

Telemedicine Across State Lines

Risk Opinion, 04/18/2024

Treatment (e.g., call from patient; virtual telehealth visit; etc.)

Each state is responsible for regulating the provision of medical services in their state, and arguably, when a patient is located in their state because he/she is on vacation, at college, etc., and they receive care while there, either in-person or via telehealth, that state sets the rules on the provision of those medical services. Moreover, each state may handle it differently. That said, I suspect it happens often (especially when a patient is on vacation), and so the state where the patient is located is either (i) unaware that it is occurring, or (ii) not concerned because arguably it is in the best interest of the patient not to have to establish care with a new provider for such a limited period of time and purpose. Nevertheless, if a patient was out of state and our provider conducted a telehealth visit with him/her while they were out of state (and the provider was here in Georgia) and a bad outcome occurred, the patient's attorney would undoubtedly use the lack of being properly licensed in their lawsuit against the provider (e.g., negligence per se), which may also support a viable claim for punitive damages.

Bottom line, best practice is to be licensed in each state where the patient may be located (even temporarily), and one of the easiest ways to do so is through the Interstate Medical Licensure Compact (see <https://www.imlcc.org/information-for-physicians/>). Unfortunately, not all states are members of the compact, but Georgia is, along with Mississippi and Tennessee. If the state is not a member, the provider should access the particular state's medical board website and see about applying for a temporary license. Otherwise, refer the patient to the appropriate local facility (e.g., urgent care, ER, etc.) where the patient is located based on the patient's complaints.

Lastly, should a provider become licensed in another state, they need to be sure to tell their professional liability carrier. The underwriter, in turn, will want to know the percentage of time spent practicing in the other state, confirm licensure, and may even need to adjust the limits and/or premium.

Prescribing

Generally, there is no restriction on prescribing non-controlled drugs across state lines. You can get a prescription filled in a state different from the one in which it was originally written. In most states, laws give the pharmacist the right to verify that the prescription was issued pursuant to a valid patient-practitioner relationship and that it is authentic. If the practitioner writing the prescription is not known to the pharmacist, the pharmacist can obtain proof of a reasonable certainty of the prescription's validity. However, controlled substance prescriptions have more stringent laws. These laws concerning controlled drugs vary from state to state. The prescriber would need to comply with any applicable state laws in the state where the controlled drug is being filled. Typically, a pharmacist practicing in that state can advise on state-specific laws.

Additionally, the DEA has issued some proposed permanent rules around prescribing controlled substances via telemedicine that expand the circumstances under which practitioners can prescribe controlled substances without first conducting an in-person medical evaluation of the patient. Please contact us for more details.

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