

## **Requirements for Connecticut Physicians to Provide Telemedicine/Telehealth Services to Out-of-State Patients**<sup>1</sup>

Last updated December 15, 2022

In the event a Connecticut-licensed provider, located in Connecticut considers providing telemedicine/telehealth services to patients located outside of Connecticut, each provider will need to comply with the laws of the state in which each patient is located. A number of physician members have requested an overview of the state telemedicine/telehealth laws for Florida, Massachusetts, New York, and Rhode Island, which are provided below.

### **Florida**

Telemedicine Defined: “The practice of health care delivery by a practitioner who is located at a site other than the site where a recipient is located for the purposes of evaluation, diagnosis, or treatment.”<sup>2</sup>

Telehealth Defined: “[T]he use of synchronous or asynchronous telecommunications technology by a telehealth provider to provide health care services, including, but not limited to, assessment, diagnosis, consultation, treatment, and monitoring of a patient; transfer of medical data; patient and professional health-related education; public health services; and health administration.”<sup>3</sup>

What is Not Telehealth: The term does not include audio-only telephone calls, e-mail messages, or facsimile transmissions.

Accepted Modalities: Synchronous or asynchronous telecommunications technology.

Required Licensure: Florida requires out-of-state practitioners to register in Florida in order to provide telehealth services to patients in Florida.<sup>4</sup> The Application for Out-of-State Telehealth Provider Registration can be accessed at: <https://flboardofmedicine.gov/licensing/out-of-state-telehealth-provider-registration/>

Out-of-state practitioners are required to:

- Submit a completed Application for Out-of-State Telehealth Provider Registration;
- Maintain an active, unencumbered license from another state, the District of Columbia, or a possession or territory of the United States (license verification is required);
- Not have a pending investigation, discipline, or revocation on his/her license within the last five (5) years;

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<sup>1</sup> This alert is designed to be informational of the general requirements of telemedicine/telehealth in these states based on a review of the state statutes and regulations.

<sup>2</sup> Fla. Rule 59G-1.057, F.A.C.

<sup>3</sup> Fla. Stat. § 456.47(1).

<sup>4</sup> [http://www.leg.state.fl.us/statutes/index.cfm?App\\_mode=Display\\_Statute&URL=0400-0499/0456/Sections/0456.47.html](http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&URL=0400-0499/0456/Sections/0456.47.html).

- Designate a duly appointed registered agent for service of process in Florida (We often use Corporation Services Company (“CSC”) which has an office in Florida, but there are many different companies that will serve as a registered agent. All of them charge a fee for such services.)
- Maintain liability coverage in an amount not less than \$100,000 per claim, with a minimum annual aggregate of not less than \$300,000;
- Not open a Florida office or provide in-person health care services to Florida patients; and
- Only use a Florida-licensed pharmacy, registered nonresident pharmacy, or outsourcing facility to dispense medicinal drugs to patients in Florida (pharmacists only).

There are two exceptions to the registration requirement: (1) services provided in response to an emergency medical condition or (b) services provided in consultation with a health care professional licensed in Florida who has ultimate authority over the diagnosis and care of the patient.

Prescription of Controlled Substances: Telehealth providers may not use telehealth to prescribe a controlled substance in Schedule II unless the controlled substance is prescribed for the (1) treatment of a psychiatric disorder; (2) inpatient treatment at a hospital; (3) treatment of a patient receiving hospice services; or (4) treatment of a resident of a nursing home facility.

Standard of Care: In regard to the standard of care in Florida, a telehealth provider has the duty to practice in a manner consistent with his/her scope of practice and the prevailing professional standard of practice for a health care professional who provides in-person health care services. A telehealth provider may use telehealth to perform a patient evaluation. If a telehealth provider conducts a patient evaluation sufficient to diagnose and treat the patient, the telehealth provider is not required to research a patient’s medical history or conduct a physical examination of the patient before using telehealth to provide health care services to the patient.<sup>5</sup>

Florida Medicaid Reimbursement: Florida Medicaid reimburses for telemedicine services using interactive telecommunications equipment that includes, at a minimum audio and video equipment permitting two-way, real time, interactive communication between a recipient and a practitioner. Florida Medicaid does not reimburse for: (a) telephone conversations, chart review(s), electronic mail messages, or facsimile transmissions and (b) equipment required to provide telemedicine services.<sup>6</sup>

## **Massachusetts**

Telemedicine Defined: “[T]he provision of services to a patient by a physician from a distance by electronic communication in order to improve patient care, treatment or services.”<sup>7</sup>

Telehealth Defined: “[T]he use of synchronous or asynchronous audio, video, electronic media or other telecommunications technology, including, but not limited to: (i) interactive audio-video

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<sup>5</sup> Fla. Stat. § 456.47(2).

<sup>6</sup> Fla. Rule 59G-1.057, F.A.C.

<sup>7</sup> M.A. 243 CMR 2.01(4).

technology; (ii) remote patient monitoring devices; (iii) audio-only telephone; and (iv) online adaptive interviews, for the purpose of evaluating, diagnosing, consulting, prescribing, treating or monitoring of a patient's physical health, oral health, mental health or substance use disorder condition.”<sup>8</sup>

Accepted Modalities: Synchronous or asynchronous audio, video, electronic media or other telecommunications technology, including, but not limited to: (i) interactive audio-video technology; (ii) remote patient monitoring devices; (iii) audio-only telephone; and (iv) online adaptive interviews.

Required Licensure: Massachusetts requires a physician to be licensed in the state of Massachusetts in order to practice telemedicine.<sup>9</sup> There is no current state of emergency that waives this licensing requirement.<sup>10</sup>

Standard of Care: In regard to the standard of care in Massachusetts, a health care provider is not required to document a barrier to an in-person visit nor shall the type of setting where telehealth services are provided be limited for health care services provided via telehealth; provided, however, that a patient may decline receiving services via telehealth in order to receive in-person services. Health care services provided via telehealth shall conform to the standards of care applicable to the telehealth provider's profession and specialty. Such services shall also conform to applicable federal and state health information privacy and security standards as well as standards for informed consent.<sup>11</sup>

Reimbursement: Insurers in Massachusetts are required to provide coverage for telehealth services if: (i) the health care services are covered by way of in-person consultation or delivery; and (ii) the health care services may be appropriately provided through the use of telehealth. Coverage of telehealth services may include utilization review, including preauthorization, to determine the appropriateness of telehealth as a means of delivering a health care service; provided, however, that the determination shall be made in the same manner as if the service was delivered in person. A carrier shall not be required to reimburse a health care provider for a health care service that is not a covered benefit under the plan or reimburse a health care provider not contracted under the plan except as already required by law.<sup>12</sup>

Coverage of telehealth services may contain a deductible, copayment or coinsurance requirement for a health care service provided via telehealth as long as the deductible, copayment or coinsurance does not exceed the deductible, copayment or coinsurance applicable to an in-person

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<sup>8</sup> M.G.L.A. 176A § 38.

<sup>9</sup> <https://www.mass.gov/lists/physician-regulations-policies-and-guidelines#new-policies-and-guidelines->.

<sup>10</sup> <https://www.massmed.org/Practice-Support/Telehealth-and-Virtual-Care/Telehealth-and-Virtual-Care/>.

<sup>11</sup> M.G.L.A. 176A § 38 (applying to nonprofit hospital service corporation plans); M.G.L.A. 176B § 25 (applying to medical service corporations); M.G.L.A. 176G § 33 (applying to health maintenance organizations); M.G.L.A. 176I § 13 (applying to a preferred provider organization contract); M.G.L.A. 32A § 30 (applying to contributory group general or blanket insurance contracts for government employees).

<sup>12</sup> M.G.L.A. 176A § 38 (applying to nonprofit hospital service corporation plans); M.G.L.A. 176B § 25 (applying to medical service corporations); M.G.L.A. 176G § 33 (applying to health maintenance organizations); M.G.L.A. 176I § 13 (applying to a preferred provider organization contract); M.G.L.A. 32A § 30 (applying to contributory group general or blanket insurance contracts for government employees).

consultation or in-person delivery of services. The rate of payment for telehealth services provided via interactive audio-video technology may be greater than the rate of payment for the same service delivered by other telehealth modalities. Coverage that reimburses a provider with a global payment shall account for the provision of telehealth services to set the global payment amount.<sup>13</sup>

## **New York**

**Telemedicine Defined:** “[T]he use of synchronous, two-way electronic audio visual communications to deliver clinical health care services, which shall include the assessment, diagnosis, and treatment of a patient, while such patient is at the originating site and a telehealth provider is at a distant site.”<sup>14</sup>

**Telehealth Defined:** “[T]he use of electronic information and communication technologies by telehealth providers to deliver health care services, which shall include the assessment, diagnosis, consultation, treatment, education, care management and/or self-management of a patient. . . . telehealth shall be limited to telemedicine, store and forward technology, remote patient monitoring and audio-only telephone communication, except that with respect to the medical assistance program and the child health insurance plan, telehealth shall include audio-only telephone communication only to the extent defined in regulations as may be promulgated by the New York health commissioner.”<sup>15</sup>

**What is Not Telehealth:** Telehealth shall not include delivery of health care services by means of facsimile machines, or electronic messaging alone, though use of these technologies is not precluded if used in conjunction with telemedicine, store and forward technology, or remote patient monitoring.

**Accepted Modalities:** Synchronous, two-way electronic audio visual communications, store and forward technology, remote patient monitoring and audio-only telephone communication.

**Required Licensure:** Under Executive Order #4, which declared a statewide disaster emergency due to healthcare staffing shortages (“**NY State of Emergency Order**”), physicians licensed and in current good standing in any state in the United States are permitted to practice medicine, including telemedicine, in New York State without civil or criminal penalty related to lack of New York licensure. The NY State of Emergency Order is extended through December 23, 2022 per Executive Order #4.15.<sup>16</sup> In New York, the governor must renew the executive order containing this waiver frequently, so it may be that the waiver is extended beyond the current deadline. We advise confirming the validity of this waiver monthly. Upon the expiration of the NY State of

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<sup>13</sup> M.G.L.A. 176A § 38 (applying to nonprofit hospital service corporation plans); M.G.L.A. 176B § 25 (applying to medical service corporations); M.G.L.A. 176G § 33 (applying to health maintenance organizations); M.G.L.A. 176I § 13 (applying to a preferred provider organization contract); M.G.L.A. 32A § 30 (applying to contributory group general or blanket insurance contracts for government employees).

<sup>14</sup> N.Y. Public Health Law § 2999-CC.

<sup>15</sup> N.Y. Public Health Law § 2999-CC.

<sup>16</sup> Sections 6512 through 6516, and 6524 of the Education Law and Part 60 of Title 8 of the NYCRR. See also <https://www.governor.ny.gov/executive-order/no-415-continuing-declaration-statewide-disaster-emergency-due-healthcare-staffing>.

Emergency Order, then an out-of-state physician will need to be licensed in New York State in order to practice telemedicine in New York State.<sup>17</sup>

Reimbursement: Health insurance in New York, including through the NY State of Health Marketplace or the New York State Health Insurance Program for public employees, may not exclude a service that is otherwise covered under the health insurance because the service is delivered via telehealth. If the policy or contract would cover the service at the in-network provider's office, an insurer is required to cover it if it is provided by telehealth by an in-network provider.<sup>18</sup> New York State also allows for the reimbursement of home telehealth services for home health care services performed by certified home health agencies and licensed home care services agencies.<sup>19</sup>

New York Medicaid Reimbursement: For New York Medicaid, payment for telehealth services shall be made only if the provision of such services appropriately reduces the need for on-site or in-office visits and the following standards are met:

- (a) An “audio-only visit” is reimbursable when the service can be effectively delivered without a visual or in-person component; and it is the only available modality or is the patient's preferred method of service delivery; and the patient consents to an audio-only visit; and it is determined clinically appropriate by the ordering or furnishing provider; and the provider meets billing requirements, as determined and specified by the New York health commissioner in administrative guidance. Services provided via audio-only visits shall contain all elements of the billable procedures or rate codes and must meet all documentation requirements as if provided in person or via an audio-visual visit.
- (b) “eConsults” are intended to improve access to specialty expertise through consultations between consulting providers and treating providers. eConsults are reimbursable when the providers meet minimum time and billing requirements, as determined and specified by the New York health commissioner in administrative guidance.
- (c) “Virtual Check-in” visits are intended to be used for brief medical discussions or electronic communications between a provider and a new or established patient, at the patient's request. Virtual check-ins are reimbursable when the provider meets certain billing requirements, as determined and specified by the New York health commissioner in administrative guidance.
- (d) “Virtual Patient Education” delivers health education to patients, their families, or caregivers, and is reimbursable only for services that are otherwise reimbursable when delivered in person and when the provider meets certain billing requirements, as determined and specified by the New York health commissioner in administrative guidance.<sup>20</sup>

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<sup>17</sup> N.Y. Education Law § 2999-DD; [http://www.op.nysesd.gov/COVID19\\_Telepracticeguidance.html](http://www.op.nysesd.gov/COVID19_Telepracticeguidance.html).

<sup>18</sup> N.Y. Insurance Law §§3217-h and 4306-g;  
[https://www.dfs.ny.gov/industry\\_guidance/coronavirus/telehealth\\_ins\\_prov\\_info](https://www.dfs.ny.gov/industry_guidance/coronavirus/telehealth_ins_prov_info).

<sup>19</sup> N.Y. Public Health Law § 3614.

<sup>20</sup> 18 NYCRR § 538.2.

## **Rhode Island**

**Telemedicine Defined:** “[T]he delivery of clinical healthcare services by use of real time, two-way synchronous audio, video, telephone-audio-only communications or electronic media or other telecommunications technology including, but not limited to: online adaptive interviews, remote patient monitoring devices, audiovisual communications, including the application of secure video conferencing or store-and-forward technology to provide or support healthcare delivery, which facilitate the assessment, diagnosis, counseling and prescribing treatment, and care management of a patient's health care while such patient is at an originating site and the healthcare provider is at a distant site, consistent with applicable federal laws and regulations.”<sup>21</sup>

**What is Not Telemedicine:** Telemedicine does not include an email message or facsimile transmission between the provider and patient, or an automated computer program used to diagnose and/or treat ocular or refractive conditions.

**Accepted Modalities:** Real time, two-way synchronous audio, video, telephone-audio-only communications or electronic media or other telecommunications technology including, but not limited to: online adaptive interviews, remote patient monitoring devices, audiovisual communications, including the application of secure video conferencing or store-and-forward technology.

**Required Licensure:** Typically, a physician must be licensed in Rhode Island to provide medical services to individuals located in Rhode Island. For the duration of the declared state of emergency in Rhode Island due to COVID-19 (“**RI State of Emergency**”), the Board of Medical Licensure and Discipline has stated that it “will not take any action against physicians not licensed in Rhode Island who, during the state of emergency, use telemedicine to deliver care to their *established* Rhode Island patients.”<sup>22</sup> The RI State of Emergency is currently in effect until January 10, 2023. The Rhode Island governor must renew the state of emergency frequently, so it may be that the RI State of Emergency is extended beyond the current deadline. We advise confirming the status of the RI State of Emergency on a monthly basis. Once the RI State of Emergency expires, physicians will be required to be licensed in Rhode Island in order to practice telemedicine.<sup>23</sup>

**Standard of Care:** In regard to the standard of care in Rhode Island, “treatment and consultation recommendations made in an online setting, including issuing a prescription via electronic means, will be held to the same standards of appropriate practice as those in face-to-face settings.” Physicians are not allowed to (1) issue a prescription, based solely on an online questionnaire without an appropriate evaluation; and (2) perform an asynchronous evaluation of a patient, without contemporaneous real-time, interactive exchange between the physician and patient.<sup>24</sup>

**Reimbursement:** As for reimbursement of telemedicine services in Rhode Island, each health insurer is required to provide coverage for the cost of health services provided through telemedicine services and not exclude coverage solely because the service is provided through

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<sup>21</sup> R.I. Gen. Laws 1956, § 27-81-3.

<sup>22</sup> <https://health.ri.gov/publications/policies/RIDOH-Policies-Telemedicine.BMLD.3.20.20.pdf>

<sup>23</sup> <https://health.ri.gov/healthcare/about/telemedicine/>.

<sup>24</sup> R.I. 216-RICR- 40-05-1.5.9(h)(1).

telemedicine. Prior authorizations cannot be more stringent for telemedicine services than in-person services.<sup>25</sup> Health insurers are also required to report to the Rhode Island office of the health insurance commissioner data on its telemedicine policies, practices and experience.<sup>26</sup>

### **Telehealth Reimbursement – Medicare**

Prior to the COVID-19 emergency, Medicare only reimbursed for telehealth visits when the patient was at an approved originating site, which did not include a patient's home. As a modification during the public health emergency ("PHE") declared due to COVID-19, Medicare waived all geographic restrictions related to where a patient is located when receiving services.<sup>27</sup> This means that a patient's home is an appropriate site of service while this waiver is in place. Currently, the PHE is scheduled to end on January 11, 2023.<sup>28</sup> Further, the 2022 Consolidated Appropriations Act extended that waiver to continue for an additional 151 days after the federal PHE expires. While we expect that the PHE will be extended again in January, if the PHE is not extended beyond the current January 11, 2023 date, patients will be able to continue receiving telehealth services in their homes until June 15, 2023.<sup>29</sup>

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Should you have any questions regarding the above, please contact Barry B. Cepelewicz, M.D., Esq. ([bcepelewicz@garfunkelwild.com](mailto:bcepelewicz@garfunkelwild.com)) or Elisabeth A. Pimentel, Esq. ([epimentel@garfunkelwild.com](mailto:epimentel@garfunkelwild.com)). Garfunkel Wild, P.C. is General Counsel to the Fairfield County Medical Association and the contact information for its Connecticut office is 350 Bedford Street, Stamford, CT 06901; 203-316-0483.

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<sup>25</sup> R.I. Gen.Laws 1956, § 27-81-4.

<sup>26</sup> R.I. Gen.Laws 1956, § 27-81-7.

<sup>27</sup> See Medicare Payment Policies During COVID-19, Telehealth.HHS.GOV, available at: <https://telehealth.hhs.gov/providers/billing-and-reimbursement/medicare-payment-policies-during-covid-19/>

<sup>28</sup> See Secretary of Health and Human Services Xavier Becerra Renewal of Determination that a Public Health Emergency Exists, available at: <https://aspr.hhs.gov/legal/PHE/Pages/covid19-13Oct2022.aspx> (October 13, 2022) Federal law allows such renewals to last for the duration of the emergency or 90 days.

<sup>29</sup> Additionally, the House of Representatives passed HR 4040 which purports to extend Medicare's coverage of telehealth services delivered when a patient is in his or her home for an additional two years. The bill has been sent to the Senate and is in the Senate Finance Committee as of the date of this writing. No date has been sent for the Senate to vote on this legislation.