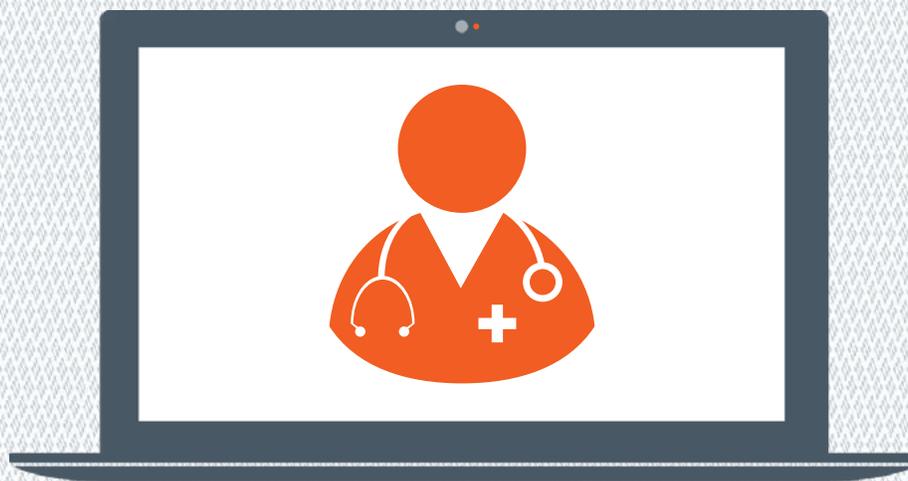


CA
SPECIAL
REPORT



Reducing Liability Risks in Telemedicine

Telemedicine is an emerging practice and the rising rate of adoption suggests its value. However, as with all advances in medicine, physicians should carefully assess the risks and advantages of this new way of practice before adopting it. The Risk Management experts at NORCAL Mutual discuss these advantages and identify ways you can reduce your liability risks when incorporating telemedicine into your practice.



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Telemedicine Offers Potential Advantages, But Be Aware of the Liability Risks

Telemedicine represents a potentially significant tool for physicians in their practice of medicine. It enables patients and their physicians to have a “two-way, real time interactive communication” while at different physical locations and is viewed as “a cost-effective alternative to the more traditional face-to-face way of providing medical care.”¹ According to the American Telemedicine Association, these advantages have contributed to significant growth in telemedicine use in recent years, improving patient access, cost efficiencies and quality of care.³

Despite these potential advantages, there are liability risks to consider when using telemedicine in your practice. HIPAA and HITECH regulations protecting patient privacy still apply to telemedicine, but complying with those regulations can be more complicated than with face-to-face encounters. Transmitting and storing sensitive electronic data, for example, presents additional challenges and requires added steps to reduce the risk of a data breach that could lead to civil penalties.

Physicians who adopt telemedicine also have administrative considerations that may pose challenges and increase liability risk. For instance, professional licensure portability and individual state-mandated practice standards present big challenges. Each state adopts unique laws that establish how physicians practice telemedicine. This adds a level of complexity and risk when treating patients across state lines that isn’t present in face-to-face encounters. Physicians should understand the relevant state laws when practicing telemedicine — particularly across borders — and understand the potential medical liability risks.

Another risk inherent in telemedicine is related to the reliability and quality of the telecommunication equipment. Patients need to be made aware that equipment failure or deficiency could contribute to a delay in treatment or a confidentiality breach. These risks, along with the likely benefits, should be discussed with the patient and informed consent should be obtained and documented in the medical record.⁴

Above all, however, is ensuring proper care of the patient. The potential for a lack of continuity of care could leave room for error and misdiagnosis. There are also soft skills, or “webside” manners, that health care providers should consider when caring for patients through virtual visits to enhance these encounters.

The Risk Management experts at NORCAL Mutual offer the following tips that can help you reduce your liability risks when using telemedicine in your practice while enhancing patient care with the advantages it offers.



Relationships: The Heart of the Matter

The AMA, in its Code of Medical Ethics, states that “a patient-physician relationship exists when a physician serves a patient’s medical needs” but admits ambiguity over “whether the patient-physician relationship can be formed via telemedicine.”⁵ Individual state practice standards vary significantly on whether that relationship can be established without an initial physical encounter.

According to PIAA, states typically require that providers obtain prior written consent before telemedicine communication can take place. For example, the State Medical Board of California, “Requires the practitioner to obtain verbal and written informed consent from the patient prior to delivering health care via telemedicine, and also requires that this signed written consent statement becomes part of the patient’s medical record.”⁸

Reducing Liability Risks in Telemedicine

Medical professionals using virtual visits must work harder to reduce practice liability exposures. Consult with your healthcare business attorney as needed and follow these recommendations to help enhance patient safety and reduce risk.

LOCATION & SCOPE OF PRACTICE

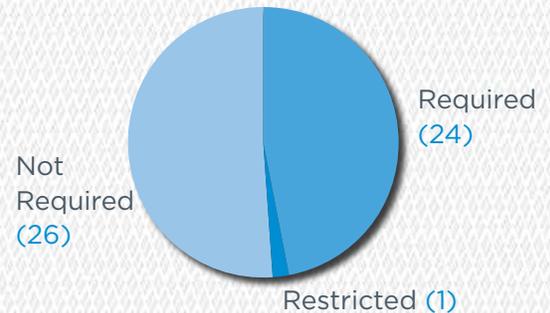
- ✓ Understand that telemedicine practice laws vary from state to state.
- ✓ Check your professional licensure portability to ensure that you're licensed to practice in the jurisdiction where the patient receives the telemedicine services.
- ✓ Consult with your medical professional liability insurance carrier to ensure that your policy covers all jurisdictions where you plan to provide services.
- ✓ Understand online prescribing policies that vary across jurisdictions.
- ✓ Ensure that your medical professional liability policy covers you for the scope of practice.

PATIENT CARE

- ✓ Comply with all applicable privacy and security standards for the secure transmission of protected health information between patient, provider and payers.
- ✓ Standardize telemedicine patient visits to help minimize the potential for error and to support good communication practices.
- ✓ Take steps to ensure that the primary care physician and patient relationship is not fractured with ongoing use of telemedicine consultation.
- ✓ Protect PHI with systems specifically designed for the unique security and encryption needs of telemedicine rather than less secure consumer systems.
- ✓ As with face-to-face encounters, ensure that both the patient and physician are in private rooms to reduce the chances of inadvertent disclosure of PHI.

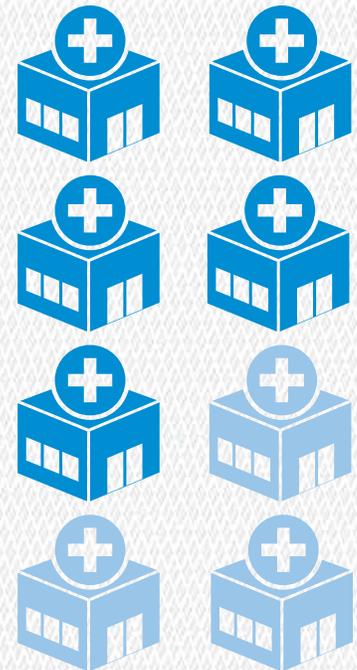
State Telemedicine Policies & the Physician-Patient Relationship⁶

Number of states (including DC) requiring an initial physical examination before providing telemedicine services



The Growth of Telemedicine Use

Over half of all U.S. hospitals now use some form of telemedicine.²



As many as 450,000 patients will receive primary care consultations through telemedicine this year.⁷

450k

This report is presented as a courtesy by NORCAL Mutual Insurance Company. Our Risk Management Specialists are always ready to help policyholders with risk issues and to support practice changes that lower risk and improve patient safety.

About NORCAL Mutual

NORCAL Mutual Insurance Company is a policyholder-owned and physician-directed medical professional liability insurance carrier that provides protection to physicians, health care extenders, medical groups, hospitals, community clinics and allied health care facilities across the nation.

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