



Interstate Licensure for Telehealth Can Fuel Medical Practice Growth

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When it comes to using telehealth to treat patients out of state, most physicians are mindful about licensure issues. But some are not aware that if you don't have a license to practice medicine in a given state, it isn't just malpractice: It's a criminal offense.

Licensing restrictions have been eased to facilitate care during the COVID-19 pandemic, and the new normal of greater state-to-state cooperation for access to care may persist after the pandemic. Still, the savvy physician knows that many restrictions apply, and that understanding them reduces risk.

First-Time Visits vs. Established Patients

When we talk about interstate licensure, we're not concerned with a one-time interaction with an established patient who happens to be traveling. For instance, say a physician has recently seen a patient, perhaps performed a procedure. Thereafter, the patient calls the physician with a question or a problem from another state while traveling. In such a case, the physician can simply address the patient's concerns, whether that's by a phone conversation, a telemedicine visit, a recommendation to go to the emergency room where they are, or whatever is appropriate, according to their best clinical judgment. That's just practicing good medicine.

But caution is required when planning for ongoing interactions with patients who will be across state lines from the physician as their regular routine, or when booking an initial interaction via telehealth with a new patient who is in another state.

That said, for practices interested in growing their patient base, the recent easing of restrictions related to licensure and place of service provides ample opportunity to approach a national telehealth platform. If properly implemented, interstate telehealth care can fuel practice growth.¹ Physicians have an incentive to understand both the risks and the benefits of practicing across state lines.

State Laws vs. Insurer Requirements

In addition to distinguishing established patients from first-time patients, and distinguishing one-time interactions from long-term care plans, it's important to separate restrictions imposed by state laws from restrictions imposed by a physician's insurer.

Coverage from The Doctors Company follows our members wherever they practice in the U.S., provided they are acting within the scope of the law (which is where legal restrictions on state-to-state practice and insurance coverage overlap). But other insurers may have specific limitations about practicing in another state, independent of any legal restrictions.

Many insurance companies will say that they want a physician's coverage and practice to be in the state that they're in, whether the physician is treating via telehealth encounter or in-person visit, because of differences in how a lawsuit is defended from state to state. There are differences in the plaintiffs' bar, in the rules, in the judges, in the courts.

Physicians should make sure their insurer has the expertise to defend them wherever they practice.

The Interstate Medical Licensure Compact Commission

The [Interstate Medical Licensure Compact Commission \(IMLCC\)](#) makes it easier for physicians to practice state to state. The compact is an agreement between states, and it requires the passage of legislation in any new state that wants to join. It currently includes nearly 30 states and territories. As of this writing, several states have introduced legislation to join the compact, so that number could soon rise. The IMLCC doesn't mean that if a physician has a license in one state, they can automatically practice in another, but it makes it easier. Through the IMLCC, physicians will still need to gather documents and pay fees, but the IMLCC will streamline the process.

The IMLCC was launched in 2017, and by summer 2019, had already issued nearly 7,000 licenses.² The great value of the IMLCC has been proven by the pandemic, and as telemedicine usage increases, we can expect to see only more physicians needing licenses in multiple states.

In addition to making life easier for physicians, the IMLCC improves healthcare access by making it easier for patients in rural areas, for example, to see specialists via telemedicine.

Prescribing Across State Lines

Additional caution is required when prescribing may be involved. During the first wave of the pandemic in the spring of 2020, many states temporarily waived various requirements affecting state-

to-state licensure. This includes, in many states, the common requirement that physicians see a patient in-person first, before prescribing remotely. Many of those waivers persist to the present.³

Controlled substances, especially, require caution when prescribing state to state, but in the spring of 2020, the Drug Enforcement Administration (DEA) temporarily lifted some restrictions around prescribing controlled substances by remote visit to patients the physician had not met in person.⁴

The key word here is “temporarily.” Just as we lived within a patchwork of state-to-state restrictions before the pandemic, now we can expect those restrictions to return in a non-synchronized fashion. One state may restore restrictions next week, another not until next year. Physicians should inquire whether their local health authority and/or specialty association will be tracking as states lift these restrictions. Physicians do not want to be surprised by a charge from the DEA.

Stepping Forward

Although we face professional and legal risks when practicing medicine across state lines, these risks may be mitigated by administrative effort, and the rewards for doing so are substantial.

Those rewards range from the personal, enjoying the ease and satisfaction of being able to provide care from the comfort of, perhaps, a home office, to the business rewards of being able to offer telemedicine in multiple states—which is especially appealing given that some of the telehealth-friendly reimbursement rates introduced during the pandemic will persist.^{5, 6}

In fall 2020, the Centers for Medicare and Medicaid Services (CMS) has added 11 new telehealth services that Medicare will reimburse for the duration of the pandemic.⁷ Meanwhile, commercial reimbursement rates are tightening the reins on visit types deemed telehealth appropriate. Therefore, while pursuing interstate licensure for telehealth, as conditions continue to change, remember to keep a watchful eye on your major payers to ensure compliance.

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The guidelines suggested here are not rules, do not constitute legal advice, and do not ensure a successful outcome. The ultimate decision regarding the appropriateness of any treatment must be made by each healthcare provider considering the circumstances of the individual situation and in accordance with the laws of the jurisdiction in which the care is rendered.