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LEGAL UPDATES

Changing Telehealth Rules Raise More Questions Than Answers

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Nearly two years into the COVID-19 pandemic the landscape of virtual health care has changed dramatically. Services offered via telehealth exploded as the virus swept through the country and patients were unable to seek care in person from their clinics and doctors. Telehealth, telemedicine, and teletherapy commonly filled the gap but the expanded use was largely fueled by a number of pandemic-related flexibility initiatives including waivers, mandates, and orders at the state and federal level.

As the pandemic recedes, and states declare an end to their public health emergencies, these flexibilities are expiring and/or changing. New proposals regulating telehealth are introduced on a near daily basis at the state and federal level. States are considering proposals to define the future of telehealth more clearly in their jurisdictions. At the same time, recent [news reports](#) indicate the U.S. Congress will soon adopt legislation to temporarily extend certain COVID-19 telehealth waivers, including allowing Medicare beneficiaries access to telehealth at their homes, expanding the types of providers who may be reimbursed for providing telehealth services, and extending Medicare coverage for audio-only telehealth services.

Even with the expected change in telehealth regulation, two conflicting truths remain. There is growing demand for telehealth, particularly for mental health services and underserved populations. At the same time, the rapidly changing regulatory landscape makes it difficult for health care providers to plan for future expansion.

Furthermore, as the federal waiver and mandates expire, and states take steps to adopt their own permanent reforms, the patch-work nature of telehealth regulation is exacerbated. Providers trying to provide services in multiple states face serious hurdles to identifying, understanding, and complying with applicable regulatory requirements. Simply identifying the scope of legal questions can be a challenge.

As the state and federal governments decide how and whether to extend pandemic era telehealth changes through regulatory means and new legislation, partnering with an attorney can ensure health care providers understand what is

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allowed, what issues your organization may face, and how to navigate this new era of digital medicine. The Health Law practice group at Lathrop GPM routinely helps health care providers navigate the changing legal landscape and efficiently plan for service expansions.

As health care providers consider expanding the scope of telehealth services they provide, and expanding the geographic reach of their organization, there are important legal questions that must be answered and analyzed in the context of state rules. Lathrop GPM attorneys can help your organization answer these questions:

Q: What type of telehealth services may we provide: Synchronous Telehealth, Asynchronous Telehealth, Remote Patient Monitoring, or telephone-only services?

Q: Are there restrictions on the types of providers who are providing services?

Q: Where is the patient located at the time of the service and does that state impose restrictions on the provider's ability to provide services?

Q: Does state law allow a provider to establish a provider-patient relationship through telehealth?

Q: Does the provider need to be licensed in a new state and does that state provide temporary, special purpose, telemedicine, or limited-service exceptions to the general licensing rules?

Q: Does the state impose additional obligations related to prescription authority and prescribing practices?

Q: Does our organization's standard consent and other forms meet the requirements of the laws in other states?

Q: Does our organization's corporate structure comply with the other state's corporate practice of medicine, fee-splitting laws, and other fraud and abuse laws?

Q: Are there additional requirements related to reimbursement including payer enrollment, telehealth codes, and restrictions on services and does the state impose any parity requirements on payers that may be applicable?

These questions, and many more, often require state-by-state review of laws and regulations. The Lathrop GPM Health Law practice group is dedicated to helping our clients understand the landscape and using telehealth to serve patients.

For more assistance with analyzing your telehealth options, please contact [Ben Peltier](#), Lizzi Janssen, or your regular Lathrop GPM attorney.