



Telemedicine

WHAT IS IT?

Telemedicine is any medical activity that occurs at a distance from the patient and utilizes some form of telecommunication. Telehealth is broader and includes services beyond clinical care including the transfer of medical information, consumer medical and health information, and online professional education. For the purposes of this summary, these terms are used interchangeably.

Telehealth can be conducted in a variety of ways and for a multitude of purposes. For context, below is a list of delivery methods that can be used in the scope of telehealth:

- **Real-time video conferencing** – patient and provider interaction.
- **Store-and-Forward** – secure electronic communication of health information (e.g., x-rays) that a provider or specialist can review and provide consultation.
- **Remote patient monitoring** – collection and monitoring of data (e.g., blood glucose, ECG) and sent to the remote diagnostic testing facility.

- **Mobile Health (mHealth)** – health apps, mobile-enabled patient portal access, secure mobile communication with providers.

DOES CRICO'S MPL COVERAGE COVER TELEMEDICINE ACTIVITIES?

Yes. CRICO Medical Professional Liability (MPL) policy covers medical negligence resulting in bodily injury domestically or internationally whether the care is provided in-person or virtually.¹

RISK OVERVIEW

Regulations are complex, vary by state, and are changing rapidly as the practice of telemedicine grows. In addition to understanding the licensing requirements of the state(s) where patients are located, providers should understand the state rules and regulations that may impact how and what services may be provided and when reimbursement is available.

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Licensing Requirements

Many states require clinicians who are practicing telemedicine to obtain a full, unrestricted license in the state where the patient is located.² Providers not in compliance with state statutes could be subject to disciplinary action by medical boards and/or professional medical societies and may not have access to tort reform statutes in that state. Additionally, practicing without a state level medical license is a criminal offense in many states.

Physician Requirements and Standards

Some states have telemedicine regulations that increase physician requirements and standards when performing telemedicine such as informed consent, medical records, internet advertising, quality of care, or prescribing medication. For providers with Medicare patients, a separate set of telehealth requirements must be met in order to qualify for reimbursement.

Establishing Physician-Patient Relationship

Most states allow a provider-patient relationship to be established via telemedicine; however, specific requirements vary by state. More information can be found at the [American Medical Association](#) website.

Scope of Practice

Advanced practice clinicians³ such as Nurse Practitioners (NP) have a unique set of challenges when providing telemedicine. The state laws for advanced practice clinician's scope of practice still vary widely. For example, NPs have full authority to practice without physician collaboration in most New England states; however, in other states, such as Massachusetts and Florida, NPs have a much more restricted practice model. If an NP is providing telemedicine in a state where NPs are not granted full authority (even if the clinician has it in his/her state of residence) s/he may be in violation of laws and subject to disciplinary action. More information on scope of practice by state can be found at the [American Association of Nurse Practitioners](#).

Patient Privacy

Another area of heightened risk with telemedicine is privacy and security. Increased use of electronic communications and records that are integral to the practice of telemedicine present an increased level of privacy and security risk. Recording the encounter is a vital element of the patient record and can prove essential in any litigation. However, HIPAA violations may occur if recorded sessions are hacked or otherwise improperly disclosed.

RISK MITIGATION

- Work with your Office of General Counsel for guidance on state laws and policies your organization may have regarding the practice of telemedicine.
- While application and ultimate enforceability may vary by state, consider using acknowledgments and agreements which include appropriate conditions such as provisions defining physician/patient relationship and outlining the governing law and venue to be used in the event of a claim.⁴
- Establish medical oversight plans for telemedicine.
- Ensure protocols are in place for standard of care, peer review, informed consent including advising the patient on limitations of the technology, patient encounters, interpretation services, proper documentation, and follow-up care.
- The technology used to provide telemedicine visits may increase the risk of a patient data breach. We recommend that our members purchase cyber liability coverage in the commercial market to protect the organization and clinicians against the liability and expenses associated with a data or privacy breach.

- Consult the American Telemedicine Association (ATA) practice guidelines for telemedicine [best practices](#) across a range of services.
- Consult the American Medical Association (AMA) guidelines for [ethical issues](#) in telemedicine.
- Ensure that all telemedicine activities are reported to your organization's Insurance Risk Manager/Insurance Office. This helps CRICO to understand the scope and type of services that are provided and to respond with modifications to our coverage and policies, as needed.

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1. Coverage does not apply in any circumstance for activities performed in countries or territories excluded by the Office of Foreign Assets Control (OFAC) of the U.S. Department of the Treasury.
 2. Some states have established a limited license for telemedicine which allows for reciprocity if the provider is fully licensed in their home state.
 3. For CRICO coverage to apply, advanced practice clinicians can provide telemedicine only if directed by their employer.
 4. Telemedicine across state lines invites questions of which state's law should apply to resolve a claim about care, and in which state(s) can or must a plaintiff bring a claim.