



# Telemedicine Risk Management

The top medical professional liability risks associated with telemedicine are multifaceted, reflecting both the growth and the complexities of delivering healthcare services through technology. These risks encompass legal, regulatory, and practical challenges healthcare providers face when adopting telemedicine.

## Top Telemedicine Risk Management Concerns

- 1. Licensure and Credentialing:** Ensuring that practitioners are properly licensed in the state where the patient is located at the time of service can be complex.
- 2. Privacy and Security:** Telehealth introduces unique privacy and security risks, including the potential for data breaches or unauthorized access to patient information. Failure to implement robust cybersecurity measures or comply with HIPAA regulations can result in liability claims related to privacy violations or data breaches.
- 3. Standard of Care and Misdiagnosis:** Allegations of substandard care or negligence may arise if patients perceive that their healthcare provider failed to meet the expected standard of care during a telehealth encounter. The risk of misdiagnosis may increase without physical examinations, and maintaining continuity of care can be challenging, affecting treatment effectiveness.
- 4. Technical Issues:** Patients may experience difficulties accessing telehealth services, device malfunctions, or user errors during telehealth sessions can interfere with the delivery of care.
- 5. Communication Issues:** Misunderstanding instructions provided during remote consultations, leading to adverse outcomes or dissatisfaction with care, may potentially result in increased liability exposure.
- 6. Informed Consent:** Claims related to inadequate informed consent may arise if patients are not adequately informed about the nature of telehealth consultations or the potential risks associated with remote care delivery. Patients must be fully informed about the telehealth process, including limitations and technology requirements, and consent must be documented.
- 7. Documentation:** Due to the remote nature of telehealth encounters, there may be challenges in documenting patient interactions and treatment plans effectively. Incomplete or inaccurate documentation can increase the risk of malpractice claims and legal disputes.
- 8. Prescribing Regulations:** Understanding and complying with varying state regulations related to prescribing medication through telemedicine is necessary.
- 9. Professional Liability Insurance:** Providers need to ensure that their professional liability insurance covers telemedicine services, considering the specific risks involved.
- 10. Regulatory Compliance:** Keeping up-to-date with changing federal and state laws and regulations regarding telehealth is critical to mitigate risks associated with non-compliance.

# Mitigating Telemedicine Liability Risk

To mitigate telemedicine liability risk, providers should engage in careful planning and compliance efforts. Additionally, understanding the legal and regulatory landscape, including state-specific laws and international considerations for cross-border telemedicine, is essential.

## 1. Regulations and Reimbursement

- Consult the Federation of State Medical Boards for status of emergency licensure orders in your state.
- Review HIPAA obligations applicable to telemedicine. Refer to The Health and Human Services Office for Civil Rights (OCR) regarding penalties for violations of the HIPAA Privacy, Security, and Breach Notification Rules.
- Refer to third-party reimbursement requirements.

## 2. Planning and Implementation

- Identify technology already in use and determine if expansion or improvements are needed.
- Plan the telehealth workflow.
- Inform patients of the availability of telehealth services.
- Verify patients are tech-ready, considering internet access and technological fluency limitations.
- Identify presentations or conditions suitable for telemedicine assessment.

## 3. Documentation

- Follow standard documentation practices for all telemedicine encounters.
- Develop a system for identifying and monitoring patients requiring subsequent in-person evaluation and treatment.
- Document training of supervised clinicians in telemedicine platform use, especially in states without independent practice regulations.

## 4. Additional Considerations

- Develop policies and procedures for long-term telemedicine use.
- Notify agents or underwriters if telemedicine practice continues.

## 5. Legal and Regulatory Compliance Resources

- [Telehealth.HHS.gov](https://www.telehealth.hhs.gov) for Providers.
- Center for Connected Health Policy for legal and regulatory compliance resources.

## 6. Cybersecurity

- Ensure adequate cybersecurity measures are in place to protect patient data and privacy.

## 7. Informed Consent

- Utilize informed consent forms specific to telehealth encounters to mitigate liability risks.

## 8. Patient Education

- Educate patients about telehealth services, including benefits and limitations.

## 9. Continual Review and Improvement

- Regularly review telemedicine practices and policies to adapt to evolving regulations and technology.

These risks highlight the importance of thorough planning, adherence to regulations, and ongoing evaluation to ensure patient safety and minimize medical liability in telemedicine practices.

Visit [ProAssurance.com/Telemedicine](https://www.ProAssurance.com/Telemedicine) to view our telemedicine risk management guidelines.

## Contact

Our Risk Management consultants have specialized knowledge of telemedicine risk management issues and are available to assist insureds with liability concerns and questions:

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### Resources

