

## **SPECIAL EDITION RISK MANAGEMENT Q&A**

### **Risk Management Considerations in Teledentistry**

As the provision of dental health care services via technology—commonly known as teledentistry—expands during the current COVID-19 emergency period, questions arise regarding the permitted scope of practice, licensure requirements and compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA), among other legal and regulatory inquiries. Dentists must understand the risks unique to the practice of teledentistry, as well as risk management best practices, including:

- Verification of authorization to legally practice teledentistry.
- Safeguarding patient data and compliance with privacy regulations and disclosure protocols.
- Monitoring outcomes for clinical care and technical support.
- Creating and retaining formal patient care records for all encounters.
- Engaging in continuing education to ensure key competencies.

The information and regulatory guidance regarding COVID-19 is rapidly evolving. The questions and responses below provide basic information to dentists and are intended to serve as a catalyst for a dentist's further inquiry into the federal and state legal and regulatory framework for telehealth/teledentistry. It is the responsibility of the qualified dentist to know and fulfill the necessary requirements in order to provide teledentistry services to their patients.

#### **What qualifies as teledentistry?**

Teledentistry involves the use of electronic communications and information technology to deliver health-related services at a distance. The electronic communication must have audio and video capabilities that are used for two-way, real-time interactive communication. States have enacted various laws concerning when and how telehealth and teledentistry may be practiced. Therefore, state statutes, regulations and policies, as well as state licensure boards regarding practice limitations before initiating services should be reviewed before engaging in teledentistry. In addition, the [Centers for Medicare & Medicaid Services](#) provide information on the scope of [telehealth services](#).

#### **Who can provide care via teledentistry?**

It is essential to verify with relevant state professional licensing boards the practitioners (known as a 'qualified provider') who can legally provide teledentistry services. [Some states](#) limit the types of providers that can provide services via telehealth. Practitioners also must be appropriately licensed/certified/credentialed to practice in the state where their patient is located, and work under that state's scope of practice act. Refer to professional associations, state and/or federal government standards and requirements for more information. Depending on the state, authorized practitioners may include physicians, clinical nurse specialists, nurse practitioners, physician assistants and licensed counselors and therapists, among others. However, during the nationwide public health emergency due to COVID-19, states may expand the types of providers authorized to provide care via telehealth to include dentists (if they are not already included). Therefore, it is recommended to check with the state board of dentistry for up-to-date information about the role of dentistry during the public health emergency period.

#### **Is it necessary to secure a license in both states when delivering teledentistry across state lines?**

Some states require practitioners who practice telehealth to be licensed in the state where the patient is located and abide by the licensure and practice requirements of that state. Before embarking on interstate teledentistry, dentists must review the state practice act of the state where the patient resides. If a state practice act is silent regarding teledentistry or published opinions or interpretations regarding the subject of licensure have not been issued by recognized sources, then potential teledentistry practitioners should contact their state professional licensing board for clarification with respect to interstate practice and their licensure

status. Certain states and professions also have entered into interstate compacts, creating a new pathway to expedite the licensing of a practitioner seeking to practice in multiple states. For additional, up-to-date information, check the respective state licensing board(s).

### **What are the risks inherent to teledentistry that patients should be made aware of?**

Patient consent is always required prior to participation in teledentistry services. Practitioners often use existing consent and documentation processes for store-and-forward consultations. For more invasive procedures, a separate consent form is preferable, encompassing the following information:

- Names, credentials, organizational affiliations and locations of the various health professionals involved.
- Name and description of the recommended procedure.
- Potential benefits and risks.
- Possible alternatives, including no treatment.
- Contingency plans in the event of a problem during the procedure.
- Circumstances under which the patient must see a healthcare professional for an in-person visit.
- Explanation of how care is to be documented and accessed.
- Security, privacy and confidentiality measures to be employed.
- Names of those responsible for ongoing care.
- Risks of declining the treatment/service.
- Reiteration of the right to revoke consent or refuse treatment at any time.

In addition, clearly convey to the patient the inherent technical and operational hazards that may impede communication. These include:

- Fiber-optic line damage, satellite system compromise or hardware failure, which could lead to incomplete or failed transmission.
- File corruption during the transmission process, resulting in less than complete, clear or accurate reception of information or images.
- Unauthorized third-party access, which may lead to data integrity problems.
- Natural disasters, such as hurricanes, tornadoes and floods, which can potentially interrupt operations and compromise computer networks.

Prepare an emergency or contingency plan in case of technology breakdown, and be sure to communicate that information to the patient in advance of a teledentistry encounter.

### **Should a special “Consent to Treat” form be utilized when performing teledentistry?**

Obtaining a patient’s consent to telehealth services is an essential step in the care process and is a [recommended best practice](#) of the American Telemedicine Association. A general consent-to-treat form lacks specificity regarding the potential benefits, constraints and risks unique to teledentistry, including equipment failures and privacy and security breaches. In addition, a general form lacks standard language regarding patient rights and responsibilities relating to teledentistry. Sample telehealth informed consent forms are available from the [American Telemedicine Association](#) and the [American Dental Association](#). The California Dental Association also has guidance on [Teledentistry Consent and Notice](#).

During the informed consent process, describe the nature of telemedicine compared with in-person care (scope of service), as well as providing written information. Provide information about the encounter, prescribing policies (if applicable), communication and follow-up, recordkeeping, scheduling, privacy and security, potential risks, mandatory reporting, provider credentials, and billing arrangements. Prior to initiating teledentistry services, know when to recommend that the patient must see a healthcare professional for an in-person visit.

### **Who must abide by HIPAA regulations?**

The [HIPAA Privacy Rule](#), [HIPAA Security Rule](#), as well as all Administrative Simplification rules, apply to “covered entities”, which include health plans, healthcare clearinghouses, and any health care provider who submits transactions electronically, including claims. Healthcare providers include all “providers of services” (e.g., institutional providers such as hospitals) and “providers of medical or health services” (e.g., non-institutional providers such as physicians, dentists and other practitioners) as defined by Medicare, and any other person or organization that furnishes, bills, or is paid for health care. If unsure of covered entity status, please refer to the [Centers for Medicare & Medicaid Services \(CMS\)](#) for guidance.

### **How are practitioners expected to ensure the privacy and confidentiality of patient data during the coronavirus (COVID-19) national public health emergency?**

On March 17, 2020, the HHS Office for Civil Rights (OCR) announced that it will waive potential HIPAA penalties for good faith use of telehealth during the nationwide public health emergency due to COVID-19. This waiver applies to telehealth provided for any reason, regardless of whether the telehealth service is associated with the diagnosis and treatment of health conditions related to COVID-19. Review of this waiver with legal counsel is appropriate. The [notification](#) and accompanying [fact sheet](#) explain how covered health care providers can use everyday communications technologies to offer telehealth to patients responsibly. Providers are encouraged to review the notification, and to routinely monitor the [HHS Emergency Response](#) page for more information about COVID-19 and HIPAA.

This notice means that covered health care providers may now use popular applications that permit video chats, including Apple FaceTime, Google Hangouts video, or Skype, to provide telehealth during the COVID-19 nationwide public health emergency without risk of incurring a penalty for noncompliance with HIPAA Rules. If health care providers decide to use these applications to provide telehealth, **providers are encouraged to notify patients that these third-party applications potentially introduce privacy risks. As a result, providers should enable all available encryption and privacy modes when using such applications.**

Covered health care providers that seek additional privacy protections for telehealth while using video communication products should provide such services through technology vendors that are HIPAA compliant and will enter into HIPAA business associate agreements (BAAs) in connection with the provision of their video communication products. There are many HIPAA-compliant telehealth solutions. While we do not endorse any specific brand here are names of a few options in no particular order: RingCentral, Doxy.me, thera-LINK, TheraNest, SimplePractice, Zoom for healthcare, and VSee. We also recommend that you contact your professional association to see recommendations to suit your needs.

### **How can dentists ensure the care and treatment delivered via teledentistry is high quality?**

Increased use of teledentistry means that dentistry practices and dentists must develop guidelines for monitoring teledentistry practitioners and sharing internal review information. Federal law requires that, at a minimum, this shared information must include adverse events that result from a practitioner’s telehealth services and complaints a health care organization receives about a practitioner.

Dentists must adhere to traditional clinical standards of care, and practice within the scope of practice authorized by law. Any legal action or professional board matter would include an analysis of how the practitioner's behavior conformed to state statutes and/or regulations. Guidelines from professional associations also may be included in the analysis, even if the guidance states that they do not comprise a standard of care. The [American Teledentistry Association](#) is a good source of information about the practice of teledentistry and related regulations. There are also several American Dental Association (ADA) resources related to teledentistry that can provide background information on the topic:

- The [Comprehensive ADA Policy Statement on Teledentistry](#), which was passed by the ADA House of Delegates and last updated in 2015 as of this writing.
- [D9995 and D9996 – ADA Guide to Understanding and Documenting Teledentistry Events](#), written to educate dentists and others in the dental community on these procedures and their codes, published in 2018.

- [ADA Technical Report No. 1060, The Secure Exchange and Utilization of Digital Images in Dentistry](#), which was published in 2011.
- The ADA's [COVID-19 Coding and Billing Interim Guidance](#) can aid dentists in working through the procedural steps to offering teledentistry during the COVID-19 national health emergency period.

Outcome measurement offers practitioners useful information about how well a teledentistry program is functioning, including further refinements that may be needed. Indicators should capture clinical, efficiency and satisfaction outcomes, including:

- Patient complication and morbidity rates.
- Compliance with provider performance criteria.
- Diagnostic accuracy.
- Adherence to clinical protocols.
- Referral rates.
- Patient satisfaction levels.
- Cost per case.
- Delays in accessing consultations, referrals or specialty practitioners.
- Average waiting times.

Complete basic training in the teledentistry system in use at your practice and participate in all training updates. Conduct routine audits of equipment and software functionality and know how to respond to equipment malfunctions. Regular equipment testing and maintenance helps prevent potential technical and user problems. Equipment should be suitable for diagnostic and treatment uses, readily available when needed and fully functional during clinical encounters. Facility safety guidelines should specify who is responsible for maintenance- know whom to contact for technological assistance. Utilize checklists or logs to facilitate documentation of post-installation testing, pre-session calibration, and ongoing quality checking of audio, video and data transmission capabilities.

Satisfaction surveys capture vital data regarding patient and dentist perceptions of the teledentistry program, as well as utilization patterns and the overall quality of care. Surveys also can reveal unexpected barriers to care, including accessibility issues and cost. A sample survey format for telehealth encounters is available [here](#).

### **How should teledentistry be documented?**

Teledentistry sessions should be as thoroughly documented as all other patient encounters, with both partners to the teledentistry agreement contributing to the process. According to the [American Health Information Management Association](#), telehealth records should include, at a minimum:

- Patient name.
- Patient identification number at originating site.
- Date of service.
- Referring practitioner's name.
- Consulting practitioner's name.
- Provider organization's name.
- Type of evaluation to be performed.
- Informed consent documentation.
- Evaluation results.
- Diagnosis/impression of practitioners.
- Recommendations for further treatment.

The use of standardized intake and consultation forms can help dentists achieve compliance with documentation parameters. Templates, such as those available from the [American Telemedicine Association](#), offer a clear and consistent documentation format for evaluations and consultations.

All communications with the patient (verbal, audiovisual, or written) should be documented in the patient's unique dental healthcare information record (electronic medical record or paper chart) in accordance with documentation standards of in-person visits. Be sure to document follow-up instructions and any referrals to specialists. Also, fully document the specific interactive telecommunication technology used to render the consultation and the reason the consultation was conducted using telecommunication technology, rather than in-person, in the patient's dental healthcare information record, in accordance with state and federal regulations.

### **Final thoughts**

The emergence of teledentistry capabilities during the current COVID-19 emergency period presents valuable opportunities to address some of the biggest challenges facing healthcare. Demand for teledentistry services is expected to grow as connected devices proliferate and interoperability between healthcare providers expands. The dentist-patient relationship will probably evolve as dentists use teledentistry to develop and maintain patient relationships over greater distances and patients grow accustomed to new flexible, personalized care models. As healthcare continues to transform with the use of technology, dentists also must be aware of the legal, ethical, and regulatory implications for the practice of dentistry.

### **References/Additional Resources**

The following additional sources offer a more detailed framework of guidelines, standards and tools for the safe practice of teledentistry:

- [Healthcare Perspective: Telemedicine](#)
- [HHS: HIPAA for Professionals](#)
- [HHS: COVID-19 and HIPAA](#)
- [HHS: Notification of Enforcement Discretion for telehealth remote communications during the COVID-19 nationwide public health emergency](#)
- [CMS: Medicare Telemedicine Health Care Provider Fact Sheet](#)
- [American Telemedicine Association](#)
- [National Consortium of Telehealth Resource Centers](#)
- [American Health Information Management Association](#)
- [Telehealth Resource Center](#)
- [Center for Connected Health Policy \(CCHP\)](#)
- [Center for Connected Health Policy \(CCHP\): State Telehealth Laws & Reimbursement Policies](#)
- [Foley & Lardner: 50-State Survey of Telehealth Commercial Payer Statutes \(December 2019\)](#)

### **Profession-Specific Resources**

- [American Teledentistry Association](#)
- ADA: [COVID-19 Coding and Billing Interim Guidance](#)
- ADA: [Policy Statement on Teledentistry](#)
- ADA: [D9995 and D9996 – Understanding and Documenting Teledentistry Events](#)
- [ADA Technical Report No. 1060, The Secure Exchange and Utilization of Digital Images in Dentistry](#)
- [California Dental Association: Teledentistry Consent and Notice](#)
- [University of the Pacific Center for Special Care: White Paper on Teledentistry](#)

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