

Compliance Today – July 2018

Telehealth: A new frontier for compliance officers

by Randi E. Seigel, Esq. and Megan N. Sherman, Esq.

Randi E. Seigel (rseigel@manatt.com) is a Partner in the Manatt, Phelps & Phillips, LLP New York City office and Megan N. Sherman (msherman@manatt.com) is an Associate in the Manatt, Phelps & Phillips, LLP Albany, NY office.

As telehealth services become increasingly popular, healthcare providers and health insurers need to keep a careful eye on the unique compliance issues raised by the delivery of these services. Various state statutes, regulations, and guidance can be a minefield for the unwitting, because states have implemented wide-ranging and inconsistent policies on regulating the provision of telehealth services.

Defining telemedicine and telehealth

The differences begin at the outset, with states taking varying approaches to defining the terms “telemedicine” and “telehealth.” Even within states, there may be multiple definitions of telehealth within varying bodies of law and regulatory agencies.

California defines telehealth as:

the mode of delivering health care services and public health via information and communication technologies to facilitate the diagnosis, consultation, treatment, education, care management, and self-management of a patient’s health care while the patient is at the originating site and the health care provider is at a distant site. Telehealth facilitates patient self-management and caregiver support for patients and includes synchronous interactions and asynchronous store and forward transfers.^[1]

Washington defines telemedicine as:

the delivery of health care services through the use of interactive audio and video technology, permitting real-time communication between the patient at the originating site and the provider, for the purpose of diagnosis, consultation, or treatment [for the purposes of commercial health insurance].^[2]

Michigan defines telehealth as:

the use of electronic information and telecommunication technologies to support or promote long-distance clinical health care, patient and professional health-related education, public health, or health administration, [including telemedicine].^[3]

[Telemedicine is defined as] the use of an electronic media to link patients with

health care professionals in different locations [and must provide the healthcare professional with the ability] to examine the patient via a real-time, interactive audio or video, or both, telecommunications system and the patient must be able to interact with the off-site health care professional at the time the services are provided.^[4]

New York has multiple definitions of telehealth. For purposes of coverage by health insurers, the state defines telehealth as:

the use of electronic information and communication technologies by a health care provider to deliver health care services to an insured individual while such individual is located at a site that is different from the site where the health care provider is located.”^[5]

[For purposes of reimbursement by the Medicaid program, telehealth is defined as] the 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 [and is limited to include only] ‘telemedicine,’ ‘remote patient monitoring’ and ‘store and forward technology,’ as those are defined in statute.^[6]

Although states have varying definitions for these terms, they generally exclude provider-to-provider consultations and the use of solely telephone or fax from the definition of telehealth or telemedicine.

Understanding whether a state’s definition of telehealth and telemedicine encompasses a proposed service is key to assessing the risks associated with the tele-program and understanding whether the professional practice, licensure, disclosure, and consent requirements apply, and whether reimbursement can be sought.

This document is only available to members. Please log in or become a member.

[Become a Member](#) [Login](#)