CENTER FOR CONNECTED HEALTH POLICY (CCHP)

is a non-profit, non-partisan organization that seeks to advance state and national telehealth policy to promote improvements in health systems and greater health equity.
Disclaimers & Friendly Reminders

- Any information provided in today’s webinar is not to be regarded as legal advice. Today’s talk is purely for informational and educational purposes.
- Always consult with your organization’s legal counsel.
- CCHP has no relevant financial interest, arrangement, or affiliation with any organizations related to commercial products or services discussed in this program.
- Today’s webinar will be recorded and slides presented here will be made publicly available as resources at cchpca.org.
- Closed captioning is available.
- Please refrain from political statements or advertising commercial products or services during this webinar.
ABOUT CCHP

• Established in 2009 as a program under the Public Health Institute
• Became federally designated national telehealth policy resource center in 2012 through a grant from HRSA
• Work with a variety of funders and partners on the state and federal levels
• Administrator National Consortium of Telehealth Resource Centers
• Convener for California Telehealth Policy Coalition
Overview of Today’s Webinar

- Telehealth enables providers to cross borders and distance with ease
- However, the borders are still there and each state is a separate jurisdiction in how telehealth-delivered services are utilized, reimbursed and regulated
- Cover the variety of policy issues that providers may encounter as they cross state lines using telehealth – including licensing, reimbursement, and practice requirements
- How those issues are addressed
- Potential solutions to issues
Today’s Webinar

Kathy Hsu Wibberly, PhD
Director
Mid-Atlantic Telehealth Resource Center

Kim Horvath, JD
Senior Attorney
American Medical Association

Jeremy Sherer
Partner
Hooper, Lundy & Bookman, PC
CCHP Telehealth Policy Webinar Series
October 21, 2022

Telehealth & Practicing Across State Lines: Framing the Issues
Lesley
Age: 39
Gender: Female
Has a child (age 3) with a rare genetic disease.

Lesley lives in Virginia

Lesley works in Maryland where her work site has child-care. Lesley also has family in Maryland who help with child-care.

Lesley’s child gets care at the Rare Disease Institute at Children’s National in DC.

Dr. Naeem
Age: 41
Specialty: Medical genetics/metabolic disorders
License: DC
The Patient’s Perspective

“How does this make sense? It’s the same doctor. I can commute 20 minutes each way to get to his office to see him. I can drive 10 minutes across the border and do a telemedicine visit in a parking lot, but I can’t do a telemedicine visit from my house or my work site or my parent’s house.”

- Drive (or take her child via Metro) into DC to be seen by Dr. Naeem
- Have her child seen via telemedicine by Dr. Naeem while she is at work or visiting family in Maryland
- Have her child seen via telemedicine by Dr. Naeem while she and her child are at home
The Clinician’s Perspective

“It doesn’t make sense. I just want to be able to offer the same array of services and level of care for all my patients. It shouldn’t matter where they live.”

• Patient lives in DC. Child is not feeling well. OK to offer telemedicine services.

• Patient lives in VA. Child is not feeling well. Ask family to bring child into the office.

• Patient lives in MD. Child is not feeling well. Ask family to bring child into the office.
“My practice would offer telehealth to all patients if it weren’t so complicated. When a patient calls asking for a telehealth appointment, there are too many steps involved…”

1. Where does the patient live / where will the patient be at the time of the visit?
2. Which type of provider does the patient need to see?
3. Does this provider type fall under an interstate compact? Is the patient’s state participating in the compact? Is this provider licensed in the state where the patient will be?
4. What type of insurance coverage does this patient have? Does the payer cover telemedicine services? If so, which provider types, services and modalities are covered?
5. Will the payer cover telemedicine services with an out of state provider?
6. Are there consent requirements by the state where the patient will be or by the out of state payer?

“The list goes on…and when all the stars align, I can tell the patient yes…”
For More Information:

Kathy Hsu Wibberly, PhD
Director, Mid-Atlantic Telehealth Resource Center
UVA Center for Telehealth
Email: Kathy.Wibberly@virginia.edu
Phone: 434.906.4960

www.facebook.com/MATRC
www.MATRC.org
Licensure & Telehealth

Kim Horvath, JD
Senior Attorney, Advocacy Resource Center
Licensure and telehealth across state lines

Do I need a license to practice medicine in the state?

Is there an exception to the licensure requirement?

How can I obtain a license to practice medicine via telehealth in another state?
Licensure and telehealth across state lines

Do I need a license

- In most states the answer is “yes”
- Most states require physicians to be licensed in the state where the patient is located.

Does the care meet an exception?

- Emergency
- Physician-physician consultations
- Infrequent or irregular care
- Follow-up care with an established patient
- Specialty assessment
- Clinical trials

How can I obtain a license to practice in other states?

- Traditional path
- Interstate Medical Licensure Compact
- Registration
- Special telehealth license
- Waiver
- Volunteer license
TELEHEALTH SERVICES: CORE LEGAL CONSIDERATIONS
Scope of Practice and Legal Considerations

CHECKLIST

Licensure
Laws of state where patient is located govern.

Prescribing
Federal and state law are implicated.

Corporate Practice
Is the arrangement properly structured?

Modalities
How can a practitioner-patient relationship be established?

ID Verification, Consent
What does state law require?

Reimbursement
Commercial payors, Medicare, Medicaid.

Credentialing, Supervision
Are distant site physicians credentialed? Non-physician practitioners supervised?

Malpractice Coverage
Does it cover telehealth? What states?
Controlled Substances Prescribing Analysis

MULTIPLE SOURCES OF AUTHORITY

• **Federal Law:** The Controlled Substances Act as amended by the Ryan Haight Act prohibits prescribing controlled substances via telehealth unless one of a series of exceptions is satisfied.

• **Federal Registration:** Federal law also requires practitioners to hold a DEA controlled substances registration in any state in which a patient is located to whom the practitioner prescribes controlled substances.

• **State Law:** Most states also have controlled substances prescribing and dispensing laws which must be considered.

• **State Registration:** About half of the states require a separate state-level controlled substances prescribing registration, in addition to the DEA requirement above.
Jeremy D. Sherer
Co-Chair, Digital Health Practice
jsherer@health-law.com
(617) 532-2705
Panel Q&A

Please submit questions using the Q&A function.
Thank You!

Kathy Hsu Wibberly, PhD
Director
Mid-Atlantic Telehealth Resource Center

Kim Horvath, JD
Senior Attorney
American Medical Association

Jeremy Sherer
Partner
Hooper, Lundy & Bookman, PC
Webinar Recordings and Resources

Subscribe to CCHP’s email listserve or stay tuned to CCHP’s resources page for recordings of this webinar and presentation slide decks!

Remember to fill out the evaluation form!

John Gordon
Office of Evaluation and Inspections
Office of the Inspector General
U.S. Department of Health and Human Services

Mei Wa Kwong, JD
Executive Director
Center for Connected Health Policy

Carly L. Paterson, PhD, MPH, RN (*tentative*)
Associate Director, Healthcare Delivery and Disparities Research Program
Patient-Centered Outcomes Research Institute (PCORI)
Please don’t forget to fill out your evaluation form!

Thank you and have a great day!