Medical Professional Liability Insurance

Key Considerations for Telehealth

Dr. Brown has a practice in Maryland. Due to the COVID-19 public health emergency and related social distancing restrictions and stay-at-home orders, Dr. Brown implemented telehealth to provide needed care to her patients. One of Dr. Brown’s patients is a local college student who relocated to her family’s home in Pennsylvania. Dr. Brown holds a medical license in Pennsylvania, a typical requirement to practice across state lines. She’s not sure about her legal liability and whether she has coverage for telehealth under her medical malpractice insurance.

Overview

As a health care provider, you invest a great deal of time and effort in your profession; medical professional liability insurance is important as sometimes even your best intention can result in an adverse outcome, or malpractice. 1 Liability coverage deserves careful consideration when adding or expanding telehealth services at your practice, including an understanding of your needs and options as it relates to telehealth regulations, state licensure, and malpractice-related questions.

In March 2020, the relaxation and expansion of telehealth policies made it easier for providers to use telehealth to maintain access to care and help mitigate the spread of COVID-19. 2 This included changes in eligible providers and services, state licensing requirements patient location, and approved technology. 3 If you currently practice telehealth, or are planning to, there are certain legal and compliance matters you should consider. Keep in mind your long-term needs as the shift to increased telehealth use is slated to continue beyond the COVID-19 Public Health Emergency. 4, 5

The information herein does not represent official guidance on malpractice or the type of medical professional liability policy necessary. It’s strongly encouraged that you contact an insurance carrier or legal counsel to ensure you have adequate coverage.

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2 Many providers have adopted telehealth to continue delivering care and avoid negative consequences from delayed preventive, chronic, or routine services; address revenue losses from declines in face-to-face encounters; and limit exposure to COVID-19 for practice staff and patients. More information is available at: www.forbes.com/sites/joeharpaz/2020/05/04/5-reasons-why-telehealth-here-to-stay-covid19/#13233e8753fb
3 Policies are temporary and subject to change. More information is available at: mhcc.maryland.gov/mhcc/pages/iat/hit/documents/HIT_Telehealth_COVID_19_Flyer.pdf
Are You Covered?

Before establishing or expanding a telehealth program at your practice, it’s essential to contact your insurance carrier and verify whether the services covered under your medical professional liability policy include telehealth and under what circumstances. Coverage may vary based on the insurance carrier, specialty, exposure, and the state(s) where you practice.

Your existing policy might include telehealth as a covered service, or you may have to purchase a rider or supplemental policy. You might also consider ancillary coverages for cyber liability (e.g., data breaches) and technology failures (e.g., power outage).

State laws vary on malpractice judgements and minimum limits of insurance, so you may need additional coverage if you practice in more than one state. Licensing rules have been relaxed to allow providers with an active license in another state or the District of Columbia to practice telehealth in Maryland during the State of Emergency. It’s important to check if telehealth practice is permissible under the appropriate licensing board for the state(s) you and your patients are located.

Contact your carrier. The following are some questions you can ask your insurance carrier about your legal liability and malpractice coverage:

- Is telehealth covered under my current policy? If not, can it be added?
- What is the coverage territory (i.e., is it limited to a specific state or geographic region)?
- What are my current malpractice limits and are these appropriate in the state(s) where I practice?
- Are other employees in my practice covered?

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8 See n. 6, Supra.
10 Ibid.
11 Some carriers specialize in tort law for specific delivered in those states; other carriers provide national coverage.
15 See n. 1, Supra.
Types of telehealth malpractice claims. Claims arising from a telehealth encounter can be similar to in-person care or telehealth-specific

Similar to in-person:

- Incorrect diagnosis or interpretation of an image
- Miscommunication
- Improper medication or dosage

Telehealth-specific:

- Encounter should have been in-person
- Use of unsecure telehealth platform
- Disrupted care due to electrical outage

Other Considerations

The following are some best practices when implementing telehealth at your practice:

- Document telehealth encounters in patients’ medical records\(^{\text{16}}\) in accordance with applicable state and federal regulations
- Understand the differences in state regulations governing telehealth, including provider-patient relationship definitions, first encounter requirements, and encounter restrictions\(^{\text{17}}\)
- Standard of care: the standard of care for telehealth encounters is the same as in-person encounters

Do you need a medical license in additional states?

Check out the Interstate Medical Licensure Compact (IMLC). Maryland is a participatory state in IMLC, which is a voluntary process that expedites licensure for physicians who want to practice in multiple states\(^{\text{18}}\).

Additional Resources

Medical Professional Liability Association
www.mplassociation.org/

MHCC Telehealth Virtual Resource Center
mhcc.maryland.gov/mhcc/pages/hit/hit_telemedicine/hit_telemedicine.aspx

Questions?

Contact Eva Lenoir, MHCC Program Manager at: eva.lenoir@maryland.gov


\(^{\text{17}}\) Medical Economics, How to Avoid the Legal Risks of Telemedicine, June 2019. Available at: www.medicaleconomics.com/view/how-avoid-legal-risks-telemedicine.

\(^{\text{18}}\) Interstate Medical Licensure Compact, Information for Physicians. Available at: www.imlcc.org/information-for-physicians/.