

TELEPSYCHIATRY: REGULATORY COMPLIANCE FACT SHEET

Psychiatrists practicing telepsychiatry need to be concerned about at least the following regulatory issues.

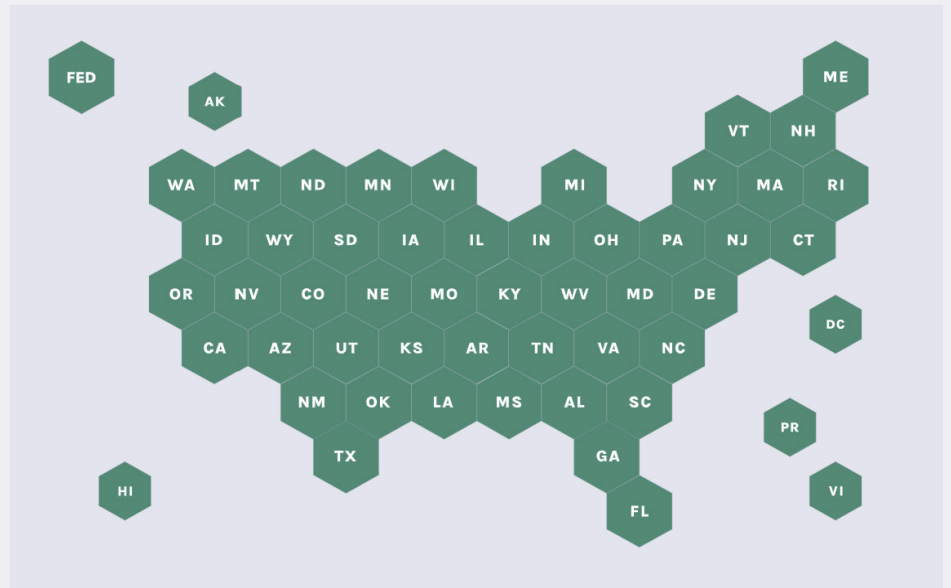
1. LICENSURE REQUIREMENTS

- **The Issue:** When practicing telepsychiatry with a patient in a different state, psychiatrists need to ensure they are meeting licensure requirements in both the state where the patient is located and the state where the psychiatrist is located.
 - Not all states require out-of-state physicians to be licensed in their state in order to treat patients there. Here are some examples of licensure exceptions that can be found in various states:
 - › *Continuity of care exceptions:* Some states allow physicians without a license in their state to provide continuing care in their state if the physician and patient have a previously established treatment relationship.
 - States with this licensure exception may:
 - Require an in-person visit to evidence the validity of the established treatment relationship.
 - Limit the availability of this exception such as a yearly number of visits allowed or a time limit after which the exception does not apply.
 - › *Border exception:* A few states allow physicians who practice out-of-state, but near their state's border to treat patients in their state without a state license.
 - › *Special registration for telemedicine:* More and more states are allowing physicians to apply for a telemedicine registration or special purpose license. The process for obtaining this is much easier and quicker than for full licensure, and the fee is much less.
 - **Consequences of non-compliance** If a psychiatrist is found to be engaged in the unauthorized practice of medicine, there are at least two significant consequences:
 - The boards in the state(s) where the psychiatrist is licensed will likely investigate and could discipline the psychiatrist.
 - Medical malpractice insurance companies cannot insure illegal acts, so there would be no coverage available to defend a licensing board action or a malpractice claim stemming from that treatment.
 - **How to determine the rules:** You may be able to find relevant information on the state licensing board's website.
 - Also, the Center for Connected Health Policy (CCHP), the federally designated National Telehealth Policy Resource Center, offers a good all state survey of cross-state licensing that can be accessed [here](#).

PROFESSIONAL REQUIREMENTS

Cross-State Licensing

When telehealth is used, it is considered to be rendered at the physical location of the patient, and therefore a provider typically needs to be licensed in the patient's state. A few states have licenses or telehealth specific exceptions that allow an out-of-state provider to render services via telemedicine in a state where they are not located, or allow a clinician to provide services via telehealth in a state if certain conditions are met (such as agreeing that they will not open an office in that state). Still other states have laws that don't specifically address telehealth and/or telemedicine licensing, but make allowances for practicing in contiguous states, or in certain situations where a temporary license might be issued provided the specific state's licensing conditions are met.



CLICK THE MAP TO SCROLL DOWN TO THE STATE

Source: <https://www.cchpca.org/topic/cross-state-licensing-professional-requirements/>

- **Additional points:**

- *Vacation exception:* As was always the case prior to the pandemic, if you or your patient are out-of-state and you are unexpectedly contacted by the patient, you can take the call.
 - › Some states explicitly say this is not a problem in their laws.
 - › If you need to prescribe, prescribe only enough to cover until the patient is back in state.
 - › If the “vacation” is longer than a week or two, and you are scheduling more than one or two sessions, you should confirm with the state that a license is not needed.
- *International telepsychiatry:* Psychiatrists still need to ensure they are acting legally.
 - › Similar to the vacation coverage mentioned above, if a patient unexpectedly calls you while one of you are outside of the US, the general risk management advice is to consider taking the call.
 - › If, on the other hand, the intent is to schedule sessions while one of you are abroad, regardless of whether it is you or your patient who will be located outside of the US, you need to confirm with the foreign country that you can do what you want to do without a license. Contacting the embassy has proven an effective way to get the answer to this question.
 - If you have permission from the foreign country, you should then confirm that your licensing board will allow the activity you are contemplating.
 - › Controlled substances cannot be prescribed outside of the US.

2. IN-PERSON VISIT REQUIREMENTS

- **The Issue:** Various regulators require in-person visits. While these requirements are typically related to prescribing controlled substances, that is not always the case. Sources of these regulatory requirements for an in-person visit include the following:
 - **Federal law:**
 - › *For prescribing all controlled substances:* Under the Ryan Haight Act amendment to the Controlled Substances Act, one in-person visit is required prior to prescribing controlled substances (with very limited exceptions).
 - There is no time limit within which the previous in-person visit had to occur; for example, an in-person visit five years ago meets the requirement.
 - There is no requirement under the RHA for any additional visits after the one in-person visit.
 - DEA is in the process of issuing its new Prescribing Controlled Substances Via Telemedicine regulation. There will be a Proposed Rule, time for public comments, and then the Final Rule.
 - › *Federal prescribing waivers extended:* The DEA has temporarily extended the federal waivers for prescribing controlled substances via telemedicine through December 31, 2024.
 - Federal requirements temporarily waived:
 - › The requirement to have one in-person visit prior to prescribing controlled substances, and
 - › The requirement to have a DEA registration in the patient's state, if different from the prescriber's state
 - [APA Resource](#)
 - › *Consequences of non-compliance:* The DEA could revoke the psychiatrist's DEA registration(s). Additionally, there could be an investigation and prosecution by the US Department of Justice.
 - › *How to determine the rules:*
 - For the final DEA regulations
 - PRMS will send an alert email
 - › To update your email address, send a note to clientservices@prms.com
 - PRMS will update its [telepsych website](#)
 - For more information on the Ryan Haight Act, click [here](#)
 - **State law:** States take a variety of different positions related to requiring in-person visits.
 - › **Caution:** If an in-person visit is not required under federal law, it could still be required under state law.
 - › *In-person visit requirements related to prescribing controlled substances include the following:*
 - Some states do not allow controlled substances to be prescribed via telemedicine at all.
 - Some states do not allow certain controlled substances to be prescribed via telemedicine.

- Some states specifically require subsequent in-person visits when prescribing controlled substances. In these states, federal exceptions to the in-person visit requirement do not apply.
 - Other states simply say federal prescribing law must be followed. In these states, federal exceptions to the in-person visit requirement do apply.
 - Some states require an in-person visit within a specified time prior to prescribing controlled substances via telemedicine.
- › *In-person visit requirements unrelated to prescribing controlled substances:*
- States may require an in-person visit to allow treatment via telemedicine.
 - States may require an in-person visit prior to allowing out-of-state unlicensed physicians to treat in their state without a license.
 - States may limit the time telemedicine services can be provided, such as requiring the patient be seen in-person if telemedicine services are provided more than four times in a 12-month period to the same patient for the same condition.
- › *Consequences of non-compliance:* The licensure board in the relevant state could investigate and discipline the psychiatrist. Any discipline imposed by that board could then trigger investigation by other states where the psychiatrist is licensed.
- › *How to determine the rules:* There are two good resources to determine state law requirements:
- CCCP offers a good state survey of telemedicine requirements that can be accessed [here](#).

Source: <https://www.cchpca.org/all-telehealth-policies/>

- The law firm of Epstein, Becker & Green has a good telemental health app that presents a state

Look up policy by jurisdiction



We track telehealth-related laws and regulations across all 50 states, the District of Columbia, Puerto Rico, Virgin Islands and at the federal level. Click on a jurisdiction to see all current laws, temporary COVID-19 actions, and pending legislation.

SELECT A JURISDICTION



survey of telemedicine requirements and includes specific information by licensure type – psychiatrists, psychologists, social workers, etc. The app can be downloaded [here](#).

- **Payers:** Payers can require more than one in-person visit, and this may not be related to prescribing controlled substances. For example:
 - › *Medicaid:* Some state Medicaid programs require in-person visits – typically related to prescribing controlled substances – and it can be required before prescribing as well as after prescribing controlled substances. Note that this can be the case for Medicaid patients, even if not required outside of the state Medicaid program.
 - CCHP’s [state survey](#) of telemedicine requirements includes state Medicaid requirements.
 - › *Medicare:* Under federal law, for mental telehealth services, there must be an in-person visit within the first six months of an initial telehealth visit and every 12 months thereafter (with certain exceptions). Enforcement of this in-person visit requirement is delayed until January 1, 2025. There is also an exception from the in-person requirement for substance use disorder treatment.
 - › *Consequences of non-compliance:* Among other possible consequences, the payer could require repayment of any funds erroneously paid to the psychiatrist.
- **Additional point:** It may be CLINICALLY necessary to see patients in-person. For example, there have been cases where patients only seen virtually have developed movement disorders that were not realized timely, and in other cases, patients with eating disorders have been able to hide weight loss.

3. OTHER STATE LAW REQUIREMENTS

- Most states have issued rules related to telemedicine, whether by statute, regulation, or licensing board policy or guideline.
- Topics range from informed consent to medical recordkeeping, continuity of care, etc.
- CCHP’s [state survey](#) of telemedicine requirements includes the various state requirements

4. OTHER FEDERAL LAW REQUIREMENTS

- HIPAA-compliant telemedicine platform
 - This requirement was temporarily waived during the COVID-19 Public Health Emergency, and will end on August 9, 2023.
 - In order to be HIPAA compliant, the telemedicine platform must provide the psychiatrist with a Business Associate Agreement (BAA) under which the vendor promises to protect the confidentiality and security of patient information.
 - For a list of vendors reporting to HHS’ Office for Civil Rights (the agency responsible for enforcing HIPAA) that they were compliant and do provide BAAs, click [here](#).

- DEA registration requirement for both state where controlled substance prescriber is located and for state where patient is located, if different
 - This requirement was in effect as of 2007, but only received attention when the DEA temporarily waived the requirement during the pandemic.
 - › Click [here](#) for more information on this requirement.
 - This requirement is temporarily waived through December 31, 2024.
 - We are waiting to see if the DEA goes back to requiring the additional DEA registration in the patient's state (if different), once the DEA issues the regulation on Prescribing Controlled Substances Via Telemedicine.

ADDITIONAL RESOURCE:

- Foley & Lardner's healthcare blog – you can subscribe (at no charge) [here](#).

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