

# Ensuring Patient Safety, Security and Quality of Care

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To achieve the potential benefits of expanded access to care for residents, states have implemented regulations to ensure the safety, security and quality of services delivered through telehealth. Similarly, providers are responsible for understanding the **standards of care, patient-provider relationship** and **informed consent requirements** within each state when considering telehealth practice across state lines.

## Upholding Standards of Care

State statutes define standards of care, as well as malpractice, in very specific terms for health care delivery, both in-person and via telehealth. And because they vary from state to state, providers using telehealth must be aware of the standards of care of each state they practice in. In response to increased telehealth usage, **some states**, including **Idaho, Missouri and Texas**, simplified matters and determined that the standard of care for in-person services also applies to telehealth.

### 3 Things to Know:

- 1 **Standards of care for telehealth services are generally the same as those for in-person care**, and several states took steps to enact them into legislation.
- 2 All 50 states allow **patient-provider relationships to be established remotely to prescribe medications**, though most states still require an in-person examination to prescribe controlled substances.
- 3 Forty-two states and the District of Columbia **require providers to inform patients of the potential risks and benefits** of telehealth usage.

### Definitions

#### ■ Standards of Care

What a similarly trained and equipped provider in the same field would do in the same situation with the same resources.

#### ■ Informed Consent

The right of patients to receive information and ask questions about recommended treatments to make well-informed decisions about their care.





## Preserving Patient-Provider Relationships

Recognizing that an established patient-provider relationship typically leads to more trust and better health outcomes, all 50 states allow a patient-provider relationship to be established remotely. Some states require patients to receive follow-up care in-person if the initial appointment was conducted via telehealth. Proponents of telehealth are wary of requiring follow-up in-person visits because of the additional burden placed on the patient to seek in-person care, which could potentially recreate some of the barriers telehealth seeks to remove.

Most states require an in-person physical exam before a provider can prescribe medication to a patient, but some states allow a provider to conduct a physical exam through telehealth. For example, Kansas applies the same laws and regulations to both in-person and telehealth prescriptions. In response to the opioid epidemic and changing federal requirements, some states allow the prescription of medication-assisted treatment (or MAT) through telehealth. West Virginia, for instance, allows practitioners to provide MAT within their scope of practice.

## Allowing for Informed Consent

In telehealth, informed consent policies require providers to share the benefits and risks associated with telehealth and alternative courses of action with patients. Patients may benefit from knowing the potential limitations of telehealth and that certain conditions may require in-person diagnosis or treatment. Forty-two states and the District of Columbia have an informed consent policy for telehealth. Requirements may vary depending on the origin (statute, administrative code, Medicaid policy) and the intent of the policy. For example, requirements may apply to only certain types of providers, Medicaid, or specific services such as behavioral health. Most states require providers to document verbal consent by patients, but at least seven states and the District of Columbia require written consent generally or for specific services (e.g., transfer of images, recording the session).

**A note about this brief:** Although the COVID-19 pandemic ushered in a wave of changes to requirements for providers using telehealth, many of these actions are temporary. State counts listed throughout this brief only include permanent laws and regulations. Please refer to the Telehealth, COVID-19 and Looking Ahead brief for more information.

### About the Telehealth Explainer Series

As state leaders seek to capitalize on the potential for telehealth to support the health care workforce and improve access to care, a number of state policy issues may arise. This new series of explainer briefs addresses six aspects of telehealth to better inform policymaking for state lawmakers.

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