



Lions and Tigers and Bears, Oh My! The Unexpected Laws that May Affect Your Telehealth Business

Carol Lucas, Esq.

An increasing number of health care providers are exploring telemedicine, either as an adjunct to their primary physical practice or as a separate and new venture. Providers have determined that many aspects of the service they provide can be effectively provided remotely if the technology and the tools are adequate. However, when a provider expands from single-state practice to potentially fifty state practice, the legal and regulatory regime that the provider is used to may not translate to all of the provider's new practice locations. In fact, it almost certainly will not and telehealth providers need to review a number of different regulatory regimes in each state they propose to practice in.

For the most part, these telehealth providers understand generally that they need to comply with the laws of the states in which the recipients of their services are located. A physician physically located in Missouri, for example, could treat a patient located in California if the physician is licensed in California, the state in which the patient resides. That physician most likely also understands that California law may have something to say about whether telemedicine is appropriate, and, if so, what requirements apply to it. For example, provision of services by means of telehealth technology does not eliminate California's requirement to obtain a patient's informed consent. However, that consent may be either oral or in writing and the healthcare provider who obtains the consent need not be at the site where the patient is. Further, for California, the physician must conduct an "appropriate" initial examination. Depending on the nature of the service, that examination could be accomplished remotely, but may need to be conducted in-person. The California Medical Board leaves that decision to the professional judgment of the physician.

Not so Texas. The Texas Medical Board recently adopted new rules that require an in-person examination in order to establish a physician-patient relationship, a prerequisite to the delivery of services via telemedicine if the services include prescribing medication. Further, the in-person examination must take place in an "established medical site."

Other laws that vary state to state also affect the delivery of telemedicine services. These include: the corporate practice of medicine; laws relating to prescribing (such as Texas's new rules) or physician dispensing; and laws requiring language services.

Corporate Practice of Medicine: The corporate practice of medicine prohibition generally prohibits lay (i.e., non-professional) entities from providing medical services. In most corporate practice states (including California), that means that a general business corporation cannot charge for physician services. A telemedicine provider located in a state without a corporate practice ban may be organized as a general business entity and may employ physicians. If that telemedicine provider were to provide services to a patient in California through a California

licensed physician employee, the payment by the California patient to the telemedicine provider could be held to violate California's corporate practice ban. Further, California does not permit foreign (i.e., sister-state) professional corporations to practice in California. New York, on the other hand, permits the qualification of foreign professional service corporations in New York, provided that all of the shareholders, officers, and directors are licensed to practice medicine in New York.

Physician Dispensing: If the telehealth provider dispenses medication to patients in remote locations, laws relating to physician dispensing will be implicated. The New York Board of Pharmacy takes the position that physicians may not dispense in New York at all. In California, physicians may dispense as long as they comply with all statutory requirements regarding labeling, etc. Florida permits physician dispensing upon registration with the Florida medical licensing board as a dispensing practitioner and compliance with pharmacy disclosure regulations.

Language Interpretation Services: States also vary widely in requirements to provide language interpretation services. For example, Mississippi specifically requires telemedicine equipment and the network for remote patient monitoring services to accommodate non-English language options. New Hampshire requires hospitals to provide interpretation services during admission and imposes interpretation requirements on long-term care facilities and mental health facilities. New Hampshire does not, however, require physicians to provide interpretation services to non-English speaking patients, either in person or remotely.

For telemedicine providers, licensing laws are only the starting point. Telemedicine providers should be aware that a business model that complies with one state's laws may not be exportable without review and some tweaking.



Carol Lucas is a Shareholder in the Los Angeles office and Chair of the Health Care and Life Sciences Practice Group. She can be reached at 213.891.5611 or at clucas@buchalter.com.