

Telehealth Professional Liability Insurance

Overview

As the use of telehealth becomes more common, health care providers are examining their professional liability insurance to determine coverage of services delivered via telehealth. Industry standards for how insurance carriers will provide coverage for telehealth malpractice and liability are not well developed, and many carriers remain silent in their policies regarding coverage for telehealth. Providers may need to consider several factors to determine the extent to which their liability carrier provides coverage when seeking to deliver care via telehealth.

Liability Insurance Coverage

Carrier policies on liability insurance coverage for the practice of telehealth can vary. These variations can include:

- The circumstances in which telehealth will be covered under the policy¹;
- Case by case determinations for providing coverage²; and
- Not providing coverage for telehealth.

Lack of specific language in the policy does not necessarily preclude coverage for telehealth. Carriers may assess specific telehealth practices to determine coverage, including the technology to be used, the target population, the type of treatment (i.e. remote patient monitoring, consultation, education and counselling, etc.), practicing across state lines, and the patient-provider treatment relationship, among others. Telehealth providers should contact their carrier and inquire about the following:

- Whether the carrier provides coverage for telehealth services under the provider's policy;

- Any specific telehealth services that are covered under the policy;
- Any specific activities, such as practicing over State lines, that would preclude coverage;
- Any conditions that must be met to maintain coverage, such as establishing a treatment relationship in-person prior to providing telehealth services; and
- If telehealth is not covered, would revising or changing the policy to include coverage result in an increase in premiums.

Providing Telehealth Services across State Lines

Providers who practice telehealth across State lines may experience barriers with liability coverage. Carriers who are licensed to provide liability coverage in a limited number of states are not able to cover telehealth services rendered in a state in which they are not licensed.³ For example, if a carrier is only licensed in Maryland, DC, and Virginia, and a provider is seeking to deliver care to a patient located in Delaware, the carrier would not be able to cover the provider for malpractice claims. Carriers that provide liability coverage for providers nationally are able to cover providers delivering telehealth to patients located outside of Maryland.⁴ National carriers are licensed related to different laws in each state with regard to practicing telehealth, the impact of those laws on liability coverage, and legal experience to assist a provider in the case of any legal proceedings as a result of care delivered via telehealth.^{5, 6} Physicians must ensure that they are following laws and regulations pertaining to the delivery of care via telehealth for both the state in which the provider is located and the state where the patient is located.

¹ For example, as of February 2018, CNA Financial explicitly details coverage for telehealth in their policies. More information on CNA Financial is available at: <https://www.cna.com/>.

² Providers should be prepared to answer questions from carriers on engagement in specific telehealth activities, including, physical location of the provider, location of the intended patients, equipment being used, and types of treatments that will be administered via telehealth.

³ In Maryland, Medical Mutual, the top liability insurance provider, is only licensed to cover physicians practicing in Maryland, the District of Columbia, or Virginia, and can only cover telehealth if the patient and the provider are located in one of those three locations.

⁴ As of February 2018, the following are the top National Liability Insurance Carriers who cover telehealth across State lines for Maryland Providers: 1) Doctor's Company; 2) ProAssurance; and 3) Berkshire Hathaway.

⁵ MagMutual. *Guidelines for Telemedicine Policies and Procedures*, January 2017. Available at: www.magmutual.com/learning/article/guidelines-telemedicine-policies-and-procedures-0.

⁶ MagMutual. *Telemedicine Guidelines*, December 2014. Available at: www.magmutual.com/learning/article/telemedicine-guidelines.

Resources

The following resources provide some additional information for providers on liability coverage when delivering care via telehealth:

- The consortium of **Telehealth Resource Centers** provides information on medical malpractice and liability as it pertains to telehealth. More information is available at: www.telehealthresourcecenter.org/toolbox-module/medical-malpractice-and-liability.
- The **American Telemedicine Association** provides information on liability coverage through a partnership with HUB International. More information is available at: www.hubinternational.com/programs-associations/telemedicine/.
- The **Center for Connected Health Policy** provides a synopsis of state laws and malpractice liability for telehealth. More information is available at: www.cchpca.org/malpractice-0.
- The **Center for Telehealth & e-Health Law (CTeL)** provides various resources on telehealth malpractice to help providers understand the liability landscape when delivering care via telehealth. More information available at: www.ctel.org/category/telemedical-malpractice/.
- The **American Medical Association** provides information for physicians regarding their telemedical liability. More information is available at: www.wire.ama-assn.org/practice-management/what-physicians-need-know-about-telemedical-liability.
- **MagMutual** provides resources and guidelines on telehealth, including liability coverage. More information is available at: www.magmutual.com/learning-center#query=telemedicine.
- **RCM&D** provides information to providers interesting in practicing telehealth, specifically around liability, risk management, and patient safety issues. More information is available at: www.rcmd.com/solutions/total-telehealth.
- **Professional Risk Associates, Inc.** provides information on coverage for care delivered via telehealth. More information is available at: www.profrisk.com/single-post/2016/02/17/Telemedicine-Am-I-Covered-for-That.
- **The Gallagher Healthcare Practice** released a resource document outlining medical professionals' liability risks when practicing telehealth. A copy of the document is available at: www.ajg.com/media/1700234/healthcare-telemedicine-march-2017.pdf.