

FAQs for Telehealth Licensing

May 7, 2020

Introduction:

There is no uniform approach to state licensing for telehealth services. For physicians wishing to practice across state lines, state-by-state analysis of licensure requirements is necessary. Some states issue specific telehealth licenses or allow for flexibility in licensing, while others require a full license in order to see patients located in their home states. Keep in mind that licensure is just one of the issues you need to consider. Once you have a license, you will still need to comply with the state medical practice acts and applicable practice standards of the state where the patient is located. This includes ensuring the visit is medically necessary, whether an in-person visit is required prior to starting telehealth services, consent for telehealth treatment, and other considerations for your medical practice.

This FAQ is designed to answer your questions regarding when you do and do not need a license in order to connect with patients who are located outside of Colorado and cannot come to our state for an in-person visit. Information regarding modality and billing are not covered. Please work with your affiliate hospital or clinic regarding modality, and CU Medicine in regards to billing, Sites of Practice, and malpractice insurance requirements.

Q: What is Telehealth?

A: Telehealth is defined differently in each state. Generally, a visit is considered a telehealth visit when you establish or have a previously established physician-patient relationship. If the patient reasonably believes you are their doctor and providing them with medical advice to follow, then you have an established physician-patient relationship. As a best practice, you should establish a physician-patient relationship before using telemedicine through either (i) a face-to-face examination, if a face-to-face encounter would otherwise be required in the provision of the service if not using telemedicine; or (ii) a consultation with another physician who has an ongoing patient-physician relationship with the patient.

The telehealth encounter normally includes providing a diagnosis, treatment, change in care plan, or adjustment in prescription for your patient. Rely on your judgement; you know when you are engaged in the practice of medicine. You also need to conduct a synchronous, real-time visit using a secure audio-video platform.

In some instances, such as during declared states of emergency, you can conduct a telehealth visit with a person you have not treated before because of the emergency circumstances. You may also be able to provide services using different modalities including voice-only interactions. Emergency exceptions are state-dependent and limited in time, scope, and duration. If you have questions about providing telehealth services

across states lines during a declared state of emergency, please contact your department administrator who can connect you with appropriate campus resources.

Q: When do I need a state license?

A: Most states require either a full license or some type of telehealth-specific license when you are interacting directly with the patient with no provider intermediary. As a general rule, if your encounter is something you would normally bill for or do in-person, then it will be considered a telehealth visit that requires a license.

If you are providing a consultation to another *provider* located in the state where the patient is located, that will not be considered a telehealth visit. Provider-to-provider consults are generally not considered engaging in the practice of medicine. Certain states also have laws stating you can provide infrequent care to patients located in those states if you meet certain criteria.

Q: Can I call my patients in other states directly and speak to them without a license?

A: It depends. If you are calling a patient just to check in and see generally how they are doing, and would not bill for that check-in, you will not need a license in that state. You only need a license when you are providing treatment or medical advice that would constitute the practice of medicine. You need to exercise your professional judgement to determine this distinction.

Similarly, many departments provide intakes or screenings to see if a patient is a good fit for care in their clinic. Activities that involve collecting information that does not involve any type of diagnosis, treatment, or impact to care plans/course of treatment would not be considered providing medical care. You should not make any care recommendations over the phone on very limited information from the prospective patient; this should all be done in-person or in consultation with the patient's in-state provider.

Q: Does the Professional Risk Management Trust cover my telehealth practice?

A: The Trust will provide coverage for telehealth services so long as you have been directed by your department chair (or designee) and/or division head to provide these services and you are properly licensed or meet state-based licensure or infrequent practice requirements. All services must meet the same standard of care as required for in-person visits. The telehealth encounter must be medically necessary and performed in accordance with the requirements of the applicable medical practice act where the patient is located.

Please note that due to state insurance laws, the Trust ***cannot*** provide coverage for care provided to patients located in Kansas. If you desire to practice telehealth with patients in Kansas, please contact the Office of Professional Risk Management who can connect your department with our insurance broker to discuss options. There may also be certain limitations for specific sites where you may be providing services based on facility-

specific requirements. If you encounter this issue, please contact Professional Risk Management.

Q: I have patients in multiple states who cannot travel to Colorado. Should I consider pursuing multiple licenses through the Interstate Medical Licensure Compact?

A: The Interstate Medical Licensure Compact (IML Compact) is an expedited pathway physicians may use to secure multiple state licenses. The IML Compact is an administrative process that helps with licensure applications, not a license itself. You are still licensed in each state and required to follow the laws, rules, and regulations of that state when practicing telehealth. You are required to meet certain criteria in order to qualify for this licensure pathway.

There are currently about 20 states processing and issuing licenses using the IML Compact process, including Wyoming, Nebraska, Kansas, Utah, Arizona, North Dakota, South Dakota, and Idaho. If you wish to pursue licensure through the IML Compact, please contact your department chair/division head and department administrator.

Q: I accidentally conducted a visit across state lines without a license. What should I do?

A: If you conduct a telehealth session with a patient and did not realize they were in another state until after the encounter, please document this in your notes so it is captured in the medical record. You will not be able to bill for this encounter. Please work with your practice managers to ensure you are not scheduled for visits with patients who are located in states where you do not have a license.

Q: Do I need a license for virtual study visits for human subjects research?

The Clinical Research Administration Office (CRAO) can help you with questions and options regarding virtual study visits. Advice will be tailored depending on your approved protocol, but as a general rule, you can follow these guidelines:

- **Visits that do not require a license:** quality of life surveys; data collection; asking about taking study drug; etc.
- **Visits that require a license or in-state PI:** decisions and determinations that require a medical license, such as evaluating vital signs, symptoms, physical exam findings, imaging, labs, and other data, and/or medical records to make a determination on study continuation; clinical care related to side effects; etc.