

We are pleased to offer our latest installment of *Insight and Perspectives*. This newsletter is dedicated to sharing healthcare news, trends and developments impacting our brokers and insureds.

This installment features Kathleen Shostek's article on *Telemedicine: Amid Growth, Know the Risks and Reap the Rewards*.

As always, we appreciate your continued support and thank you for selecting Endurance to be a part of your risk and insurance programs.

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Our U.S. and Bermuda teams provide healthcare professional liability coverage to non-profit and for-profit hospitals and other healthcare organizations.

## Contact Us

### Kim Morgan

Senior Vice President, Healthcare Practice Leader – Bermuda  
 kmorgan@endurance.bm  
 +1.441.278.0923

### Kim Willis

Senior Vice President, Healthcare Practice Leader – U.S.  
 kwillis@enhinsurance.com  
 +1.636.681.1205

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# Insight and Perspectives

a publication of Endurance Insurance's Healthcare Practice

## Telemedicine: Amid Growth, Know the Risks and Reap the Rewards

By Kathleen Shostek, RN, ARM, FASHRM, CPHRM, CPPS  
 Vice President Healthcare Risk Management, Sedgwick  
[kathleen.shostek@sedgwick.com](mailto:kathleen.shostek@sedgwick.com)

Today, most healthcare organizations use some form of telemedicine for patient care. Telemedicine is the use of technology, including video conferencing and internet and store-and-forward imaging, to deliver health care services when the provider and patient are not in the same physical location. The American Telemedicine Association (ATA) defines telemedicine as "the use of medical information exchanged from one site to another via electronic communications to improve a patient's clinical health status" and notes that the term refers to the delivery of remote medicine and clinical services using technology.<sup>1</sup>

While teleradiology and telestroke services have been in use for several years to meet the demand for 24/7 urgent imaging and diagnostic services, other healthcare specialty services are increasingly being offered remotely including telepsychiatry and virtual chronic disease management. The growing use of telemedicine can be attributed to the need to serve an aging population, a surge in on-demand healthcare and a desire to curb healthcare costs and capitalize on improved health insurance coverages.



## Managing Telemedicine Risks

When providing medical services through telemedicine technology, traditional medical liability and risk management considerations still apply to providers and healthcare facilities. This includes contracting, credentialing, and monitoring the quality of the services provided.

### Contracting

Contracts are a primary area for proactive risk management, because these agreements generally spell out the duties, obligations, rights and responsibilities of each party and therefore can clearly define roles and accountability. For example, teleradiology contracts often outline responsibility for equipment, software, and servers for transmission and storage of scans/images and reports as well as requirements for turn-around time for reports.

Contracts can also address the provider's role in patient care: Is it specialist consulting or is a deeper physician-patient relationship being established? A good example of this difference is the contrast between teleradiology arrangements where the images are preliminarily interpreted but the final "official" reading rests with the physician onsite, versus the telemedicine internist who, via 'virtual' presence in the ICU, is involved with and directing the patients care in real

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time. An important distinction, although scenarios with only indirect patient encounters have resulted in malpractice claims, with some courts holding that direct contact is not required to establish a physician-patient relationship.

Contracts can also attempt to limit “venue shopping” by inserting choice-of-law or choice-of-venue clauses. For example, a facility could specify that any controversies or disputes arising out of the care that is rendered by the telemedicine provider will be governed by the law in the state in which the care was provided or where the medical facility is located. It is important to engage legal counsel early in the contracting process to ensure that appropriate mutual hold harmless and indemnification provisions are included in these agreements.

## Credentialing

Ascertaining the qualifications and credentials of telemedicine providers is akin to the credentialing and privileging process for employed physicians and healthcare providers with medical staff privileges. The hospital or healthcare facility has a duty to ensure that all of its providers meet licensure, training, and education requirements necessary to treat patients safely. Following established credentialing policies, including re-credentialing and privileging requirements, in telemedicine agreements is advised. If for example a teleradiologist’s reading variance rate exceeds an established quality measure, the hospital should reserve the right, under the agreement, to request that the provider be removed from its panel. The healthcare facility should also ensure that off-site physician and non-physician providers are not practicing outside of their scopes of practice, and verify that non-physician providers comply

with state-defined practice parameters including physician collaboration or supervision requirements.

In selecting qualified telemedicine providers, it is essential to define their state licensures and liability insurance coverage (and any limitations on coverage). This is important because the practice of medicine occurs where the patient is located at the time the telemedicine technology is applied. Physicians or other providers who treat or prescribe virtually through online technologies must be licensed in all jurisdictions where patients receive care. Although, because of the changing healthcare landscape, it is predicted that legislation for the practice of telemedicine across state boundaries will be passed in the next few years.<sup>2</sup>

## Monitoring for Quality and Safety

The organization’s existing systems for identifying risk, monitoring quality, and improving safety should be applied to telemedicine services. Timely communication and documentation of patient encounters, informed consent, and maintaining standard of care are keys to risk reduction. As with any contracted or outsourced service, healthcare organizations need a process to monitor the performance of their medical providers, including the people and technology involved in providing telemedicine care.

As with regular healthcare services, the security, privacy, and confidentiality of protected health information is of concern for telemedicine. However, as

the care is provided by transmission of patient information over networks and systems, critical safeguards need to be implemented for these technologies. Risk managers should collaborate with their information technology, corporate compliance, and systems engineers to ensure that the telemedicine networks and systems are included in their information security program.

The technology used in the practice of telemedicine requires a high level of monitoring and maintenance as well as user education and training. Equipment malfunctions, software errors or user errors can occur and contribute to communication and care breakdowns resulting in patient harm and potential liability. Operational or performance issues arising from telemedicine services can lead to loss of patient information, delays or failures in patient care and treatment, as well as lost revenues from interrupted services. Engaging with the appropriate resources in a timely manner to intervene and mitigate downtime is crucial to reducing risks to patient safety. This includes the implementation of back-up systems and response plans which rely on timely communication with facility management and medical providers.

Understanding the risks and rewards of telemedicine and implementing mitigation strategies that support safer use of this growing delivery channel will help healthcare facilities realize their return on investment in this technology while meeting goals to enhance access to safe patient care. ◀

1. American Telemedicine Association. What is Telemedicine? [online] <http://www.americantelemed.org/about-telemedicine/what-is-telemedicine#.VwvfOOwrLIU>

2. Hunter TB, et al., *Telemed J E Health*. 2015 Apr;21(4):315-8. doi: 10.1089/tmj.2015.9997. Epub 2015 Mar 3.

### Additional Resources:

Sample credentialing and privileging agreement templates for telemedicine are available online at The Center for Telehealth and e-Health Law’s website: <http://ctel.org/wp-content/uploads/2011/07/Physician-Credentialing-and-Privileging-Agreement-Between-Telemedicine-Entity-and-Hospital-712.pdf>.

### Endurance U.S. Healthcare

16052 Swingley Ridge Road, Suite 130  
St. Louis, MO 63017  
United States  
Phone: +1.636.681.1220

### Endurance Bermuda Healthcare

Waterloo House, 100 Pitts Bay Road  
Pembroke, HM 08  
Bermuda  
Phone: +1.441.278.0400