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# Navigating the Legal Considerations of Telehealth

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Advances in technology have transformed healthcare delivery. During the COVID-19 pandemic, the utilization of telehealth expanded, providing critical access to primary care and specialty providers. Telehealth is "... the exchange of medical information from one site to another through electronic communication to improve a patient's health" (Centers for Medicare and Medicaid Services, 2020, para. 2). Post-pandemic telehealth utilization remains broad due to its flexibility, convenience, and ability to connect patients and providers who might otherwise not be connected. Accordingly, nurses and APRNs must be aware of legal considerations associated with telehealth.

## Privacy and Confidentiality Considerations

Law and healthcare share a common standard of privacy and confidentiality. While telehealth services are covered by the Health Insurance Portability and Accountability Act (HIPAA) of 1996, legitimate privacy and confidentiality concerns have emerged, including sharing sensitive health information virtually (Houser et al., 2023). Nurses and APRNs should consider if patients feel comfort-

able sharing their health concerns virtually, if they understand the implications of accessing health-related information virtually,

and if telehealth is the best way to deliver sensitive information.

Moreover, unauthorized data breaches from cell phones, computers, and other electronic devices may expose protected health information to third parties. The Federal Trade Commission (FTC) and the United States Department of Health and Human Services Office for Civil Rights (OCR) have cautioned hospitals and telehealth providers about the risks associated with online tracking technology and associated data breaches (FTC, 2023). To minimize data breaches, nurses and APRNs should utilize HIPAA-compliant communication vendors and products (FTC, 2023).

When choosing to utilize telehealth to provide healthcare services, nurses and APRNs should consider a patient's cultural competence (Balestra, 2018). Review and incorporate Americans with Disabilities Act (ADA) guidelines for language interpretation and regularly review updates to federal and state laws related to telehealth services. At the onset of a telehealth visit, review privacy, security, and confidentiality considerations with patients and discuss what patients can expect during the visit.

## Establishing the Patient Relationship

Establishing the patient-provider relationship is an essential telehealth consideration for nurses and APRNs. All states have enacted legislation allowing healthcare providers to establish the patient-provider relationship via a telehealth visit; however, caveats to the patient-provider relationship can vary from state to state (American Medical Association, 2018). For example, states may differ in how the patient-provider relationship is established, with some requiring visual synchronous two-way communication and others requiring audio-only communication. In Delaware, [t]elehealth and telemedicine services may be used to establish a provider-patient relationship only if the provider determines that the provider is able to meet the same standard of care as if the health-care services were being provided in person. (Delaware Code Online, n.d. tit. 24 § 6003(b))

Therefore, synchronous two-way visual communication is considered the gold standard.

## Documentation Requirements

Telehealth encounters are held to the same standard of care as in-person encounters yet have unique documentation requirements (Centers for Medicare and Medicaid Services, 2023). Nurses and APRNs must document their location (e.g., office, home), patient location, and telehealth technology (e.g., telephonic, secure interactive video). Include the city and state with provider and patient location documentation and anyone else participating in the visit (e.g., family member, medical assistant). Document the patient's understanding and accep-

tance of the risks and benefits of participating in a telehealth visit and informed consent. Finally, document the length of the visit and any other requirements dictated by third-party payors.

## Licensing Requirements

Nurses and APRNs providing telehealth services must carefully review and comply with professional licensing requirements and nurse practice acts within the state where the patient is located (originating site) and where the provider is located (distant site) (Delaware Code Online, n.d.). The nurse licensure compact has expanded practice opportunities, enabling nurses to provide telehealth services in 41 jurisdictions (including Delaware) (NCSBN, 2024b). Conversely, the APRN compact, enacted in Delaware, North Dakota, and Utah, remains inactive until seven states have enacted legislation (NCSBN, 2024a).

Therefore, APRNs must obtain state and Drug Enforcement Agency licensure (if prescribing controlled substances) in originating and distant sites. Nurses and APRNs should also review and comply with state-specific requirements for telehealth practice. Due to variations in state practice environments, APRNs may require collaborative agreements with physicians (Kobeissi, 2023).

Nurses and APRNs practicing in a non-compact state may provide telehealth services to patients in Delaware by obtaining an interstate telehealth registration from the Delaware Division of Professional Regulation (Delaware Code Online, n.d.). Requirements for interstate telehealth regulation include active licensure in good standing issued by a state licensing authority or board and not currently under investigation or subject to an administrative complaint before another state's licensing authority or board

(Delaware Code Online, n.d.).

## Conclusion

As the number of states participating in the nurse licensure compact and APRN scope of practice continues to expand, telehealth use is expected to increase. Nurses and APRNs must, therefore, review and comply with the legal implications of telehealth, including privacy and confidentiality, establishing the patient-provider relationship, documentation, and licensing requirements. ■

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