

# Telemedicine: Increase Your Risk Management Bandwidth in a Changing Healthcare Environment

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## Objectives

- Identify potential risks and liability exposures in telemedicine
- Offer risk mitigation strategies and best practices to minimize and/or eliminate the risks/liability



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## Definition

American Telemedicine Association:

“the remote delivery of health care services and clinical information using telecommunications technology. This includes a wide array of clinical services using internet, wireless, satellite and telephone media.”

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## Where Used? What Specialties Are Using?

- Radiology (Telerad)
- Intensive/Critical Care (Tele Stroke/Tele Burn)
- Behavioral Health
- Dermatology
- Home Health Care
- Out patient virtual visits
- Prison Health
- Long Term Care
- Emergency Medicine
- Primary Care



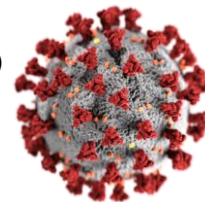
- Note: Some specialties may not use until after one initial in person visit
  - Behavioral Health



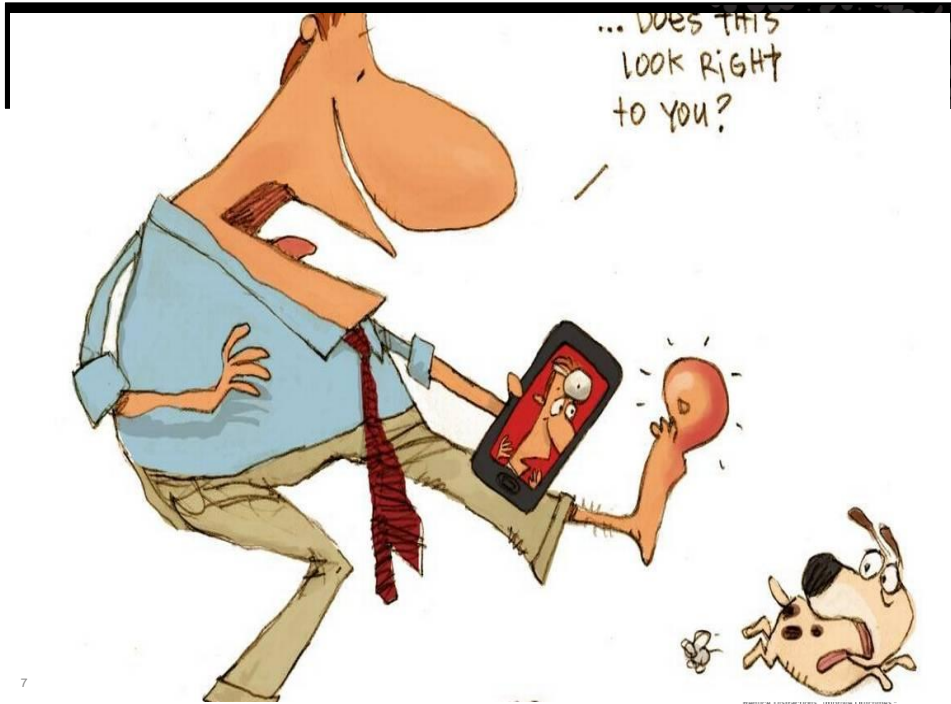
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## Why the boom? Increase use of Telemedicine Services

- COVID19
- Customer demand/expectations
- Improved/user friendly technology
- Access to (specialty) care
- Meet provider shortages
- Fewer barriers for multi-state licenses
- Efficient care delivery for certain types of visits
- Improved outcomes
  - Incentivize patients (Remote monitoring/Wearables)
  - Decrease readmissions
- Cost savings for patients
- Improved reimbursement



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## Potential liability – Claims

- Types of claims expected to be similar to what we see for in person visits
  - Missed/delayed diagnosis
  - Inadequate assessments, testing, procedures
  - Communication breakdowns: lack of informed consent, lack of follow up on test results/consults
  - Medication/Prescribing errors
- Additional types of claims/allegations:
  - Failure to convert telemedicine visit to in person visit
  - Deviation from same standard of care as in person visit
  - Failed telemedicine visit due to practitioner inexperience
- Other contributing factors:
  - Technology/Poor connection-inadequate exam
  - Lack of provider attention-poor webcam etiquette
  - Communication/language barriers
  - Documentation



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## Case Scenario 1 Failure to Diagnose/Treat – Vision Loss

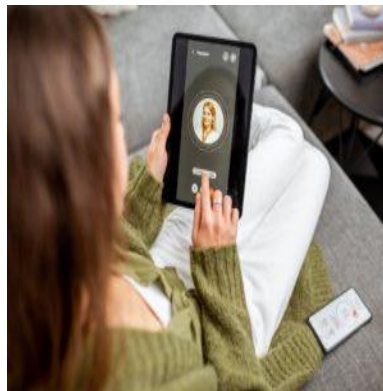


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## Case Scenario 2 Negligent Prescribing – Delayed Treatment, Surgical Intervention

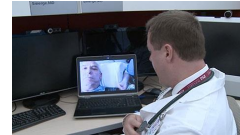


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# Risk Management Considerations



- Compliance with Laws and Regulations
- Licensure
- Credentialing
- Policies and Procedures
- Informed Consent
- Standard of Care
- Workflows
- Patient Selection
- Confidentiality/ Privacy/Security
- Documentation
- Technology/Equipment
- Education/Training
- Quality Program
- Access to EHR/Patient data



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# Laws and Regulations

HIPPA Privacy      HIPAA Security      State Privacy Laws

[Telehealthresourcecenter.com](http://Telehealthresourcecenter.com)

HIPAA Stepwise Guide To  
Compliance



Other regulations need to be aware of

- DEA requirements pertaining to prescribing high risk meds
- State laws requiring informed consent
- State laws pertaining to licensure
  - Center for Connected Health Policy - up to date state actions  
<https://www.cchpca.org/covid-19-related-state-actions>

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## Licensure

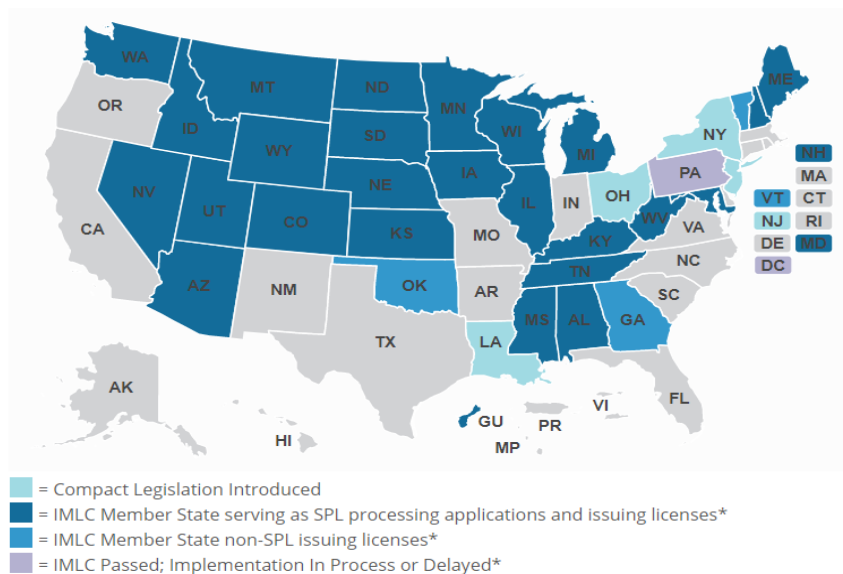
- Must be licensed in state practicing in and the state where the patient is located
- To help reduce licensure issues:  
Interstate Medical Licensure Compact Commission  
<https://www.imlcc.org/>  
<https://www.imlcc.org/information-for-physicians/#WhatDoesItCostToParticipate>
- Some states also have an expedited process for TM licensure

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## IMLC Participating States



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## Licensure Recommendations

- Ensure compliance with licensing requirements when treating patients across state lines
- Stay current with state regulations
- Utilize the IMLC for an expedited pathway to licensure
- Consult with an attorney to ensure compliance
- Consult with your professional liability insurance carrier

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## Telemedicine - Policies and Procedures

- Administrative: fiscal management, ownership of data, network/data transmission, storage, access, security, use of equipment, devices, hardware/software
- Clinical/Operational:
  - Informed Consent process and documentation
  - Verification of patient identification and location
  - Screening criteria for telemedicine visit
  - Visit expectations, standards of conduct, etiquette
  - Handling medical emergencies
  - Prescribing
  - Threshold for ending encounters
  - Quality monitoring program
  - Training, competency, workflows

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## Standard of Care

- Same as traditional in person encounter
- Patient suitability for participating in TM visit
- Follow state requirements for an in person visit when establishing care with a new patient
- Availability of past medical records, proper history, patient data to review prior or during the visit



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## Informed Consent

Informed consent for TM visits should include:

- How the technology will be used
- Confidentiality and privacy provisions
- Emergency procedures
- Technological limitations
- Physician right to discontinue visit
- Patient right to discontinue visit
- Patient right to receive a face to face consult
- Health ramifications if patient refuses treatment



Obtain a separate consent to record the visit if the TM visit is to be recorded.

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## Verifying IDs and Locations

- Develop a means of verifying new patients ID to include full name, DOB, demographics (government issued photo ID)
- Provide verification of practitioner name, qualifications, location (town/state)
- Document verification process for all IDs and locations in the medical record

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## Screening Criteria for Telemedicine Visit

- Patient eligibility for a TM visit should be accessed prior to scheduling.
- Consider the following when determining if a virtual or in person visit is appropriate:
  - First time appointments
  - Anytime a physical exam is needed, when a chaperone is needed
  - Patient experiencing symptoms outside the bounds of clinical protocols for TM visits or would have to deviate from the standard of care
- Include a list of common cases for TM visits
- Share this information with patients
- Include clinical factors and patient factors in considering whether a TM visit would be successful

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## Standards of Conduct – Patients

Visit expectations, Standard of Conduct, TM etiquette

### Patients



- Develop a process to establish expectations prior to a telemedicine visit
  - Pre-visit prep call (first visit)
  - When educating patient, use a plain language document that addresses expectations for the telemedicine visit
- Include instructions on how to dress for the visit
- Address the importance of the patient having a private, safe, and uninterrupted space for the encounter
- Share contact information if the patient experiences technical difficulties with the telemedicine visit

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## Standard of Conduct – Healthcare Providers

Visit expectations, Standard of Conduct, TM etiquette

### Healthcare Providers



- Train practitioners in webcam etiquette
- Ensure webcams at eye level, maintain eye contact
- Maintain private, professional, quiet, culturally sensitive and clean and free from clutter/distraction and ensure privacy of non-clients
- Dressing and presenting oneself professionally
- Maintain professional hours and timing of sessions
- Being punctual so patients not waiting too long

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## Case study – Boundary Issues



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## Threshold for Ending Telemedicine Visits

Recognize when TM visits should be discontinued

- Technology failures or impediments impacting communication and assessment
- Boundary violations (e.g. inappropriate dress or language, behavior, inappropriate patient setting)
- Need for in person physical exam
- Barriers impacting ability to assess, evaluate, treat
- Inability to determine diagnosis
- Potential deviation from the standard of care



Ensure appropriate f/u with patient when TM visit is discontinued

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## Medical Emergency Plan

Develop protocols for handling medical emergencies during a TM visit.

- Knowing address of patient
- How to contact emergency services in patient's location
- Knowing patient's preferred healthcare system/hospital
- Knowing resources and travel requirements when making referrals and additional health services.

Plan should include formal, written protocols appropriate for the services being rendered.

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## Prescribing

- Ensure SOC/best practice guidelines followed
- Know federal and state laws re: controlled substances
  - Is established pt/physician relationship necessary?
  - Does best practice recommend in person exam?
  - If national emergency declared does it qualify as an exception to the Ryan Haight Act for TM?
- Ensure follow organization's policy on educating pts on risks/benefits of high risk meds, document IC
- Educate patients on refill policy for TM visits and when in person visits are required
- Documentation is critical to show appropriate evaluation, checking PMP



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## Documentation in TM = Documentation in Person

### Document

- Patient's consent
- Location of Doctor/Patient
- Other Participants
- Technology/Equipment Used
- Technical difficulties
- Interpreter services if applicable
- If visit had to be discontinued, reason why, action taken to reschedule, f/u communications
- Any verbal, audiovisual and written communication
- Document any e-communications such as lab/test results

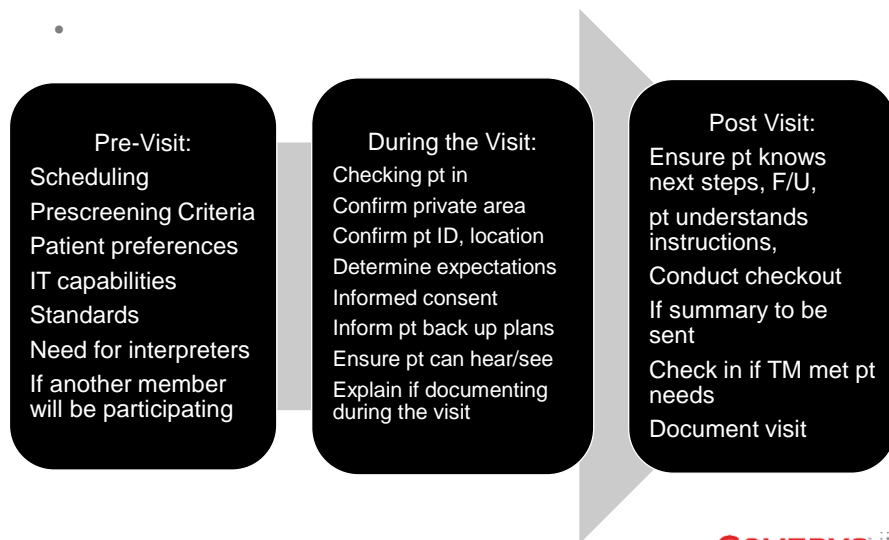


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## Telemedicine – Workflows



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## Education and Training

Practitioner and staff training is essential

- Know fully the technology being used, how to operate equipment and limitations
- Include training on how to troubleshoot problems and how to obtain technical assistance, back-up plan
- Ensure smooth transitions for TM workflow, staff check-in, handoff to practitioners
- Include role specific training
- Include webcam etiquette
- Include training on each type of TM modality
- Include competency testing specific to staff roles and responsibilities



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## Quality Program for Telemedicine

- Develop and track measurable key quality measures
- Measures may include:
  - Monitoring number of TM visits requiring in person visits
  - Tracking number of technology failures requiring rescheduling or delays
  - Access to care
  - Clinical Outcomes
  - MR documentation for TM visits
  - Patient and Practitioner satisfaction
  - Reimbursement
- National Quality Forum recommends measuring:
  - Access
  - Financial Impact
  - Experience
  - Effectiveness

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## Telemedicine Resources

- American Telemedicine Association: Offers a wide range of discipline specific telemedicine practice guidelines as well as core standards, assessment and outcome measures. [www.americantelemed.org](http://www.americantelemed.org)
- Federation of State Medical Boards: Model policy for guidance to medical boards for regulation the appropriate use of telemedicine technologies in the practice of medicine. [www.fsmb.org](http://www.fsmb.org)
- Interstate Medical Licensure Compact: Provides information about state license reciprocity and expedited licensure for qualified providers wishing to practice in multiple states. [www.imlcc.org](http://www.imlcc.org)
- Center for Connected Health Policy: Resource for telehealth-related laws and regulations. <https://www.cchpca.org/>
- Center for Telehealth and e-Health Law (CteL): Information on credentialing, sample agreements between originating and distant sites and checklists. <https://www.telehealthlawcenter.org/>



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## Telemedicine Resources

- American Medical Association: National organization that provides resources to providers relating to the delivery of medicine, educational resources and practice management. Specifically related to telemedicine, they offer AMA Quick Guide to Telemedicine/Playbook. <https://www.ama-assn.org/system/files/2020-04/ama-telehealth-playbook.pdf>
- American Hospital Association: National organization that provides resources to hospitals, health care networks and their patients and communities. Specifically related to telemedicine, they offer a Telehealth Resource Site with sample telemedicine related forms. [www.aha.org/telehealth](http://www.aha.org/telehealth)
- American Society for Healthcare Risk Management [www.ashrm.org](http://www.ashrm.org)
- National Consortium of Telehealth Resource Centers: Provide resources to assist providers in developing a telehealth program.



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## Telemedicine Resources

- Centers for Medicare and Medicaid Services (CMS): CMS oversees many federal healthcare programs. Specifically related to telemedicine, CMS offers a provider telehealth and telemedicine toolkit. CMS Telemedicine Toolkit [www.cms.gov](http://www.cms.gov)
- Accrediting Bodies
  - The Joint Commission (DNV and HFAP also have resources) [www.jointcommission.org](http://www.jointcommission.org)
- Various Medical Specialty Associations offer Telemedicine Resources such as:
  - American College of Physicians
  - American Academy of Family Physicians
  - American Psychiatric Association,
  - American College of Radiology
  - American College of Emergency Physicians
  - American Academy of Pediatrics



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## Concluding Thoughts...



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