



## Telemedicine: Are Your Insurance Policies Due for a Checkup?

A proactive examination of liability risks and appropriate coverages is critical for business health

Ten years ago, seeing a doctor virtually may have felt like a strange concept. Today, however, the telehealth industry is booming and doesn't appear to be slowing down.

The term telehealth refers to various remote healthcare services, including remote monitoring, provider training, non-clinical training, prescription delivery, health education, provider to provider communication and telemedicine.

Telemedicine is a subset of telehealth and refers to the delivery of healthcare—evaluation, diagnosis, treatment, etc.—using various telecommunication technologies.

The global telemedicine market is projected to reach \$52.3 billion by 2022. Many factors are driving this growth, including widespread internet access, aging populations across different geographies, the prevalence of chronic disease and the response to the COVID-19 pandemic.

Telemedicine has many advantages, such as increased access to care—especially for those living in rural areas—decreased cost, and higher levels of patient and provider satisfaction. Predicted areas of growth in this space include behavioral health and substance abuse, outpatient virtual visits and critical care.

While there are clear advantages and conveniences to the growing telemedicine industry, there are also emerging risks and coverage considerations for healthcare practitioners.

### CONTACT

To learn more about how Amwins can help you place coverage for your clients, reach out to your local Amwins broker.

### LEGAL DISCLAIMER

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## Risks in Telemedicine

### Cyber Attacks

Ransomware attacks have crippled hundreds of healthcare facilities in recent years, literally endangering lives while holding medical information hostage. Hackers gain entry to a healthcare computer system, encrypt the files within it and then demand payment for a decryption key to unlock access.

In the meantime, patient care suffers as healthcare providers can't access medical records or patient appointments, surgeries are rescheduled, cancer patients are relocated, ambulances are diverted to other hospitals and many other issues.

Since the COVID-19 pandemic began, the risks of a cyberbreach have increased substantially with more than 1 in 3 healthcare organizations reporting [ransomware attacks in 2020](#), according to a survey of IT professionals.

In the U.S. more than 600 healthcare organizations (and more than 18 million patient records) were affected in 2020 alone at an estimated cost of nearly \$21 billion, [according to one study](#).

Make sure your clients are protecting themselves from attack with cybersecurity strategies and cyber insurance.

### Medical Professional Liability (MPL)

In the past, telemedicine has leaned toward less complex healthcare services, making it a relatively lower malpractice risk for providers. However, as more complex services are routinely offered via telehealth, we will likely see more complex legal cases come to light.

According to a recent analysis conducted by CRICO, a leader in medical professional liability, 66% of telemedicine-related claims received from 2014 through 2018 were diagnosis related.

While telemedicine helps facilitate accurate and complete medical records by electronically capturing doctor's notes, the inability for providers to physically examine their patients invites miscommunication and increases risk for an MPL exposure.

Not only does communications via video make it difficult for a medical professional to get a full sense of how ill a patient is, but the remote interaction also makes it more difficult for the provider to build trust and credibility with the patient. That close connection between patient and provider is often key to preventing malpractice claims because patients are less likely to sue doctors they trust.

Now is a good time to revisit MPL insurance to ensure adequate coverages for telemedicine.





## State Licensing Rules

One of the most challenging issues for remote health professionals is ensuring compliance with each individual state's licensing rules. A physician must be licensed in the state in which he or she physically practices, but that licensure does not necessarily permit the physician to remotely provide patient care if the patient is in another state.

During the COVID-19 pandemic, state licensing requirements were temporarily lifted to ensure the hardest hit geographic areas had enough healthcare workers. Healthcare providers were crossing state lines via telehealth to provide care in states where they did not hold a license.

## HIPAA Violations

Typically, the Health Insurance Portability and Accountability Act (HIPAA), places stringent rules on how healthcare providers may share patient information. During the pandemic, however, the U.S. Department of Health and Human Services lifted some of these restrictions so healthcare providers could, in good faith of healthcare practices, use available technologies to communicate without the risk of violating the law.

## Informed Consent

Another key risk factor contributing to legal allegations involving telemedicine is not informing patients in advance about the risks of telemedicine. If after a telemedicine visit a patient's condition worsens, he or she may have a legal basis for filing a lawsuit against the medical provider.

Many insurance carriers, however, did not recognize this license waiver and continue to require licensing in the state for coverage to exist. Policy wording becomes crucial here as many specifically excludes coverage if a practitioner lacks appropriate licensing.

If your insured is providing any telehealth services across state lines, it is important to understand those state's insurance requirements, Patient Compensation Fund participation and any additional caveats.

Many states and localities have their own health information privacy laws, however, so it is important that your clients understand their responsibilities under all applicable laws to avoid violations.

Check your policies for HIPAA (and other privacy law) sub limits and coverage limitations. This can be covered on either cyber or medical malpractice policies, and it is important to understand all insurance clauses if you insure them through multiple policies.

Make sure the informed consent language is reviewed and updated appropriately. A poorly executed, inadequate and/or incomplete informed consent can result in a claim for medical battery.



## Coverage Considerations

If your client is offering telehealth services, including practicing telemedicine, it is important to check insurance policies to ensure coverage exists. Many carriers will not cover these services unless specifically stated.

Understanding the definition of professional services is extremely important. Some coverage forms require the practitioner to physically see the patient, where other carriers define the term much more broadly and will include the telehealth services within the definition. These gray areas can be covered through manuscript wording or endorsements.

Specific coverage concerns vary widely based on the type of services offered. Medical malpractice and cyber are generally the focus, but the following coverages should also be considered, depending on services provided.

### Media liability

If your insured is publishing medical content or giving medical advice in any fashion—via television, radio, internet, blog, etc.—it is important to make sure they have appropriate disclaimers and insurance coverage for their media content. This can be provided by adding to the current policy or a separate media form.

### International exposure

This exposure will gain popularity as people seek experts across the globe. Industries such as oil and gas seek healthcare in remote areas that don't belong to any country, and many ex-pats desire their own physician care. Territory becomes extremely important in this case. Do insureds need true worldwide coverage, or will worldwide territory with suits brought in the U.S. be enough?

### Other terms

Other terms that are important to understand in a policy are the coverage trigger and if coverage is provided for punitive damage, reputational harm and sexual abuse. Terms such as written demand vs. incident sensitive, the definition of bodily injury, the definition of claim and the definition of insured become very important in these policies.



## Summary

As telehealth usage continues to rise, so do the risks facing healthcare providers. Strong financial protection includes knowledge of these evolving risks, compliance with various state and federal laws and proper insurance coverage.

The healthcare specialists at Amwins are well-versed in telehealth risks and can partner with you to develop a comprehensive insurance program for your clients' unique needs.

### About the Authors

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