

MACM Risk Management

Telemedicine Checklist: How to Get Started During This COVID-19 Crisis

For additional information:

Kathy Stone, RN, BSN, Vice President of Risk Management

COVID-19 has changed many aspects of patient care, not the least of which is access. With the relaxation of previous telemedicine regulations and payment requirements, as well as the social distancing necessary during this time, many physicians have opted to jump into telemedicine as a means to aid them in meeting the medical needs of their patients while keeping the patients, their staff and themselves as safe as possible from exposure to the virus.

This document has been adapted to be relevant during the coronavirus pandemic. Specifically, the requirements for a fully documented and signed consent form and robust cybersecurity to prevent HIPAA breaches have been somewhat relaxed during this unprecedented period. However, liability potential still exists.

When considering the use of telemedicine in your practice, consider the following to mitigate your liability risks:

1. **Review the Mississippi State Board of Medical Licensure Telemedicine Regulations (and Mississippi Board of Nursing Regulations, if working with APRNs).**
2. **Decide on the following:**
 - a. Type of service you want to provide,
 - b. Locations of service – at both ends,
 - c. Telemedicine practice times (how many hours each day and how many days each week),
 - d. Personnel needed – at all sites.
3. **Choose appropriate technology to accomplish your plan. Ideally, if time allows, you should**
 - a. View several options.
 - b. Discuss with other providers using same technology.
 - c. Make site visits to see technology in action.
4. **Review all contracts thoroughly. Look for the following:**
 - a. Who will “own” the medical records?
 - b. Will the records be easily accessible at both sites?
 - c. Is there an indemnity clause?
 - d. What assurances are made by vendor regarding maintenance and problem solving?
 - e. Have a healthcare attorney review the contract before you sign it.
5. **Ensure privacy protection of all medical information and related data. HIPAA compliance has been somewhat relaxed at this time; but, reasonable efforts to maintain confidentiality should be made.**
 - a. This should be addressed in contract.
 - b. Must apply to both the use of the technology and the medical records generated.
 - c. Is transmitted data encrypted or otherwise protected?
 - d. Will vendor be responsible for privacy and security of system?
6. **Train all staff involved – at all sites.**
 - a. Include clinicians and support staff in training – everyone who will be involved in the telemedicine process.
 - b. Document all training, including who was present and the content covered.
 - c. Document dates of both training and re-training that occurs after the program is running.
7. **Set up policies and procedures for telemedicine practice, including:**
 - a. Policy for HIPAA compliance,
 - b. Criteria for patient selection,
 - c. Process for managing urgent/emergent situations identified during a telemedicine encounter.
 - d. Share all policies and procedures with staff at all sites.

MACM Risk Management

Telemedicine Checklist: How to Get Started During This COVID-19 Crisis

8. Determine how you will decide which patients to see via telemedicine. Consider the following when deciding who you want to treat:
- Established patients only or new patients?
 - Patients established only with you or also with your partners?
 - Follow-up visits only or new onset problems too?
 - Follow-up only on certain diagnoses, e.g. DM, HTN, ADHD, etc.?
 - No telemedicine for certain complaints, for instance, those that may require urgent care, a hands-on exam, or further diagnostic studies unavailable via a telemedicine visit. Be specific with a list of diagnoses or symptoms you will not treat via telemedicine.
 - For new patients, what types of complaints or issues will you see in telemedicine?
 - Any age limits on patients? Are any too young or too old to be seen via telemedicine?
 - Location of patient? Limited to a structured environment, such as another clinic, or will you see patients in their home or elsewhere?

Remember: MACM insureds are only covered to provide telemedicine to patients located within the State of Mississippi.

9. Refuse to provide care if technology is not working properly or patient's condition is not suitable for telemedicine.
10. Have a plan to transition visits from telemedicine to in-person.
11. If patient refuses, document refusal for transition to in-person visit.
12. Document a telemedicine encounter to the same extent that an in-person visit would be documented.
13. Be sure all paperwork completed at remote site is entered into medical records and practice administration files.
14. Obtain informed consent from patient for a telemedicine visit. If the use of a consent form is not feasible, the physician should document the consent discussion in the progress note with a statement such as the following:
- "As a result of the COVID-19 pandemic, it was determined that this patient met the appropriate criteria for a telemedicine visit in lieu of an in-person visit. The patient was informed of the benefits and limitations of telemedicine including the possibility that the patient's privacy could be compromised despite measures taken to maintain confidentiality and security. Any questions the patient had about telemedicine were addressed. The patient agreed to proceed with the telemedicine visit."*
15. Should the physician be able to utilize an actual consent form which would be signed by the patient, the form should include the following info:
- Basic explanation of how the telemedicine encounter will be performed,
 - ID of patient, provider, and provider's credentials,
 - Provider will determine if patient's condition is appropriate for telemedicine visit,
 - Details on security measures taken,
 - Possibility of loss of information due to technology failures,
 - Assurance of availability of appropriate follow-up care,
 - Complete medical record will be maintained and available to patient per usual request procedures,
 - Limitations of telemedicine, as well as risks and benefits, How patients can access care in the event of an adverse response to treatment or failure of the technology or equipment.
16. When possible, patients should still sign the usual forms for consent to treat, privacy, and release of information.

This checklist is for informational purposes only and is in no way intended to amount to a representation regarding insurance coverage. Further, it is not intended and should not be construed to be or to establish the standard of care applicable to physicians practicing in Mississippi. This information should not be regarded as legal advice. We encourage physicians to seek the advice of their own legal counsel. Finally, this list is not exhaustive, and there may be additional areas which require your consideration prior to beginning a telemedicine practice.

MACM Risk Management

Telemedicine

Medical Assurance Company of Mississippi (MACM) is aware that Medical Practices want to use Telemedicine to assist them during the current public health crisis. Please be advised that MACM will insure its existing Members' use of Telemedicine for nonsurgical care, as long as the patient is located within Mississippi at the time of the Telemedicine encounter, so there is no need to contact MACM. This includes new patients. When using Telemedicine, we strongly urge Medical Practices to consider the following good risk management practices. This applies only during the current public health crisis. Surgical practices should contact MACM prior to using Telemedicine.

- 1. QUALITY OF CARE** – Under most circumstances, a physician must be careful to provide the same quality of medical care that would be provided in an in-person examination and treatment. In other words, the physician should not use telemedicine if the use would result in inadequate care.
- 2. COMMUNICATION** – Is the image viewed by the physician adequate to conduct the examination and render treatment? Is the equipment sufficient for accurate transmission of images and data? Can the physician and patient adequately communicate so that the encounter results in proper medical care?
- 3. DOCUMENTATION** – Documentation needs to be later available regarding conversations and communications between the physician and patient; thus, proper entries should be made in the medical record. Consideration should be given to where the documentation is maintained – *i.e.*, only in the clinic medical record.
- 4. TECHNOLOGICAL ADVANCES** – The physician should not allow device manufacturers to push them beyond what is safe or reasonable. Just because a sales person suggests that a telemedicine device or process is available, the physician should make an independent determination as to whether it is appropriate for his or her practice.
- 5. PRIVACY SHOULD BE PROTECTED** – The patient's right of privacy should be protected. Thus, the practitioner should have in place all necessary equipment, policies and processes to insure compliance with HIPAA and other privacy laws.
- 6. TELEMEDICINE MUST BE APPROPRIATE** – Telemedicine is not appropriate in every circumstance. Physicians will need to recognize when to forgo the use of telemedicine and insist on an in-person examination of the patient. The convenience of telemedicine should not override an in-person examination if such is needed.
- 7. PHYSICIAN SHOULD BE TRAINED** – The physician should be adequately trained in the use of the telemedicine equipment, which includes audio, visual and medical record documentation equipment.
- 8. PATIENTS SHOULD BE EDUCATED** – Patients need to be aware of the purpose and limitations of telemedicine and when it is appropriate to be used in lieu of an in-person examination. The patients also need to be told that if either the telemedicine equipment at their location is not adequate or their medical condition warrants it, they will be instructed to come to the physician's clinic for an in-person examination. All of the clinic staff should also receive education on the clinic's telemedicine procedures if they are to be involved in its use.
- 9. EQUIPMENT** – Telemedicine equipment should be maintained, tested and monitored constantly to be certain that it functions properly.
- 10. CONSENT** – The following statement or something similar should be included in the patient's medical record:
“As a result of the COVID-19 pandemic, it was determined that this patient met the appropriate criteria for a telemedicine visit in lieu of an in-person visit. The patient was informed of the benefits and limitations of telemedicine including the possibility that the patient's privacy could be compromised despite measures taken to maintain confidentiality and security. Any questions the patient had about telemedicine were addressed. The patient agreed to proceed with the telemedicine visit.”

All information contained in this handout is provided by Medical Assurance Company of Mississippi for the sole purpose of risk management. It is not intended and should not be construed to be or to establish the standard of care applicable to providers practicing in Mississippi. This information should not be regarded as legal advice. We encourage providers to seek the advice of their own legal counsel.