Telehealth Regulatory and Legal Considerations: Frequently Asked Questions

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Abstract

As telehealth gains momentum as a service delivery model in the United States within the rehabilitation professions, regulatory and legal questions arise. This article examines the following questions:

1. Is there a need to secure licenses in two states (i.e., where the practitioner resides, and where the client is located), before engaging in telehealth?
2. Do state laws differ concerning if and how telehealth can occur?
3. Do any states expressly disallow telehealth?
4. Can services delivered through telehealth be billed the same way as services provided in-person?
5. If practitioners fulfill the requirements to maintain licensure (e.g., continuing education obligations) in their state of residence, do they also need to fulfill the requirements to maintain licensure for the state in which the client resides?
6. Will professional malpractice insurance cover services delivered through telehealth?
7. Does a sole practitioner need to abide by HIPAA regulations?

Responses to these questions are offered to raise awareness of the regulatory and legal implications associated with the use of a telehealth service delivery model within the professions of occupational therapy, physical therapy, speech-language pathology and audiology.

Keywords: Telehealth, licensure, inter-state practice, telerehabilitation

Introduction

Telehealth, the use of electronic communications and information technology to deliver health-related services at a distance, is a promising service delivery model for occupational therapy, physical therapy, speech-language pathology, and audiology. However, prior to engaging in telehealth, practitioners in the United States should be aware of the most current policies and practices related to telehealth and licensure, reimbursement, HIPAA compliance, and malpractice insurance coverage. The questions and responses below are designed to serve as a catalyst for further inquiry into the federal and state regulatory requirements associated with the use of telehealth technologies to deliver occupational therapy, physical therapy, speech-language pathology, and audiology services at a distance.

1. Is there a need to secure licenses in two states (i.e., where the practitioner resides, and where the client is located), before engaging in telehealth?

Current medical and legal practices dictate that it is the location of the client that determines the state in which the practitioner must be licensed. At the present time, if that location is in a different state from the one the practitioner is licensed to practice, then the practitioner would need to secure a license from the state where the client is located unless the state has exemption provisions within its licensure laws. Although not all states have laws, regulations, or policy pertaining to the use of telehealth, it is possible that a regulatory board receiving a complaint on a practitioner delivering services through telehealth who does not hold a license in the state where the client is located would fall back on the "operating without a license" penalty provision that exists in every state.

There are consultation and licensure exemption provisions in various states. For speech-language pathology and audiology, some states allow individuals to work in another state without a license for up to 30 days

in a calendar year. In this situation, the practitioner must hold a license from another state that has equivalent licensure requirements and must provide services in cooperation with a speech-language pathologist or audiologist who is licensed within the state where the temporary practice will occur. Although this exemption exists in some states, it remains untested for use with services provided via a telehealth service delivery model.

Similarly, a few states permit an occupational therapist licensed in another state to practice temporarily by notifying the state's licensure board for occupational therapy of the intent to practice within the state on a temporary basis, paying a fee, and submitting required documentation and credential verification.

Additionally, the Department of Defense (DOD) and the Veterans Health Administration (VHA) have their own licensing requirements and credentialing and privileging process because they operate on federal property (military installations, VA hospitals, etc.). Practitioners must hold a license in one of the US states, District of Columbia, or US territories, and be credentialed (i.e., authentication process to validate qualifications) through the DOD or VHA system in order to practice. Once the credentialing and privileging process is complete, a practitioner using telehealth can engage in inter-state practice if the client is located on federal property at the time of service delivery. This provision is not extended to services provided off federal property.

The Service Members Telemedicine & E-Health Portability Act (STEP) (H.R. 1832), proposed on May 11, 2011 by Representative Glenn Thompson may provide a solution to health disparities among military personnel who are eligible for federally funded health care services. If passed by Congress, the STEP Act will enable health care professionals (DOD civilian employees and personal services contractors) to use telemedicine and e-health applications to treat service members where they are located, including in their homes. Currently, health care professionals must obtain licenses in states where their clients are located if services are provided off federal property (i.e., in the clients' homes or communities). Under the STEP Act, health care professionals providing therapy/treatment to service members through telehealth and e-health technologies will not be required to obtain additional licenses in the states where their clients are located (Thompson, 2011).

2. Do state laws differ concerning if and how telehealth can occur?

Yes, states have different laws concerning if and how telehealth can occur. The American Speech-Language-Hearing Association (ASHA) and the Federation of State Boards of Physical Therapy (FSBPT) have written model practice act language for states to consider when crafting laws and policies related to telehealth. States may use the model practice act language verbatim; apply part(s) of a model practice act, or create their own language to meet state-specific needs. The legislative and regulatory language and policies vary by state for occupational therapy, speech-language pathology, audiology, and physical therapy. Currently, among the state boards overseeing speech-language pathologists and audiologists, 14 states and the District of Columbia have some provision, statutes, regulations, or policy, regarding the use of telehealth/telepractice (American Speech-Language-Hearing Association, 2011). Similar to provisions for speech-language pathologists and audiologists, several states have statutes, regulations, or policy related to the use of telehealth by occupational therapists and physical therapists.

With inconsistent adoption and non-uniformity of language regarding the use of telehealth, it is extremely important to check a state's statutes, regulations and policies before beginning to practice; such information can be found through a number of mechanisms. The state licensure board within the state where a practitioner plans to practice should be regarded as the leading authority on the use of telehealth as a service delivery model within the state. Most state licensure boards have websites that can be easily accessed through a search engine. Generally state laws, regulations, and policies governing practice within the state can be found on these sites. It is always incumbent upon practitioners to know their scope of practice laws and regulations for the states in which they render services. Professional associations may also be a resource for preliminary information gathering.

3. Do any states expressly disallow telehealth?

There are a wide variety of regulatory mechanisms that may disallow the practice of telehealth or create barriers for its use within various professions. Problems can arise when the interpretation of the language of a statute, regulation, or rule creates barriers for the use of telehealth. One such example of restrictive language would be a requirement that the clinician conduct an in-person physical exam of the client before providing telehealth. Moreover, such restrictions are not universally applicable across all professions and their areas of practice. For example, a client seeking assistance from an occupational therapist to identify and implement ergonomic principles and work space modifications to promote health and prevent injury may not require an in-person evaluation prior to a remote consultation. Instead of an arbitrary requirement, clinical reasoning should dictate which clients are appropriate for services delivered through telehealth.

For speech-language pathology and audiology, Delaware has a regulation that states: "Licensees shall

not evaluate or treat a client with speech, language or hearing disorders solely by correspondence. Correspondence includes telecommunications (Delaware General Assembly Title 24 Professional Regulation, 2006, Section 9.2.1.4)." Thus the Delaware Board, through an unfortunate choice of wording, significantly limits the use of telehealth within their state for speech-language pathologists and audiologists by defining telecommunication in this way. Because amendments and revisions of statutory and regulatory language take time and money, careful consideration of practice language and its interpretation is warranted. It is important for practitioners to review the state practice act, board regulations, and any relevant board opinions/interpretations in the state in which they reside, to determine what restrictions or requirements may come into play as they relate to the use of telehealth. Before embarking on inter-state telepractice, practitioners will also need to check the state practice act for the client's state of residence. If a state's practice act does not mention telehealth or have any published opinions or positions, practitioners should contact the state board for further clarification to ensure that they do not violate any aspect of their license.

4. Can services delivered through telehealth be billed the same way as services provided in-person?

Practitioners are encouraged to contact the reimbursement entity prior to engaging in telehealth to determine if and how services delivered through telehealth are reimbursed. Medicare does not currently recognize occupational therapists, speech-language pathologists, audiologists, or physical therapists as telehealth providers. Some state Medicaid programs do reimburse for services delivered through telehealth by rehabilitation professionals, though qualifying circumstances vary by state. Private insurance reimbursement for services delivered through telehealth varies by state. Some states have legislation that requires insurance companies to reimburse for a service delivered through telehealth if that same service delivered in-person would be reimbursed. If a practitioner does bill for services delivered through telehealth, the modifier "GT" is generally used along with the appropriate CPT/HCPCS code. The use of this modifier identifies the service delivery model as telehealth and enables the collection of data on the frequency and types of services delivered using a telehealth service delivery model.

5. If practitioners fulfill the requirements to maintain licensure (e.g., continuing education obligations) in their state of residence, do they also need to fulfill the requirements to maintain licensure for the state in which the client resides?

Provided a practitioner holds a license in his/her home state and the state where the client resides, the practitioner is required to comply with the laws, regulations, rules and policies where the licenses are held, including continuing education requirements, which vary between states. For example, in occupational therapy, continuing education (CE) hours required for licensure renewal range from 0-24 hours per year; some states calculate hourly requirements annually while others calculate hours biannually. An activity that is defined as continuing education for which hourly credit is allocated also varies by state. Some states require that the CE hours are earned from state-approved continuing education providers. Other states may also accept activities for which the practitioner has engaged in over the course of the renewal period, including scholarly activities such as presenting at a conference, engaging in research, or contributing to articles, chapters or books. This is not an exhaustive list and many other variations on CE requirements between states and the rehabilitation professions do exist and require careful review before embarking on multi-state telehealth practice.

6. Will professional malpractice insurance cover services delivered through telehealth?

Malpractice policies for services delivered through telehealth vary by carrier. Practitioners should therefore consult with their malpractice insurance carrier prior to engaging in telehealth. Consideration of the insurer's licensed coverage area is also warranted if a practitioner intends to practice in multiple states using a telehealth service delivery model.

7. Does a sole practitioner need to abide by HIPAA regulations?

Telehealth is a service delivery model. Services rendered through telehealth must comply with the same rules, regulations (federal, state, institutional) and practice stipulations that apply to services delivered in-person. Two major areas to consider when reviewing HIPAA compliance are security and privacy. Practitioners should become familiar with the HIPAA Breach Notification Rules

and technology encryption requirements. Excellent resources are available for practitioners to complete a risk analysis for privacy, security, and HIPAA compliance when using Voice over the Internet Protocol (VoIP) (Watzlaf, Moeini, & Firouzan, 2010; Watzlaf, Moeini, Matusow, & Firouzan, 2011). When states have differing requirements for privacy, security, and informed consent, practitioners are encouraged to follow the most restrictive laws and regulations (particularly when the greatest restrictions occur where the client is located).

Conclusion

In conclusion, practitioners and their clients are poised to benefit from the use of emerging technologies to deliver health care services. Practitioners interested in using telehealth should become familiar with all pertinent legislation, regulation, and policies related to licensure, reimbursement, and malpractice coverage for services rendered through telehealth. Additionally, practitioners' respective professional associations, the American Telemedicine Association and its Telerehabilitation Special Interest Group, the Center for Telehealth and e-Health Law (CTel), and regional telehealth resource centers may be able to provide additional information for professionals interested in using telehealth as service delivery model.

References

1. American Speech-Language-Hearing Association. (2011). State licensure telepractice provisions. Retrieved from http://www.asha.org/Practice/telepractice/telepractice-licensure/
2. Delaware General Assembly Title 24 Professional Regulation. (2006). 3700 Board of Examiners of Speech/Language Pathologists, Audiologists & Hearing Aid Dispensers, Section 9.2.1.4. Retrieved fromhttp://regulations.delaware.gov/AdminCode/title24/3700.shtml
3. Thompson, G. (2011). Thompson STEP Act passes U.S. House of Representatives. Retrieved from http://thompson.house.gov/2011/05/thompson-step-act-passes-us-house-of-representatives.shtml
4. Watzlaf, V., Fahima, R., Moeini, S., & Firouzan, P. (2010). VoIP for telerehabilitation: A risk analysis for privacy, security, and HIPPA compliance. International Journal of Telerehabilitation, 2(2), 3-14. doi:10.5195/IJT.2010.6056
5. Watzlaf, V., Fahima, R., Moeini, S., Matusow, L. & Firouzan, P. (2011). VoIP for telerehabilitation: A risk analysis for privacy, security, and HIPPA compliance – Part II. International Journal of Telerehabilitation, 3(1), 3-10. doi: 10.5195/IJT.2011.6070

Telehealth Resources

6. American Occupational Therapy Association. (2010). Telerehabilitation Position Paper. American Journal of Occupational Therapy, 64, S92-S102. doi: 10.5014/ajot.2010.64S92. Retrieved from http://www.aota.org/Practitioners/Official/Position/36203.aspx?FT=.pdf
7. American Physical Therapy Association. (2009). Telehealth - definitions and guidelines. Retrieved from http://www.apta.org/uploadedFiles/APTAorg/About_Us/Policies/BOD/Practice/TelehealthDefinitionsGuidelines.pdf
8. American Speech-Language-Hearing Association. (2011). Telepractice for SLPs and audiologists. Retrieved from http://www.asha.org/practice/telepractice/
9. American Telemedicine Association – www.atmeda.org
   * Telerehabilitation Special Interest Group (SIG) http://www.americantelemed.org/i4a/pages/index.cfm?pageID=3328
   * American Telemedicine Association's, A Blueprint for Telerehabilitation Guidelines – http://www.americantelemed.org/files/public/standards/ATA%20Telerehab%20Guidelines%20v1%20(2).pdf
10. Center for Telehealth and e-Health Law (CTel) – http://www.ctel.org/
11. Regional Telehealth Resource Centers - http://telehealthresourcecenters.org/

Disclaimer

This article contains general information on the topics presented and should not replace individual research by practitioners prior to engaging in telehealth practice. The views expressed in the article are the authors and do not represent the official position of any professional association or regulatory organization.

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