

# Medical Professional Liability Insurance

## Key Considerations for Telehealth

*Dr. Brown has a licensed practice located in Maryland and offers telehealth as an option for patients to receive care. Some patients are located in neighboring states like Pennsylvania and Delaware where Dr. Brown also holds a medical license. Unsure about legal liability and coverage for telehealth, Dr. Brown calls her malpractice insurance carrier to confirm if she can provide medical care to patients outside of Maryland. She asks whether her existing*

*coverage includes telehealth and to what extent to determine need for purchasing additional coverage.*



### 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.<sup>1</sup> 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.

If you currently practice telehealth, or are planning to, there are certain legal and compliance matters you should consider. 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.

### Are You Covered?

Before establishing or expanding a telehealth program, 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

<sup>1</sup> Coverys, *A Guide to Purchasing Medical Professional Liability Insurance*. Available at: [www.coverys.com/PDFs/Coverys\\_Guide\\_to\\_Purchasing\\_MPL\\_Insurance.aspx](http://www.coverys.com/PDFs/Coverys_Guide_to_Purchasing_MPL_Insurance.aspx).

purchase a rider or supplemental policy.<sup>2</sup> You might also consider ancillary coverages for cyber liability (e.g., data breaches)<sup>3</sup> and technology failures (e.g., power outage).<sup>4</sup>

State laws vary on malpractice judgements and minimum limits of insurance,<sup>5</sup> so you may need additional coverage if you practice in more than one state.<sup>6,7</sup> 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 questions for your insurance carrier can help you better understand 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 offer telehealth services?<sup>8</sup>
- Are other employees in my practice covered?<sup>9</sup>



### ***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

<sup>2</sup> American College of Emergency Physicians, *Malpractice Insurance for TeleMedicine*. Available at: [www.acep.org/how-we-serve/sections/telehealth/newsletter/june-2015/malpractice-insurance-for-telemedicine/](http://www.acep.org/how-we-serve/sections/telehealth/newsletter/june-2015/malpractice-insurance-for-telemedicine/).

<sup>3</sup> Center for Connected Health Policy, *Telehealth Policy Malpractice*. Available at: [www.cchpca.org/telehealth-policy/malpractice](http://www.cchpca.org/telehealth-policy/malpractice).

<sup>4</sup> See n. 6, *Supra*.

<sup>5</sup> Mend, *Do I Need Additional Malpractice Insurance for Telemedicine?* January 2018. Available at: [www.mendfamily.com/need-additional-malpractice-insurance-telemedicine/](http://www.mendfamily.com/need-additional-malpractice-insurance-telemedicine/).

<sup>6</sup> *Ibid.*

<sup>7</sup> Some carriers specialize in tort law for specific delivered in those states; other carriers provide national coverage.

<sup>8</sup> National Consortium of Telehealth Resource Centers, *Considerations for Telehealth Providers When Negotiating for Malpractice Insurance*, March 2017. Available at: [www.telehealthresourcecenter.org/event/considerations-for-telehealth-providers-when-negotiating-for-malpractice-insurance/](http://www.telehealthresourcecenter.org/event/considerations-for-telehealth-providers-when-negotiating-for-malpractice-insurance/).

<sup>9</sup> See n. 1, *Supra*.

## Other Considerations

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

- Document telehealth encounters in patients' medical records<sup>10</sup> 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<sup>11</sup>
- 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.<sup>12</sup>



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## Additional Resources

Medical Professional Liability Association  
[www.mplassociation.org/](http://www.mplassociation.org/)

MHCC Telehealth Virtual Resource Center  
[mhcc.maryland.gov/mhcc/pages/hit/hit\\_telemedicine/hit\\_telemedicine.aspx](http://mhcc.maryland.gov/mhcc/pages/hit/hit_telemedicine/hit_telemedicine.aspx)

## Questions?

Contact Eva Lenoir, MHCC Program  
Manager at: [eva.lenoir@maryland.gov](mailto:eva.lenoir@maryland.gov)

<sup>10</sup> MedCity News, *Liability Risks in Telehealth: 7 Things to Consider*, February 2019. Available at: [medcitynews.com/2019/02/liability-risk-in-telehealth-7-things-to-consider/?rf=1](http://medcitynews.com/2019/02/liability-risk-in-telehealth-7-things-to-consider/?rf=1).

<sup>11</sup> Medical Economics, *How to Avoid the Legal Risks of Telemedicine*, June 2019. Available at: [www.medicaleconomics.com/view/how-avoid-legal-risks-telemedicine](http://www.medicaleconomics.com/view/how-avoid-legal-risks-telemedicine).

<sup>12</sup> Interstate Medical Licensure Compact, *Information for Physicians*. Available at: [www.imlcc.org/information-for-physicians/](http://www.imlcc.org/information-for-physicians/).