

# Telehealth and Legal Implications for Nurse Practitioners

Melanie Balestra, JD, PNP

## ABSTRACT

Telehealth, which uses electronic information and telecommunications technologies to support long-distance clinical healthcare, is a growing trend that offers improved patient access, cost savings, and more engaged patients with better outcomes. For nurse practitioners who deal with patients in a variety of settings, telehealth can help improve healthcare delivery to underserved populations. However, there are challenges including wide variations in the rules, regulations, and practice guidelines surrounding telehealth. Nurse practitioners should implement practical advice and tips for utilizing telehealth, as well as risk management strategies to ensure better patient care and avoid malpractice litigation or licensing issues.

**Keywords:** best practices, liability, malpractice/disciplinary action, nurse practitioners, risk management, telehealth, telemedicine

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## INTRODUCTION

Telehealth, or the use of electronic information and telecommunications technologies to support and promote long-distance clinical health care, patient and professional health-related education, public health, and health administration, is a rapidly growing trend in health care.<sup>1</sup> The term “telehealth,” which can be used interchangeably with “telemedicine,”<sup>2</sup> encompasses real-time, audio-video communication tools that connect providers and patients in different locations; store-and-forward technologies that collect images and data to be transmitted and interpreted later, and remote patient-monitoring tools such as home blood pressure monitors.<sup>3</sup> Although the practice is not new, advances in health care information technology innovation and the expansion of access to health care under the Affordable Care Act have provided a significant boost to telehealth, bringing providers and patients together in ways that were unheard of even a decade ago.<sup>4</sup>

Hospitals are embracing the trend. In a 2013 survey, 52% of hospitals reported they were using

telehealth, and another 10% said they were beginning the process of implementing telehealth services.<sup>5,6</sup> Health care consumers also appear ready for telehealth, with 64% of Americans reporting that they would attend an appointment via video telehealth.<sup>7</sup>

Although telehealth was originally developed with the goal of reaching rural and underserved patients and providing basic care, recent research has supported integrating telehealth into a variety of medical specialties. For example, a study in the *Journal of Clinical Psychiatry*<sup>8</sup> found that telemedicine is a “viable alternative modality for providing evidence-based psychotherapy for elderly patients with depression.”<sup>p. 1704, 1709</sup> This is supported by a new study from Harvard Medical School and the RAND Corp. that shows an average 45 percent jump per year in mental health telemedicine visits among rural patients over the decade.<sup>9</sup> Another study in *Annals of Allergy, Asthma and Immunology* found that telemedicine appointments may be just as effective as in-person visits with an allergist.<sup>10</sup>

However, as with all technology, there are pros and cons associated telehealth. Some of the advantages include improved patient access, cost savings and increased efficiency, and more engaged patients with improved outcomes.<sup>11</sup> Disadvantages include

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limited physical examination, potential for technical problems and security breaches, and regulatory and industry barriers.<sup>11</sup> Rules defining and regulating telehealth are evolving and vary widely across states, and health care groups are issuing different guidelines about the standard of care that applies in telehealth encounters.<sup>12</sup> For example, in 2016, the American Medical Association adopted ethical guidance on telehealth and telemedicine,<sup>13</sup> and in 2015, the American Academy of Pediatrics issued recommendation of telemedicine in pediatric health care,<sup>14</sup> but the rules and regulations addressing nurse practitioner (NP) requirements differ from state to state, and this variability creates confusion for NPs involved in the practice of telehealth.

With this in mind, for NPs who are providing health care directly to patients in both rural and urban settings and in locations ranging from clinics and hospitals to emergency/urgent care sites, private physician or nurse practitioner practices, and nursing homes, among others, using telemedicine can help improve health care delivery to underserved populations. Although telemedicine promises to transform health care, it also raises a number of questions. This article discusses several important issues for NPs surrounding the use of telehealth. Nurse practitioners should become familiar with potential legal implications and risks surrounding telehealth to ensure best practices for patients and to avoid litigation and licensing issues.

### ISSUES WITH TELEMEDICINE AND RISKS FOR NPs

With the rapid expansion of telemedicine comes the increased potential for liability issues. As a result, NPs should be aware of certain aspects of telemedicine that might create liability problems. Some of the most critical issues include the following.

- *Licenses and credentialing.* Typically, a nurse practitioner is licensed only in the state in which he or she practices medicine. Now, however, telemedicine technology allows NPs to assess patients remotely and in a variety of settings, and could include patients located across state borders, making this single state license (one license for every state in which an advanced practice registered nurse practices) uneconomical for practitioners or employers.<sup>15</sup>

Efforts are underway to streamline the license process for NPs who practice across state lines. The APRN Compact, spearheaded by the National Council of State Boards of Nursing (NCSBN), allows an advanced practice registered nurse (APRN), such as a certified nurse practitioner, to hold one multistate license with a privilege to practice in other compact states.<sup>16</sup> The plan is to make requirements more consistent and licenses more portable, to train APRNs well, and then allow them to practice at the extent of their training.<sup>17</sup> The APRN Compact will come into effect once 10 states have enacted the legislation. According to the NCSBN, as of this writing, 3 states had enacted APRN Compact Legislation (Idaho, Wyoming, and North Dakota), and states including Iowa (pending SB 430) and West Virginia (pending SB 2521), have pending legislation.<sup>18</sup>

Additional efforts to shape the regulation of APRNs include the Consensus Model for APRN Regulation: Licensure, Accreditation, Certification and Education (APRN Consensus Model), which was completed in July 2008 and endorsed by 44 organizations.<sup>19</sup> The APRN Consensus Model, when implemented, will standardize each aspect of the regulatory process for APRNs, resulting in increased mobility for APRNs and increased access to APRN care.<sup>19</sup> Implementation of the Consensus Model has occurred incrementally. Although full implementation was targeted for 2015, as of August 2016, only 15 states had full implementation, and 10 states had achieved implementation ranging from 75% to 96%.<sup>20</sup>

The bottom line is that there is wide variation from state to state in telehealth rules and regulations. NPs working in several states (in person or via telemedicine) could be at risk for legal action from regulatory authorities such as the Board of Nursing if they do not have the appropriate licenses, certifications, and training or experience within the scope of practice in each state required to practice.<sup>21</sup>

- *Reimbursement.* In general, telehealth reimbursement policies differ greatly across state Medicaid plans and private payers, and the Centers for Medicare and Medicaid Services' telehealth coverage reimburses only for specific services when they are delivered via live video and is limited to strictly defined rural areas, for specific services, and when the patient is located

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