

## LEGAL AND REGULATORY ISSUES IN TELEMEDICINE

Providing health care services through telemedicine is regulated by a myriad of evolving federal and state laws. But as this type of practice becomes increasingly accessible, there are legal and regulatory issues that should be considered prior to offering telemedicine services. Three primary areas to consider as it relates to telemedicine are licensure, privacy and security, and prescribing authority.

### 1. LICENSURE

Like all forms of health care services, state licensure laws will apply as there is no nationwide license for telemedicine. With limited exceptions, states require health care practitioners that treat patients through telemedicine to be licensed in the state of the physical location of the patient at the time of service. A physician practicing in a state through telehealth is subject to the state's medical practice act and all medical board regulations and policies, and should be familiar with these.

Becoming licensed in several states to perform telemedicine is an arduous application process that is somewhat mitigated by the **Interstate Medical Licensure Compact (IMLC)**, a group of 34 states, D.C. and Guam, that seek to streamline the application process ([www.imlcc.org](http://www.imlcc.org)). However, please note that the IMLC process still requires a practitioner to obtain licensure from each state's medical board in which the practitioner seeks to provide telemedicine services and to pay the applicable licensing fee. If a practitioner provides health care services in a state without that state's license, the practitioner can be subject to disciplinary action. Additionally, any negative complaint against a practitioner is required to be reported to each state participating in the IMLC.

### 2. PRIVACY AND SECURITY

Practitioners must also comply with all privacy and security laws (state and federal, such as HIPAA) in a telemedicine setting to generally the same extent that apply when examining or treating a patient in person. The telemedicine technology platform and all patient records and information must be stored, preserved, and secured in compliance with all applicable requirements as in any other setting. Covered health care providers that seek additional privacy protections for telehealth while using video communication products should provide such services through technology vendors that are HIPAA-compliant and will enter into

HIPAA business associate agreements in connection with the provision of their video communication products. Additionally, patient records originating from a telemedicine setting must adhere to ONC's Cures Act Final Rule requirements that a patient must have immediate access to his or her medical records.

*Telemedicine technology platforms should be **HIPAA-compliant** and medical records must adhere to **ONC's Cures Act Final Rule** requirements that allow patients immediate access to their records.*

### 3. PRESCRIBING

Another consideration for telemedicine services is compliance with regulations governing prescribing controlled substances to patients. The authority to prescribe controlled substances originates from the practitioner's state of licensure regardless of the patient setting.

Before COVID-19, prescriptions for a controlled substance issued by means of telemedicine were generally predicated on an in-person medical evaluation (21 U.S.C. 829(e)). However, during the designated public health emergency, DEA-registered practitioners may issue prescriptions for all schedule II-V controlled substances to patients for whom they have not conducted an in-person medical evaluation, provided all of the following conditions are met:

- The prescription is issued for a legitimate medical purpose by a practitioner acting in the usual course of his/her professional practice;
- The telemedicine visit with the patient is conducted using an audio-visual, real-time, two-way interactive communication system; and
- The practitioner is acting in accordance with applicable federal and state laws. Practitioners must be registered with the DEA in at least one state and have permission under state law to practice using controlled substances in the state where the dispensing occurs.

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## COPIC TIP: LEGAL AND REGULATORY ISSUES IN TELEMEDICINE

Regardless of whether a public health emergency exists, if the prescribing practitioner previously conducted an in-person medical evaluation of the patient, the practitioner may issue a prescription for a controlled substance after having communicated with the patient via telemedicine, or any other means, so long as the prescription is issued for a legitimate medical purpose and the practitioner is acting in the usual course of his or her professional practice.

In addition, for the prescription to be valid, the practitioner must comply with applicable federal and state laws. The prescribing practitioner should also determine the possible requirement to register and maintain an account with the state's prescription drug monitoring program (PDMP), and consult with the PDMP when prescribing controlled substances.

All other prescribing requirements will apply, such as issuing a prescription either electronically (for schedules II-V) or by calling in an emergency schedule II prescription to the pharmacy, or by calling in a schedule III-V prescription to the pharmacy.

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### COPIC'S PERSPECTIVE

Practitioners that provide services through telemedicine are encouraged to seek legal counsel with respect to the applicable requirements.