

Updates on Telehealth

July 22, 2021



Agenda

Welcome and Introduction

Benjamin A. Kruskal, MD, PhD, Senior Medical Director, Wellforce CIN

Telehealth Alignment with Wellforce Strategy

Stacie Swanson, MHA, System Vice President, Operations, Wellforce Physicians Organization

Summary of Recent Legal and Regulatory Changes

Benjamin A. Kruskal, MD, PhD, Senior Medical Director, Wellforce CIN

Insurance and Liability Concerns

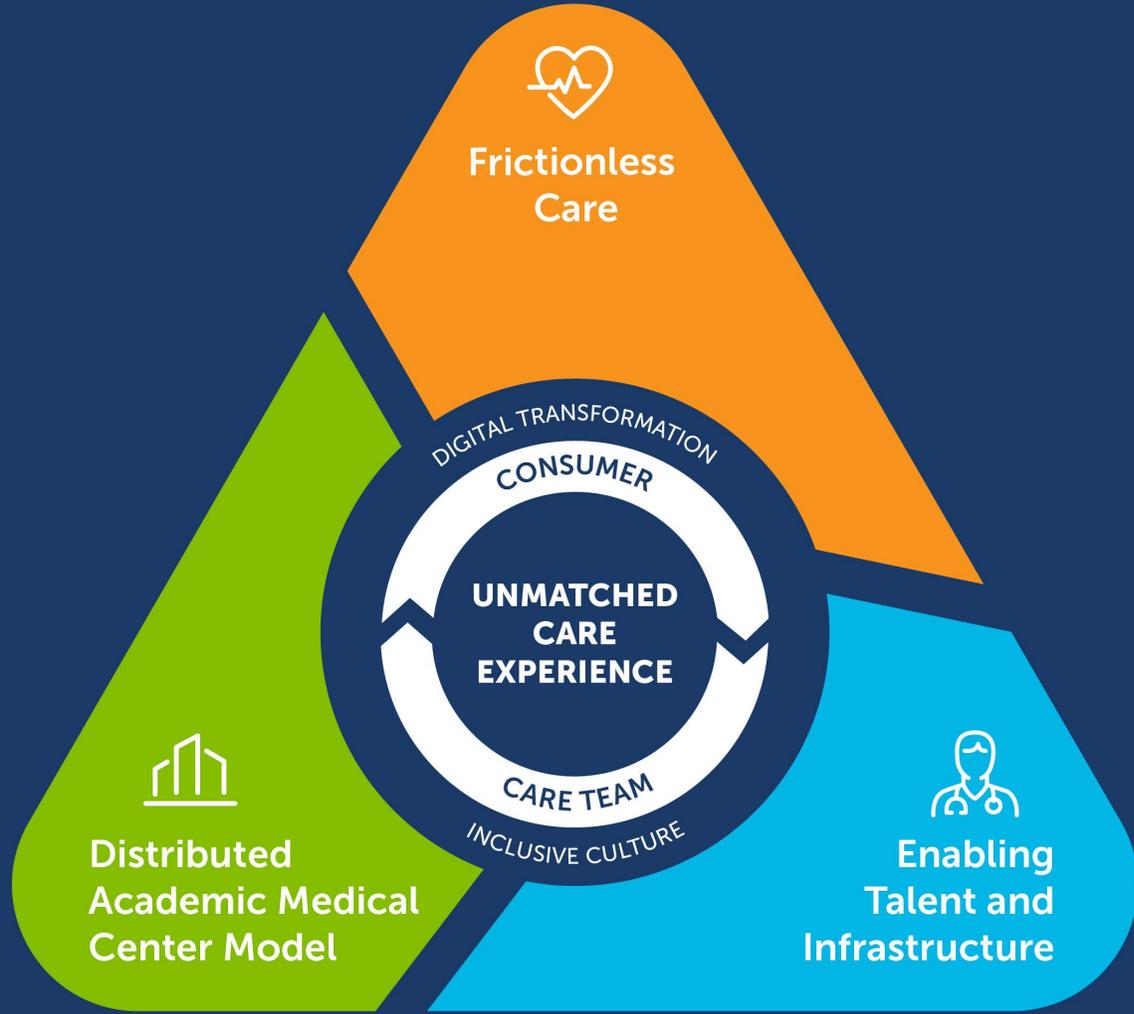
Adriana St. Cyr, Director of Insurance, Wellforce

Jennifer Tolkoff, Esq. Associate General Counsel, Wellforce

Q&A

- Please submit all questions using the chat feature. We will circulate a summary of questions received and answers via email to all registered webinar attendees at a later date.

Telehealth Connection to Our Vision



Legal and Regulatory Changes

Licensure requirements and location

- Licenses to practice medicine are issued by states and permit practicing only within that state (unless states have a mutual reciprocity agreement, which some do).
- For traditional face to face visits, the patient and clinician are located in the same state, and the clinician must be licensed in that state.
- Telehealth introduces the possibility of the clinician and patient being in different states at the time of the visit. The laws (which in most states were written long before telehealth was envisioned) have been interpreted to require that the clinician be licensed in the state where the patient is physically located at the time of the visit.

Regulatory changes simplified telehealth early in the pandemic

- Telehealth became common during the pandemic as it allowed clinical encounters with no risk of infection to either clinician or patient.
- In order to allow clinicians to care for established patients who were traveling or residing temporarily away from home, and to facilitate appropriate urgent care to be rendered via telehealth, states conferred license reciprocity to clinicians licensed in any state. Temporarily, they did not require licensure within their state for telehealth treatment of patients physically located within their state borders at the time of treatment.
- These changes occurred on a state-by-state basis, with no overriding national agreement, legislation or regulations.

Reversion of telehealth regulations as the pandemic has waned

End of License Reciprocity

Most states have rescinded orders allowing for license reciprocity during the pandemic, thus causing a problem if we see a patient for a televisit while they are physically located in another state during the visit.

- The applicable licensing rules and regulations are the ones where the patient is located at the time of the visit.
- Depending on the location, practicing medicine without a license could result in a misdemeanor or a felony in another state, which could affect your Massachusetts license. In addition, your professional liability (malpractice) insurance may not apply to that visit, which could leave you personally vulnerable to claims.

End of the Emergency Order

Massachusetts has ended the state of emergency and associated orders as of 6/15/21, which begins a 90 day countdown to ending emergency state orders to payers around reimbursement for telehealth visits.

End of License Reciprocity for Telehealth

 **As of August 1, 2021** – Patients should no longer be permitted to book telehealth visits if the patient will be outside MA during the visit (unless the provider is licensed in the state where the patient will be during the visit)

- A Wellforce email communication was sent to all providers from Dr. Craig Best/Emily Young on Tuesday, June 29, 2021
 - Includes FAQ for providers as well as sample scripts for staff
- Communication should be sent to all patients that have had a telehealth visit during the pandemic and have a home address outside MA to alert them to the changes
- All area hospitals have taken (or are taking) similar notification steps

What about phone calls?

- Advice via telephone (or more recently, electronic patient portal messages) has long been provided (without charge) with no regard to patient location
 - May conflict with new telehealth practices
- Distinction between brief, general, less formal advice and a formal telehealth encounter (which might be conducted by video, or by audio alone including telephone)
- Useful guidelines (not binding):
 - Was this type of advice appropriately/customarily given by phone/electronic messaging before widespread telehealth use?
 - Is patient out of state planning to return to be seen in MA in the future?
- If a patient needs more, they should come to MA or be referred locally.
- If a remote encounter is complex enough that you could bill for it, consider whether it should be done when a patient is located out of state.
- Patients who have moved out-of-state permanently/long-term and cannot/will not come to MA for care should be transitioned to a local provider

What This Means for You

- Review your list of patients seen for telehealth visits who are likely to be outside of MA for a future visit (based on non-MA home address, work address, winter residence, or known travel.)
- Determine if it would be operationally and financially appropriate to pursue a license in other states based on the number of your patients likely to want a telehealth visit while located in those other states.
- Make sure your scheduling teams are aware of the issue (and know whether you have obtained a license from states other than MA)
 - A review of out of state telehealth indicates the following are those states with the largest proportion of non-MA addresses for patients (in order from highest to lowest):
 - **New Hampshire**
 - **Rhode Island**
 - **Maine**
 - **Vermont**
 - **Connecticut**
 - **New York**
 - **Florida**

Communication to Patients

Sent earlier this week from Wellforce hospitals to patients seen by employed providers



Logo Here

Patient Update

DRAFT

Dear Tufts Medical Center and Tufts Children's Hospital Community:

At the height of the pandemic, we shifted significant outpatient care through telehealth services allowing patients to connect with their physicians virtually and have continued to offer these services as an option for patients as COVID-19 conditions improved.

Over the past year, many state and federal agencies who govern and regulate health care allowed virtual visits to be delivered to patients who resided in states different from where the physician was licensed. This was done so patients, providers and staff could adhere to the recommendations made by public health agencies and our own infectious diseases professionals. Unfortunately, many states are now changing their medical licensing rules to stricter telehealth conditions.

A physician can now provide care to patients via telehealth only when the physician is licensed in the state where the patient resides. While we continue to advocate with government and regulatory agencies to change these conditions to better support our patients, this change will have an impact on your appointments with us in the future.

What does this mean for you?

- For appointments scheduled on or after August 1, 2021 most of our physicians will continue to offer virtual visits to patients located in Massachusetts only. Telehealth visits with patients in any state other than Massachusetts will need to be re-scheduled to an in-person visit.
- If you have a virtual visit scheduled, you do not need to take any action at this time. Your doctor's office will contact you if there is anything you need to do or if anything changes.

Thank you for trusting us with your care during the pandemic. We will continue to keep you updated on any changes to the laws or regulations around telehealth visits.

Wishing you a healthy summer,

Tufts Medical Center & Tufts Children's Hospital

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Licensing Rules at the End of Pandemic

| | Conn | Florida | Maine | NH | RI | NY |
|--|---|---|--|---|---|---|
| Allow out of state providers to provide Telehealth services, any stipulations? | Allows Providers licensed in another state to treat a patient in CT through Telehealth without getting a license in CT, however check with insurance carriers to understand whether an OOS provider will be covered | Can only provide Telehealth services if registered with Medical Board of Florida by completing an application | Providers receive emergency license to perform Telehealth services with no application fee, or if already seeing those patients at OOS locations, no license is needed | Temporary authorization for out of state medical providers to provide medically necessary services, includes Telehealth. An emergency NH license shall be issued at no cost and will be valid during State of emergency | As of 1/21/21, Out of state providers providing Telehealth will need to apply for a full RI license | Licensed providers from other states in good standing can practice in NY per Executive order without a NY license |
| If yes, when does that expire | Gov. signed order to continue Telehealth on 3/14/21 to extend expiration date to 4/20/21. State of emergency extension re: licensing scheduled to expire on 5/20/21 | No expiration date - simply have to be registered with Medical Board of Florida | Active for duration of Public health emergency. Scheduled to expire on 4/15/21 | Active until end of NH state of emergency, scheduled to expire on 4/16/21 | | Active, currently scheduled to expire 4/25/21 |
| License fees | Initial application fee: \$565 | Application fee: \$350, Initial license fee: \$205 | MD License Application fee: \$600, MD temporary license 6 months: \$400 | Full license: \$600 | \$1,090 or \$1,290 for CSR | Fee for licensure: \$735 |
| Licensing Contact | 101 | 51 | 249 | 814 | 470 | 112 |

Licensing Rules at the End of Pandemic

Continued

Connecticut:

<https://portal.ct.gov/DPH/Practitioner-Licensing--Investigations/Physician/Physician-Licensure>

Florida:

<https://flboardofmedicine.gov/licensing/>

Maine:

<https://www.maine.gov/md/licensure/md-license>

New Hampshire:

<https://www.oplc.nh.gov/board-medicine-license-application-physician>

Rhode Island:

<https://health.ri.gov/licenses/detail.php?id=200>

New York:

<http://www.op.nysed.gov/prof/med/medforms.htm>

Vermont:

<https://www.healthvermont.gov/health-professionals-systems/board-medical-practice/application-licensing-and-fees>

The Future of Telehealth in MA

This legislative act makes telehealth services permanently available for Massachusetts patients after the COVID-19 state of emergency has ended by requiring insurance carriers, including MassHealth, to cover telehealth services in any case where the same in-person service would be covered and the use of telehealth is appropriate.

- **Behavioral Health permanent**

- This bill extends payment rate parity beyond the current COVID-19 state of emergency by requiring that behavioral health services delivered via telehealth be permanently reimbursed by insurers at the same level as in-person services.

- **Primary Care and Chronic Disease for 2 years since passage**

- Access to primary care and chronic disease management services via telehealth are also enhanced in the bill by requiring these services to be reimbursed by insurers at the same rate as in-person services over the next two years.

- **All other in place, 90 days after PHE (which is mid-September)**

- Equal payment rates for telehealth and in person care for all other health care services, which have been temporarily mandated by an Executive Order, will also remain in place for 90 days beyond the end of the COVID-19 state of emergency.

MEDICARE CHRONIC DISEASES

Alcohol Abuse
Drug Abuse / Substance Abuse
Alzheimer's Disease and Related Dementia
Hepatitis (Chronic Viral, B & C)
Arthritis (Osteoarthritis and Rheumatoid)
Asthma
HIV / AIDS
Atrial Fibrillation
Hyperlipidemia (High Cholesterol)
Autism Spectrum Disorders
Hypertension (High Blood Pressure)
Cancer (Breast, Colorectal, Lung, and Prostate)
Ischemic Heart Disease
Chronic Kidney Diseases
Osteoporosis
COPD
Schizophrenia and Other Psychotic Disorders
Depression
Stroke
Diabetes

Medical Malpractice and Telehealth

Jurisdictional and Coverage Considerations

Telehealth considerations revolve around the location of the patient

One of the biggest hurdles to practicing telemedicine is licensure:

- The provider must be licensed to provide care in the jurisdiction where the patient is located during services
- Providing care without a license creates liability - both to the individual provider and to the entity itself

In the event of malpractice litigation resulting from telehealth, the venue of the litigation is likely to be the patient's state

Malpractice Awards Vary by Jurisdiction

Differences in state-by-state regulations create variation in awards related to medical malpractice

Some states have statutory caps on the amount that a plaintiff can be awarded for non-economic damages, which relate to the physical injury, mental distress, loss of enjoyment of life, permanent impairment, etc.

- CA (\$250k)
- MD (\$845k, +\$15k annually)
- VA (**total award** capped at \$2.45m, +\$50k annually up to \$3m by 2030)
- NC (\$545,144, adj. for inflation annually)
- SC (\$350k per claimant, unless provider was grossly negligent, willful, wanton, or reckless)

However, many states have no cap on non-economic damages, including:

- CT
- DC
- DE
- FL
- MA
- ME
- NH
- NJ
- NY
- PA
- RI
- VT

Coverage Considerations

Insurance Policies Exclude Illegal Acts

Entity

- Massachusetts is unique in that it caps liability for not-for-profit healthcare organizations to \$100k, provided that the malpractice was committed in the course of an activity carried out to accomplish the charitable purposes of the nonprofit. **At this time, no other state has such a cap**
- This inconsistency means that if a not-for-profit healthcare entity is sued for malpractice in any other state (i.e. failure to supervise), the charitable immunity will not apply
- An entity that knowingly allows individuals to practice medicine without a license risks losing malpractice coverage protection

Individual

- Practicing medicine without a license is illegal in all 50 states
- WIC Employed Program Insureds – Policy provides coverage on the basis of “scope of duties”
- Wellforce VAP Program Insureds – Insured definition specifies appropriate licensure
- Therefore, whether insured through WIC or a commercial carrier, an individual who provides care without a license risks being declined coverage in the event of a malpractice incident.

Additional Considerations

- Definition of “patient care” or “practicing medicine” and potential exceptions, e.g., necessity, basic advice, transfer of care, are all state-dependent and would be evaluated based on the circumstances presented.
- Useful guidelines to determine the appropriateness of limited electronic communication with patient across state lines:
 - If this type of advice was appropriately and customarily provided by telephone or electronic portal message before the availability of telemedicine services.
 - If the patient is out of state transiently and plans to return to be seen in Massachusetts in the future.
 - **NOTE:** Neither of these guidelines is necessary or sufficient by itself or together to justify appropriateness of out-of-state remote advice. *Your judgment and interpretation of each situation is necessary, and you should consult with your legal counsel, risk department, and/or representatives of your professional liability insurance for specific situational guidance.*
- If a patient requires more involved attention, they should either be invited to come to Massachusetts for a visit, or directed to medical resources in their current locale, as appropriate.
- Clinicians should plan to transition the care of patients who indicate they have moved out-of-state permanently or on a long-term basis and cannot or will not seek care in-person within Massachusetts.

Additional Resources

- Federation of State Medical Boards, U.S. States and Territories Modifying Requirements for Telehealth in Response to COVID-19 (updated July 19, 2021), available at <https://www.fsmb.org/siteassets/advocacy/pdf/states-waiving-licensure-requirements-for-telehealth-in-response-to-covid-19.pdf>