



Remote Risk: Novel Legal and Regulatory Pitfalls of Telemedicine

By Shawn Masia, MD



©istockphoto

Consider a common scenario: A neurologist lives on the border between three states and maintains a practice in each state. For this interstate model, she maintains licensure and professional liability insurance in accordance with the regulations in all involved jurisdictions. These may allow some degree of reciprocity, however, depending on the specifics she may need to separate her practice into three discrete silos. She may further need to maintain separate corporations in each state depending on local regulations and billing requirements.

This same logic applies to telemedicine. If our interstate neurologist wishes to extend this practice beyond border states and provide remote care for patients in distant states, she must obtain licensure, liability insurance, and comply with any regional billing requirements from each payer.

Obtaining multiple medical licenses can be challenging. The Federation of State Medical Boards (FSMB) represents 70 medical and osteopathic boards, and each has specific requirements for licensure. Each state must verify that each previous license is in good standing, and therefore each license may lengthen the process for each subsequent application.

The FSMB offers some help to streamline the process. The Federation Credentials Verification Service maintains verified core documents such as USMLE transcripts, medical school and residency verifications, and board certifications. It releases the packet upon request to state medical boards, saving them time on verification. In addition, there are a number of jurisdictions that use the FSMB's common application, although there are many more jurisdictions that do not participate.

While pursuing multiple state licenses seems daunting enough a task, most hospitals require full medical staff membership for telemedicine providers. The Joint Commission allows Accredited Organizations to accept the credentialing decisions of other Accredited Organizations, which in theory should help streamline the process. In practice, most hospitals continue to conduct their own credentialing process.

Finding the right medical malpractice policy is critical for interstate telemedicine practice. Knowing the anticipated volume of work in each state will help determine the premiums. Each state varies in its regulations regarding the types of policies that may be issued, caps on liabilities, as well as the minimum coverage amounts. Some carriers recommend obtaining informed consent for the use of telemedicine technologies to mitigate patients' concerns. The physician is held to the same standard of care as for in-person interactions and thus plaintiff's attorneys may focus on the remote location or use of telemedicine technology. Claims may include allegations of misdiagnosis on the basis of equipment limitations or failure, delay or error in care caused by internet or power failure, and failure to fulfill scheduled telemedicine call resulting in delay of care.

Reimbursement models for telemedicine services are constantly in flux. CMS refers to the location that the patient is physically located and where services are provided as the originating site. The remotely located neurologist provides services to such a patient from the distant site. Medicare will provide reimbursement for live audiovisual services for certain qualified originating sites—such as rural areas and pilot programs in cities—and maintains a list of reimbursable CPT and G codes.

As with all aspects of neurology practice, success in telemedicine demands adherence to state and local regulations and fostering relationships with other physicians and components of the health care team. While there are many hurdles, the aspiring physician can consult experienced attorneys, credentialing agents, and organizations such as the FSMB and CMS. ■

Shawn Masia, MD is a board certified neurologist and clinical Neurophysiologist.



1. McMeniman and Greve, 2015. Professional Liability Underwriting Society Journal. Vol. XXVIII Number 9 <http://plusweb.org/Portals/0/Journal/2015SeptemberPLUSEJournal.pdf>
2. <https://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLN-Products/downloads/telehealthsvcsfctsh.pdf>