

Telehealth In Practice

On-Demand Series



Professionalism and Legal Considerations

Ted J. Hudspeth, MD, FAAFP

Webinar Series Topics

- Why You Should Develop a Telemedicine Practice
- How to Choose a Telemedicine Platform
- Telemedicine Pre-Visit Workflow
- Telemedicine Visit Workflow and Documentation
- Urgent Care in Telemedicine
- Chronic Care in Telemedicine

Webinar Series Topics

- Marketing Your Telemedicine Practice
- Value Metrics in Telemedicine
- Disparities in Care: Telemedicine Potential
- Hardware in Telemedicine
- Literature Review in Telemedicine
- Special Considerations in Telemedicine

Webinar Series Topics: On Demand

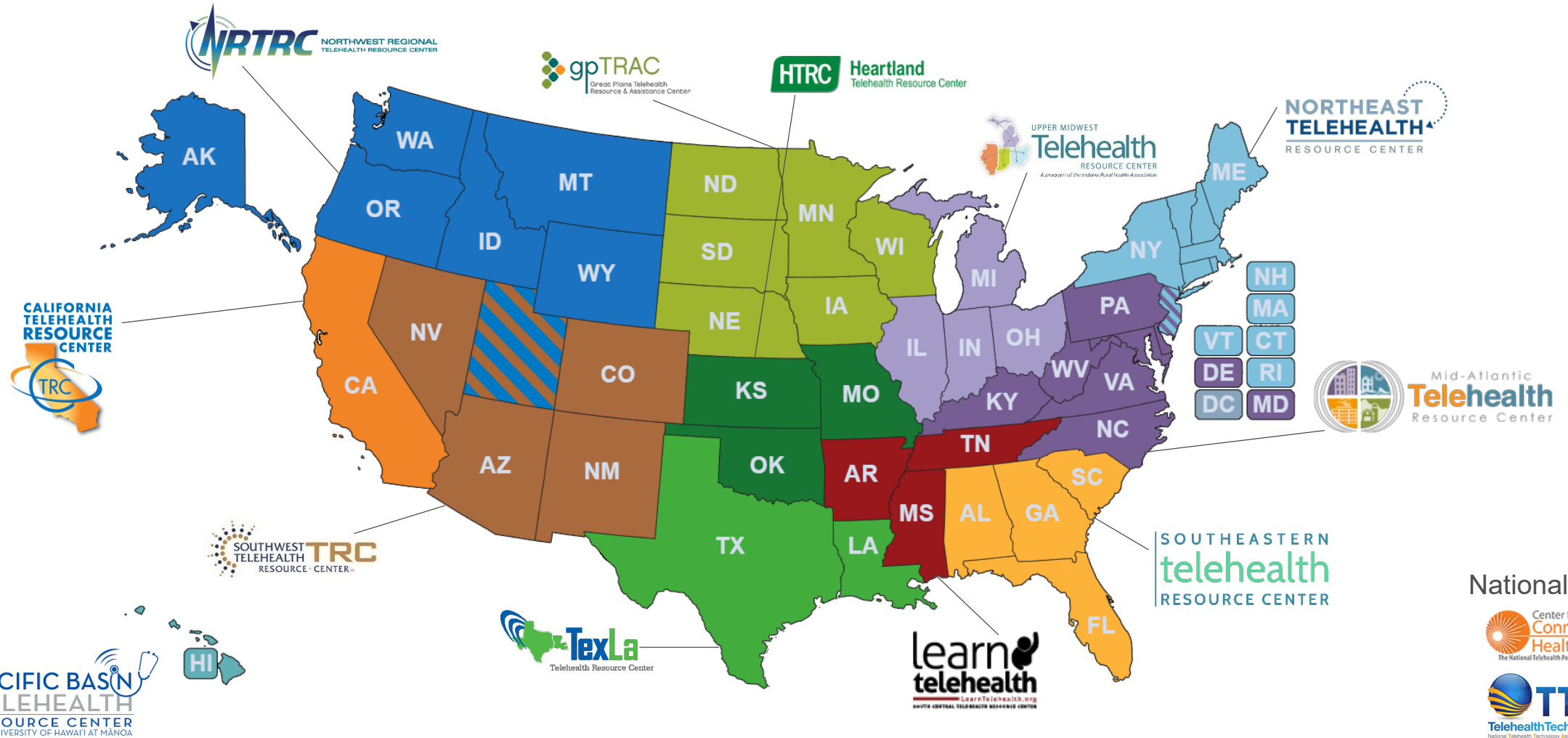
- On Demand: Team Troubleshooting
- **On Demand: Professionalism & Legal Considerations**
- On Demand: Best Practices & Caring Communication
- On Demand: Telemedicine Billing

TexLa Telehealth Resource Center

- The TexLa Telehealth Resource Center is a federally-funded program designed to provide technical assistance and resources to new and existing Telehealth programs throughout Texas and Louisiana.
- The F. Marie Hall Institute for Rural and Community Health at Texas Tech University Health Sciences Center is the support representative for Texas. Well-Ahead Louisiana, the chronic disease prevention and healthcare access arm of the state Department of Health, is the support representative for Louisiana.

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Telehealth Resource Centers

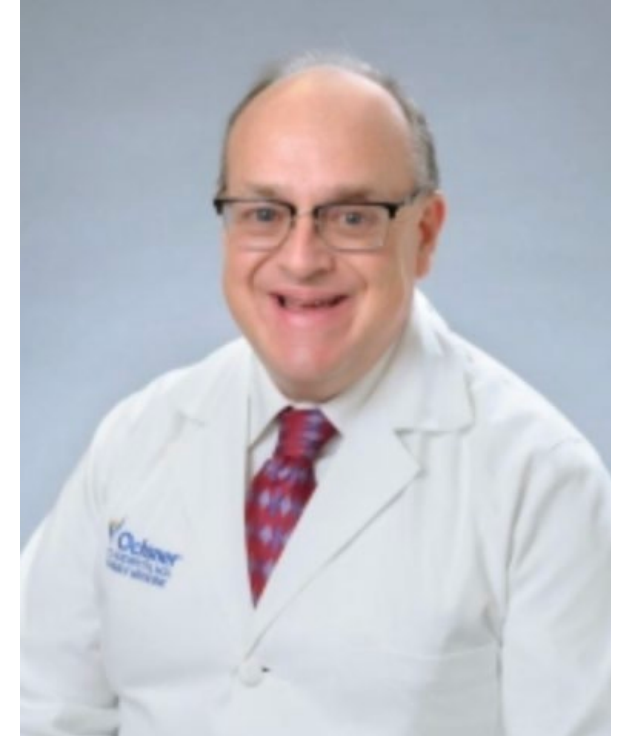


National TRCs



Speaker

- Ted J. Hudspeth, MD, FAAFP
 - Grew up in Amite, LA
 - BS in Microbiology at LSU Baton Rouge
 - Doctorate at LSUMC in New Orleans
 - Family Practice Residency at LSUMC Shreveport
 - Practices at Ochsner Health Center Hammond and Ochsner Hospital of Baton Rouge since 1993
 - Currently serving as the Ochsner Medical Director of Informatics of the Baton Rouge Region



*“Medical Profession is a feat,
it requires self sacrifice, purity
of soul and purity of thoughts.”*

—Anonymous

OVERVIEW

Overview

- Potential Ethical Pitfalls
- American Medical Association (AMA) Code Of Ethics
- American Medical Association's Council On Ethical and Judicial Affairs
- Telehealth Regulation Overview
- Legal Considerations

TELEMEDICINE'S POTENTIAL ETHICAL PITFALLS

The Patient-Physician Relationship



Premise: face-to-face, therapeutic value

Detailed history and physical

Touch

Trust

Empathy



AMA position statement

Supplement live visits

Pre-existing relationship

The Patient-Physician Relationship



Despite value of
live visits,
telemedicine can
improve access



Society becoming
comfortable with
electronic
communication



Medical practice
can and will evolve

The Patient-Physician Relationship



Concern loss of the
patient-doctor
relationship



Don't stand in the
way of improved
access and quality

Threats to Patient Privacy

- Patient concerns: who responds and who shares
- Information on many devices: security breach
- Asynchronous communication: unclear who responds

Threats to Patient Privacy



Security is
operational
New
encryption/security
tools



Gaining confidence
Communicate a
robust privacy and
security plan

New May Not Be Better

- Can't force same solutions
 - Situations, needs, preferences
- Texting vs. live visits
- Medication change vs. end-of-life discussion
- Technology access/knowledge differences

New May Not Be Better

- Telemedicine needs proof
 - Effectiveness
 - Adverse events
 - Evidence-based
- Balance enthusiasm of potential with objective evaluation
 - Evidence is sometimes mixed

Concluding Thoughts

- Strong doctor-patient relationship
- Protecting patient privacy
- Promoting equity
- Seeking best outcome

AMA CODE OF ETHICS

AMA Code of Ethics, Generalities

- Disclose conflicts of interest
- Provide accurate information
- Assure information protection
- Assure personnel work consistent with their role

AMA Code of Ethics, Patient-Specific

- Inform about limitations
- Advise needed care for follow-up
- Encourage notification of primary doctor
- Follow professional, ethical, specialty, and legal guidance
- Technology proficiency
- Recognize limitations and try to overcome
- Prudent prescribing and evaluation
 - Patient ID, appropriate service for need, follow best practice guidelines, documentation

AMA Code of Ethics, Patient-Specific

- Informed consent and treatment options
- Provide continuity of information
- Support refinement
- Advocate and promote access
- Monitor for adverse consequences
- Encourage sharing of outcomes
- Patient ID, appropriate service for need, follow best practice guidelines, documentation

COUNCIL ON ETHICAL AND JUDICIAL AFFAIRS (CEJA)

Council on Ethical and Judicial Affairs (CEJA)

- Reports developed with input from multiple stakeholders
- Recommendations become AMA ethics policy
- Issued as Opinions in the Code
- Strives to articulate expectations for conduct
- Provides broad guidance for ethics in telemedicine

Telehealth and Telemedicine: New Ways to Deliver Healthcare

New Ways to Deliver Healthcare

- U.S. Health Resources and Services Administration (HRSA): Involves electronic and telecommunications technologies
 - Support and promote long-distance clinical health care, patient and professional health-related education, and public health and administration
- Centers for Medicare and Medicaid Services: Activities involving “two-way, real time interactive communication between the patient and the physician or practitioner at a distant site

New Ways to Deliver Healthcare

- Physician's interactions yield different levels of accountability
 - Physician websites: interaction is indirect
 - Obligation to ensure accuracy and quality of content
 - Not accountable to an individual information seeker
 - Physician service: patient asks questions and gets general advice
 - Physician takes on greater accountability
 - Teleradiology/Teledermatology: patient-specific images, history, ROS, etc. and renders a patient specific recommendation
 - Physician has high accountability
- New formats to follow patients with chronic health conditions will evolve

Familiar Challenges, New Context

Familiar Challenges, New Context

- Technology opens new channels
 - Access to care
 - Patient centered care
- Risks
 - Privacy and confidentiality
 - Limitations for physical examination
 - Potential disruption of the patient-physician relationship

Risks to Privacy and Confidentiality

- Patient seeks care
 - Website
 - Can leak information to third-parties via code or code implanted on patient's computer
 - Home monitoring devices
 - Mobile health apps
 - Communication service provider
 - Their business affiliates
 - Other Healthcare Personnel
 - Provider

Matching the Mode of Care to the Patient

- Appropriate
 - Patient has resources to:
 - Access and use technology
 - Necessary health professional
 - Access to emergency care or in person option
 - Acceptable level of comfort
 - Access to in person care is not feasible otherwise
- Inappropriate
 - Hands-on exam is crucial
 - Technology does not allow provider to meet clinical standards of care

Trust and Ethical Practice in Telehealth and Telemedicine

Trust and Ethical Practice in Telehealth and Telemedicine

- Ethics remains same
 - Moral activity: “covenant of trust”
 - Place patient welfare above other interests
 - Surrogates need same trust
 - Competence
 - Inform to allow well considered decisions
 - Respect privacy
 - Ensure continuity of care
- Must understand how these play out differently in telehealth

Fidelity

- Obligation
 - Patient's interest first
 - Minimize conflicts of interest and bias
 - Disclose financial or other interest
 - Take active steps to manage or eliminate them
- Financial interests in websites and services put providers at risk

Competence

- Different implications along continuum of interactions
 - Website with general health information: limited responsibility
 - Content provided is accurate and objective
 - Personalized responses: additional responsibility
 - Qualifications and experience
 - Means to obtain crucial information
 - Clinical Services: fully responsible
 - Technology proficiency
 - Awareness of limitations of technology
 - Limitations of caring for an individual patient
 - Judge what modality of care is best and shift to in-person if needed

Transparency and Informed Consent

- Different implications along continuum of interactions
 - Website with general health information: limited responsibility, disclose credentials as author
 - Clinical Services: obtain informed consent
- Informed Consent
 - Basic understanding of credentials of providers
 - How technology will be used
 - Limitations of technology
 - Patients play a different role
 - Provider is responsible to determine if skillset is appropriate
 - Patient can withdraw from telehealth visit at any time and come in person

Privacy and Confidentiality

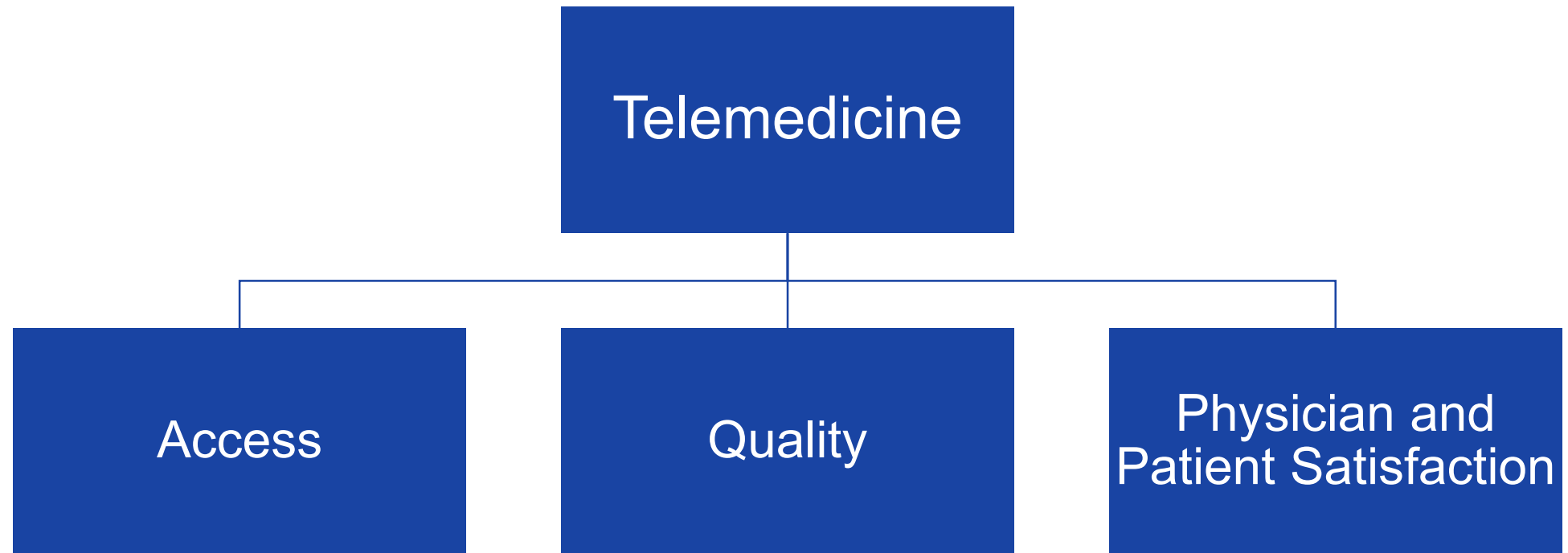
- Website with general health information: publish policies
 - What information is collected
 - How it will be used
 - Providers are responsible to be satisfied that website has relevant privacy policies
 - Providers should avoid websites without policies
- Answer individual health queries
 - Provider must be confident that website has mechanisms to protect confidentiality of individual's information exchanged
 - Inform website users of potential risks to privacy
- Clinical Services
 - Adhere to sound privacy practices
 - Assure collaborators do likewise
 - Assure appropriate protocols to prevent unauthorized access and to protect the security and integrity of patient information
 - Providers alert patients that issues of data security and access can arise and inform them of steps taken to protect confidential information

Continuity of Care

- **Obligation**
 - To not abandon and to provide for continuity of care
- **Website: do not enter into relationship**
 - No responsibility
- **Individual health query**
 - Responsible for encouraging in-person care when needed
 - Can identify providers for them to use
- **Clinical Services**
 - Discuss preserving information for future care
 - Ask patients if they or provider are responsible for this
 - Should provide follow-up recommendations
 - Collaborating providers should develop plans of care that ensure appropriate follow-up
 - Providers should write a note after each clinical encounter for their own files if not part of the patient's Electronic Medical Record (EMR) system

The Evolving World of Patient Care

The Evolving World of Patient Care



TELEHEALTH REGULATION OVERVIEW

Generally Applicable Guidance

Generally Applicable Guidance

- All states require consent
- Written is best, even if not required
 - Can email and receive a photo copy of signature
 - Oral consent is accepted in some states
- Establish new patients just like in-person
- Same standard of care as in-person
- Establish diagnosis using acceptable medical practices and standards of care
- Individual states require additional guidelines

Generally Applicable Guidance

- Explain how technology works
- Explain how to follow-up
- Comply with state record keeping requirements

State-Level Telehealth Regulations During COVID-19

Louisiana Telehealth COVID-19 Declaration

- Mar. 21, 2020: The State Health Officer directed all healthcare providers to transition all in-person healthcare services to a telehealth mode of delivery when medically appropriate and defer in-person services for 30 days when they can safely do so (now lifted)
- Encounter may be conducted by any licensed health care provider in accordance with the standard of care for in-person visits
 - Per Gov. Edwards' Mar. 20, 2020, emergency declaration, licensing boards are encouraged to adopt emergency rules relaxing the standards of care for telehealth encounters
- Encounter may occur over two-way interactive audio, visual, or audio-visual technologies. The modality must always allow the encounter to meet the standard of care, a particular concern for audio-only encounters.
 - Note that payers may have different criteria for telehealth reimbursement and require audio-visual. Medicare has developed unique time-based codes to reimburse for audio-only calls. Medicare will reimburse telehealth with video at parity with an office visit if you use POS 11 and Modifier-95
- Patient may orally consent to telehealth services
- No need for pre-existing relationship with patient but must verify the patient's identity

Louisiana Telehealth COVID-19 Declaration

- You must disclose the following and document in the patient's medical record:
 - Your name, address and telephone number
 - Your LA medical license number
 - Your specialty or area of practice
 - How patient can receive follow-up and emergency care (contained in template consent form)
 - How patient can obtain copies of medical records and/or ensure their transmission to another provider
 - How patient can receive care in the event of a technology or equipment failure (contained in template consent form)
- That patient may decline to receive services by telemedicine and may withdraw from care at any time (this is contained in the template consent form provided)
- Licensed out-of-state physicians may obtain an emergency temporary permit, valid for a period of 60 days, to respond to the COVID-19 emergency
 - Typically the physician must agree to provide free services, but the Louisiana Board of Medical Examiners may authorize out-of-state physicians to receive payment under emergency circumstances, which have already been declared in Louisiana

Louisiana Telehealth COVID-19 Declaration

- Prescribing: Physicians may prescribe controlled substances via telemedicine if they have previously conducted an appropriate in-person patient history of physical examination of the patient
- Special HIPAA/Privacy Concerns: Must provide Notice of Privacy Practices to patient
 - Special Medicaid note: the Department of Health requires you to use a HIPAA-compliant platform if one is available
 - If one is not, you may use a commercial product

Texas Telehealth COVID-19 Declaration

- The following rules are in effect during the declared COVID-19 disaster period:
 - Any licensed provider may practice telehealth within the scope of their license
 - Telemedicine, including the use of telephone only, may be used to establish a physician-patient relationship, as well as for diagnosis, treatment and prescribing provided that meets the standard of care
 - Out of state physicians and nurses may practice via telehealth in Texas if they have a valid license from their home state and are practicing within the scope of their license
 - Must obtain a Texas limited emergency license
 - Patient may provide oral consent to telemedicine; must document in record
 - Prescribing: Until the TX State of Emergency expires, APRNs may prescribe controlled substances via telehealth and physicians may provide telephone refills of a valid prescription for treatment of chronic pain if they have an established chronic pain patient. All other prescribers may follow federal prescribing guidance during the COVID-19 emergency

LEGAL CONSIDERATIONS IN TELEMEDICINE

Legal Information

- Liability and malpractice
 - Some insurance covers and some require a supplement
 - Contact your carrier to ask first
 - States have different minimum limits of insurance
 - Confirm coverage if working across state lines

Consent

- Written vs. Verbal
 - Overview of technology
 - Privacy and security
 - Inform patients of their rights when receiving telemedicine, including the right to stop or refuse treatment
 - Tell patients of their own responsibilities when receiving telemedicine treatment
 - Have a formal complaint or grievance process to resolve potential ethical concerns or issues that might come up
 - Describe potential benefits, constraints, risks (privacy, security)
 - Inform patients of what will happen in case of technology or equipment failures during telemedicine sessions, state contingency plan
 - Inform patients and obtain their consent when students or trainees observe the encounter

Consent

- Obtain patient consent prior to any recording of the encounter
 - Note that the recording will be made available upon request and that release of the recording shall require written patient authorization or court order
- Adhere to all applicable laws and regional and local practices as to Patient Informed Consents & Disclaimers
- Set appropriate expectations regarding telemedicine encounters, including, for example, prescribing policies, scope of service, communication, and follow-up
- To reduce risk of overprescribing, follow evidence-based guidelines as well as all federal, state and local regulations
- Have a procedure in place for patients who don't wish to sign the consent forms or receive care via telemedicine
- Reference websites
 - The Center for Connected Health Policy (CCHP): <http://www.cchpca.org>
 - American Telemedicine Association (ATA): <https://www.americantelemed.org>

Privacy and HIPAA

- All telehealth services must be HIPAA-compliant
 - Ensuring that data collected through a smartphone application will not be accessed by third-party advertisers
 - Enabling multi-factor authentication on mobile devices
 - Determining how to safely archive stored images and videos
 - Encrypting communications and data transmission between patients and providers
- Designing telehealth workspaces to maximize privacy and minimize the potential of overhearing private conversations
- Creating protocols that ensure only authorized personnel and patients have access to sensitive information
- Providing information to patients about HIPAA and training to providers and other staff on safeguarding personal health information
- HIPAA and telehealth:
<https://www.telehealthpolicy.us/sites/default/files/2018-09/HIPAA%20and%20Telehealth.pdf>

“Primum non nocere.”
(Above all, do no harm.)

—Hippocrates

RESOURCES

Resources

- [Texas Medical Association Telemedicine Vendor Evaluation](#)
- [American Medical Association \(AMA\) Digital Health Implementation Playbook](#)
- [Centers for Medicare & Medicaid Services \(CMS\) General Provider Telehealth and Telemedicine Toolkit](#)
- [National Telehealth Technology Assessment Resource Center](#)
- [TexLa Telehealth Resource Center](#)
- [American Health Information Management Association Telemedicine Toolkit](#)

Resources

- [AAFP Telehealth Toolkit](#)
- [AAFP General Provider Telehealth and Telemedicine Toolkit](#)
- [Center For Connect Health Policy Current State Laws And Reimbursement Policies](#)
- [CMS General Provider Telehealth and Telemedicine Tool Kit](#)
- [Patient Take Home Prep Sheet](#)
- [Consumer Technology Association Digital Health Directory](#)
- [AMA Telehealth Playbook](#)

Risk Management Resources

- [HIPAA and Telehealth: A Stepwise Guide to Compliance](#)
 - Describes considerations for complying with HIPAA, including questions for potential business associates. Covers information and potential consequences related to data breaches.
- [Telemedicine Risk Management Considerations](#)
 - Describes the various forms of telemedicine, risk management concerns, and risk mitigation strategies. Outlines the enterprise risk management (ERM) framework for telemedicine and covers the future applications of telemedicine.
- [A Systematic Review of Research Studies Examining Telehealth Privacy and Security Practices Used by Healthcare Providers](#)
 - Describes a literature review examining current standards for privacy and security practices for telehealth technologies used by healthcare providers in the U.S.

Health Professional Resources for Chronic Care Management

- [CMS Connected Care Toolkit](#)
- [Chronic Care Management Services Fact Sheet \(PDF\)](#)
- [Chronic Care Management Outreach Campaign on Geographic and Minority/Ethnic Health Disparities](#)
- [Chronic Conditions in Medicare](#)
- [Chronic Conditions Data Warehouse](#)
- [Searchable Medicare Provider Fee Schedule](#)

References

- [The Best 10 Free and Open Source Telemedicine Software](#)
- [Comparing the latest telehealth solutions](#)
- [Technical Specifications for Selected Platforms](#)
- [Telemedicine Vendor Evaluation](#)
- [AMA Telehealth Implementation Playbook](#)
- [Picking The Right Telehealth Platform For a Small or Solo Practice](#)
- [Cleveland Clinic Digital Health Playbook](#)

References

- [Comparing 11 top telehealth platforms: Company execs tout quality, safety, EHR integrations](#)
- [Leading Age Technology Selection Tools](#)
- [Best telemedicine software of 2021](#)
- [National Telehealth Technology Assessment Resource Center \(TTAC\)](#)
- [Videoconferencing–Technology Overview](#)

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 - [Louisiana Health Professionals Facebook group](#)

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