in another location, usually at a different time.
- **Mobile health (mHealth):** Healthcare and public health information provided through mobile devices including general educational materials, targeted texts, and notifications about disease outbreaks.

### Regulatory Framework

In addition to applicable federal regulations, providers must be knowledgeable of their state's telehealth rules. Since rules can vary state-to-state, it is essential for providers to be familiar with their state's regulations regarding licensing, credentialing, and Medicaid reimbursement. For example, most states require physicians practicing telemedicine be licensed in the state where the patient resides. However, if you plan to implement telemedicine services in a state other than your own, the [Interstate Medical Licensure Compact](#)<sup>5</sup> provides a mechanism to expedite telehealth licensure for physicians who wish to practice telemedicine in multiple states. Currently, 29 states participate in the compact as well as the District of Columbia and the Territory of Guam. The [Federation of State Medical Boards](#)<sup>6</sup> published an overview on licensure and reimbursement regarding telemedicine policies, updated as of July 2020. The American Medical Association (AMA) also has a [state-specific chart](#)<sup>7</sup> regarding the expansion of telemedicine in response to COVID-19.

### Telemedicine Changes due to COVID-19

Many existing federal and state telehealth rules have been modified and relaxed in light of the national health emergency caused by COVID-19.

Several federal efforts are in place to encourage telehealth adoption. The Centers for Medicare and Medicaid Services (CMS) has temporarily lifted a number of Medicare restrictions on practicing telemedicine in response to COVID-19. Medicare now reimburses healthcare providers for telemedicine at the [same rate](#) it does for in-person visits.<sup>8</sup> This reimbursement relaxation is not restricted to services that only treat COVID-19.<sup>9</sup> Patients are no longer required to have a preexisting relationship with the physician providing telehealth services before the first telehealth visit.<sup>10</sup> For Medicare purposes, physicians are allowed to use telemedicine across state lines.<sup>11</sup> These changes, however, do not erase requirements related to state licensure and credentialing.

The CMS has also relaxed restrictions on the technologies physicians use to perform telemedicine services. Currently, physicians may use smartphones for telemedicine visits.<sup>12</sup> Also, HHS's Office for Civil Rights (OCR) is using its discretionary authority to not enforce certain technological requirements. Among the major discretionary decisions is allowing physicians to use popular online communication platforms<sup>13</sup> as long as they are not "public facing." Permitted platforms include those like FaceTime and Skype, while platforms such as Facebook Live, Twitch, or TikTok are not<sup>14</sup> allowed.

At the state level, most governors addressed the COVID-19 pandemic with Executive Orders declaring states of emergency. The orders consistently imposed physical distancing limitations on interpersonal contact. Along with state legislative and agency efforts, these orders implemented changes to encourage physicians to adopt telemedicine as an additional effort to limit physical contact. Although many telehealth rules are currently relaxed, they have not necessarily been simplified, making it increasingly critical for physicians to understand state and federal rules regulating their telemedicine practice.

**While increasing telemedicine access for patients, physicians must remain mindful that nearly all the recent state and federal measures are temporary.** If further legislative and agency action is not taken at both the state and federal levels, most telehealth regulations will revert to their pre-COVID-19 status. Because of this, physicians must regularly review telemedicine regulations to ensure continued compliance with their requirements.

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### Telehealth Risk Considerations

For all its potential benefits, implementing telemedicine in your practice may present a number of professional liability risks. Although not exhaustive, please consider the following list of risk management strategies and resources when adopting telemedicine in your healthcare practice.

**Informed consent and patient education:** Physicians practicing telemedicine must disclose risks that are unique to the practice of telemedicine. Informed consent remains a non-delegable duty of the physician in a telemedicine encounter just as it does for the in-person visit. However, a telemedicine visit presents additional areas for discussion. Chief areas to examine include the technical limitations of telemedicine, as well as how the lack of a physical exam may limit the provider's ability to diagnose and treat certain conditions. Patient education should be a focal point during any telemedicine encounter. To learn more, view ProAssurance's short video [Two Minutes: What's The Risk? Telemedicine and Informed Consent](#) and review our [sample telehealth informed consent form](#).

**Documentation:** Physicians should always document thoroughly. As with in-person visits, each and every telemedicine visit must be properly documented in a complete and accurate medical record. When reviewing the record of a telemedicine encounter, it should be readily apparent what type of visit occurred, as well as the physician's impressions and plan of care. Informed consent should be obtained and documented. Finally, consultations, follow-up appointments, and referrals should be clearly documented, so that each is easily tracked and any loose ends closed.

**Licensing/Credentialing:** While CMS has temporarily relaxed a number of restrictions on practicing telemedicine across state lines, licensing and credentialing primarily remains regulated at the [state level](#). When adopting telemedicine in your practice, it is important to familiarize yourself with the applicable state telehealth licensing and credentialing regulations.

**Patient selection and age-related challenges:**

Telemedicine can be a great tool. However, not all patient presentations can be treated remotely. The provider must screen each patient for suitability for

telemedicine encounters. For example, older adult patients may not be suitable for virtual encounters since some may not have access to a computer, smartphone, or high-speed internet. Older adult patients might also have difficulty hearing, seeing, or being heard during a telemedicine visit. Providers must also be aware of state-specific telehealth rules related to treating minor patients.

**Coverage:** Be sure to consider [coverage](#) implications if you are adding telemedicine as a component of your practice. You can learn more about ProAssurance COVID-19 and telemedicine coverage at [ProAssurance.com/COVID-19](#). To discuss your telemedicine coverage questions, contact your ProAssurance agent or broker, or call ProAssurance at **800-282-6242**.



**Technology:** Technology used to facilitate telemedicine visits must be safe, secure, and regularly backed-up. Providers should know that the continuity of care can be disrupted by technology issues, and have a plan to address any disruption. If applicable, providers should document how technology has affected the diagnosis.

**Security and Privacy of Protected Health**

**Information:** Physicians must meet or exceed all state and federal security and privacy requirements regarding protected health information whether the encounter is conducted via telemedicine or in person. This includes requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule and Security Rule. The American Medical Association (AMA) and the American Hospital Association (AHA) issued joint guidance regarding [cybersecurity](#)<sup>15</sup> for physicians practicing telemedicine.

**Schedule regular reviews:** Develop and regularly review [policies and procedures](#)<sup>16</sup> if you plan to implement telemedicine for long-term use.

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### Conclusion

Telehealth popularity is growing to encompass a significant percentage of U.S. healthcare encounters. As a result, the federal and state regulatory environment will continue to evolve. At this time, it's uncertain whether the rules temporarily relaxed in response to the COVID-19 crisis will become permanent. To mitigate risk, physicians implementing telemedicine in their practices must remain up to date on federal and state rules.

For more information regarding telemedicine, you can access videos and other educational information from ProAssurance by visiting [ProAssurance.com/Telemed](https://www.proassurance.com/Telemed). Insureds can sign into our secure services portal to access an online seminar on telemedicine for CME at <https://secure.proassurance.com/seminars/education/online-seminars/>.

If you have any questions about telemedicine, or any other risk management questions, contact the ProAssurance Risk Resource Department at **844-223-9648** or [RiskAdvisor@ProAssurance.com](mailto:RiskAdvisor@ProAssurance.com).

### Telehealth Resources for Providers

The ProAssurance Risk Resource Area has curated a number of resources related to telehealth. Providers may find further discussions and guidelines by selecting the links in this section.

- [ProAssurance Telemedicine Resources](#)
- [ProAssurance COVID-19 Information Center](#)
- [ProAssurance Guidelines for Practicing During an Pandemic](#)
- [https://www.proassurance.com/globalassets/optimized-pdfs/market/national/proassurance-telemedicine-best-practices-flyer-m4475\\_2.pdf](https://www.proassurance.com/globalassets/optimized-pdfs/market/national/proassurance-telemedicine-best-practices-flyer-m4475_2.pdf)
- <https://www.cms.gov/files/document/covid-19-physicians-and-practitioners.pdf>
- <https://edit.cms.gov/files/document/medicare-telehealth-frequently-asked-questions-faqs-31720.pdf>
- <https://www.americantelemed.org/>
- <https://www.ama-assn.org/system/files/2020-04/covid-19-state-policy-guidance-on-telemedicine.pdf>
- <https://www.hipaajournal.com/aha-and-ama-release-joint-cybersecurity-guidance-for-telecommuting-physicians/>

### Endnotes

- 1 <https://www.mckinsey.com/industries/healthcare-systems-and-services/our-insights/telehealth-a-quarter-trillion-dollar-post-covid-19-reality#> accessed September 23, 2020.
- 2 <https://www.healthit.gov/faq/what-telehealth-how-telehealth-different-telemedicine> accessed September 23, 2020.
- 3 Ibid.
- 4 <https://www.healthit.gov/topic/health-it-initiatives/telemedicine-and-telehealth> accessed September 23, 2020.
- 5 <https://www.imlcc.org/> accessed September 28, 2020.
- 6 [https://www.fsmb.org/siteassets/advocacy/key-issues/telemedicine\\_policies\\_by\\_state.pdf](https://www.fsmb.org/siteassets/advocacy/key-issues/telemedicine_policies_by_state.pdf) accessed September 28, 2020.
- 7 <https://www.ama-assn.org/system/files/2020-04/telemedicine-state-orders-directives-chart.pdf> accessed September 28, 2020.
- 8 <https://www.hhs.gov/coronavirus/telehealth/index.html> accessed September 23, 2020.
- 9 Ibid.
- 10 Ibid.
- 11 Ibid.
- 12 <https://www.hhs.gov/hipaa/for-professionals/special-topics/emergency-preparedness/notification-enforcement-discretion-telehealth/index.html> accessed September 23, 2020.
- 13 Ibid.
- 14 Ibid.
- 15 <https://www.hipaajournal.com/aha-and-ama-release-joint-cybersecurity-guidance-for-telecommuting-physicians/> accessed September 28, 2020.
- 16 <https://healthsectorcouncil.org/wp-content/uploads/2018/08/AHIMA-Telemedicine-Toolkit.pdf> accessed September 28, 2020.

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