



HPSO Physical Therapy Spotlight: Telehealth

Healthcare Providers Service Organization (HPSO), in collaboration with CNA, has published our *Physical Therapy Professional Liability Exposure Claim Report: 4th Edition*. It includes statistical data and case scenarios from CNA claim files, as well as risk management recommendations designed to help physical therapists and physical therapist assistants reduce their malpractice exposures and improve patient safety.

You may access the complete report, and additional Risk Control Spotlights, at: hpso.com/ptclaimreport.

This Physical Therapy Spotlight focuses on our analysis and risk recommendations regarding one of the most significant topics in the report: [Telehealth](#).

Telehealth involves the use of electronic communications and information technology to deliver health-related services remotely. Telehealth encompasses a range of clinical services, including patient monitoring, counseling and education, as well as administrative functions delivered via patient portals, text messaging and email. Physical therapy professionals provide services using telehealth as part of their scope of practice, incorporating elements of patient and client management as needed, to enhance patient and client interactions.

The American Physical Therapy Association (APTA) supports the inclusion of physical therapist services in telehealth policy and regulation in order to address the growing cost of health services, the disparity in the accessibility of health services, and the potential impact of health workforce shortages. More on [APTA's position on telehealth](#).

Potential Liability Risks and Guidance for the Use of Telehealth in Physical Therapy Practice

To help physical therapy professionals better understand the potential professional liability risks and guidance for use of Telehealth in physical therapy practice, this section provides a brief list of risks. While not exhaustive, this section imparts helpful tips intended to alert physical therapy providers to important considerations when embarking on providing telehealth services to patients/clients.

Licensure: A potential liability risk to physical therapists and physical therapy assistants (subsequently referred to collectively as physical therapy providers) and a potential barrier to providing physical therapy services remotely is related to licensure or certification. Before pursuing the ability to engage in interstate telehealth, physical therapy providers must review the state practice act of the state where the patient resides. The physical therapy providers must be licensed in the jurisdiction where the patient is located and must adhere to the laws defining scope of practice and telehealth in that jurisdiction. If a state practice act is silent regarding telehealth, then physical therapy providers should contact their [State Board of Physical Therapy](#) for clarification with respect to interstate practice and/or practice limitations before initiating services. The [Physical Therapy Compact](#) improves access to physical therapy services for the public and creates a pathway for physical therapy providers seeking to practice in multiple states.

Standard of Care: The provider/patient relationship can be established in the absence of physical contact between the physical therapy provider and the patient. Regardless of the delivery method of the physical therapy services, and identical to an in-person visit, once the relationship is established, the physical therapy provider has an obligation to practice in accordance with the relevant standard of care in performing professional services. Any physical therapy treatment and care, interventions, and referrals made during a telehealth visit will be held to the same standard of care as an in-person visit. Documentation of the telehealth visit should reflect the same standards of an in-person appointment, including documentation of the telehealth delivery method.

Consent to Treat: Obtaining a patient's consent to telehealth services is an essential step in the care process and is a recommended best practice. A general consent-to-treat form specifies the potential benefits, limitations and risks unique to telehealth, including equipment failures and privacy and security breaches. Additionally, standard language on the form should describe the nature of telehealth compared to in-person care regarding scope of service, as well as delineating the policies of your practice pertaining to communication, follow-up, record-keeping, scheduling, privacy and security, potential risks, mandatory reporting, provider credentials, and billing arrangements.

Telehealth Training. Physical therapy providers should educate themselves and receive training on the proper use of telehealth technology. The electronic communication must have audio and video capabilities that are used for two-way, real-time interactive communication. If possible, schedule mock patient visits to ensure that you are comfortable with the platform's tools and your facility's procedures including how to properly respond to equipment and software glitches. Prepare an emergency or contingency plan in case of technology breakdown, and communicate that information to the patient in advance of a telehealth visit. APTA offers a [Telehealth Certification](#) course in their Learning Center.

Patient selection. Not every patient is a suitable candidate for remote care. Adopt formal selection criteria, considering the patient's medical factors, activity level, motivation, as well as internet access and computer skills. When planning and providing telerehabilitation services, and through consultation with the patient/client, physical therapy providers should identify hurdles that may arise and promote possible solutions identified from the patient's/client's perspective and experience.

Potential Liability Risks and Guidance for the Use of Telehealth in Physical Therapy Practice cont.

Patient verification. Confirm the patient's identity prior to the telehealth visit, in order to prevent identity theft and fraudulent insurance billing.

Patient privacy. Remember that [HIPAA requirements](#) remain intact and apply to telehealth visits. Physical therapy providers must comply with federal and state legal requirements of health information privacy. If a physical therapy provider is utilizing telehealth that involves Protected Health Information (PHI), the provider must meet the same HIPAA requirements that apply to an in-person appointment. Physical therapy providers are encouraged to notify patients that use of third-party applications potentially introduce privacy risks, and providers should enable all available encryption and privacy modes when using such applications.

Security of Patient Records: There are many HIPAA-compliant telehealth solutions. Contracts with telehealth software vendors should state how the vendor is permitted and required to use PHI and that the vendor will not use or disclose PHI outside those parameters, as well as requirements for appropriate safeguards to prevent misuse of PHI. The physical security of telehealth equipment and the electronic security of data storage, retrieval and transmission should be maintained. Providers should be educated in risk management strategies including data and identity theft, activating wiping and/or disabling programs if devices are lost or stolen, and deleting stored health information on technology devices. Physical therapy providers also should be aware of any state laws and regulations applying to the collection and storage of PHI. To find out more about the state laws where you practice, consult with an attorney, your SBPT, or other local professional association.

Documentation: Telehealth sessions should be as thoroughly documented as all other patient visits. The use of standardized intake and consultation forms can help physical therapy providers achieve compliance with documentation parameters. All communications with the patient (verbal, audiovisual, or written) should be documented in the patient's healthcare information record in accordance with documentation standards of in-person visits. Therefore, document patient history, assessments, information used to make treatment decisions, follow-up instructions, referrals to specialists and discussions with referring providers. In addition, note that the service was provided through interactive telecommunications technology, indicating the location of the patient and the provider, as well as the names and roles of other individuals participating in the virtual visit. Also, document the reason the visit was conducted using telehealth, rather than face-to-face, in the patient's healthcare information record.

According to the [American Health Information Management Association](#), at a minimum, telehealth records should include:

- 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 future of telehealth and physical therapy

Lastly, the use of telehealth by physical therapy providers has proven effective in delivering virtual care and expanding patients' access to that care. Telehealth in physical therapy shouldn't be an emergency-only option, given its potential to improve access to physical therapy services. APTA continues to advocate for legislative and regulatory changes that permit PTs and PTAs to provide services via telehealth such as the [Expanded Telehealth Access Act](#). Nevertheless, as healthcare continues to evolve with the use of technology, it is physical therapy providers who must be conversant with the legal, ethical, and regulatory implications of their practice.



CASE STUDY:

[Click Here](#)

Physical therapy provider settles violations that it impermissibly disclosed patient information. In this case, the U.S. Department of Health and Human Services Office for Civil Rights (OCR) received a complaint alleging that the named PT Practice had impermissibly disclosed numerous individuals' protected health information (PHI), when it posted patient testimonials, including full names and full face photographic images, to its website without obtaining valid, HIPAA-compliant authorizations. OCR's investigation revealed that the PT Practice (1) Failed to reasonably safeguard PHI; (2) Impermissibly disclosed PHI without an authorization; and (3) Failed to implement policies and procedures with respect to PHI that were designed to comply with HIPAA's requirements with regard to authorization. The settlement agreement is an admission of civil liability by the named PT Practice who is required to pay \$25,000, adopt and implement a corrective action plan, and report compliance efforts for a one year period. OCR Director, Jocelyn Samuels, said of this case, "All covered entities, including physical therapy providers, must ensure that they have adequate policies and procedures to obtain an individual's authorization for such purposes, including for posting on a website and/or social media pages, and a valid authorization form."

Self-Assessment Checklist: Creating a Defensible and Compliant Record of Virtual Care

The checklist is designed to assist physical therapy providers in evaluating risk control exposures associated with their current practice. For additional risk control tools or to download the *Physical Therapy Liability Claim Report: 4th Edition*, visit [Healthcare Providers Service Organization](#) or [CNA Healthcare](#).

Compliance Measures	Status	Action Plan
Basic Business and Operational Considerations		
A written protocol is created, which delineates acceptable uses of remote care technologies , e.g., prescription refills, appointment scheduling, assessment, patient and specialist consultation, and education, among others.		
A thorough, documented due diligence evaluation is conducted of potential telemedicine and telehealth (TM/TH) partners, especially with regard to clinical and technical compatibilities.		
A business associate agreement is signed with all TM/TH partners , pursuant to HIPAA privacy rule requirements.		
A record is maintained of TM/TH partners' contact information , including business email addresses.		
A "memorandum of agreement" is written , reviewed by legal counsel and entered into with partner sites.		
The memorandum is checked to ensure that it provides specific answers to key questions about the partnership arrangement , including the following:		
• Who provides support staff?		
• Who pays for telecommunication connections?		
• Who supplies and maintains equipment?		
• What space is available for TM/TH encounters?		
• Who manages the billing process?		
A TM/TH coordinator is designated and a job description written , assigning the coordinator responsibility for providing administrative support for consultations/referrals, program functioning and system processes.		
A written TM/TH procedure manual is developed , which addresses a broad range of clinical processes that occur before, during and after consultations.		
The procedure manual is reviewed by affiliated healthcare providers to ensure that it conforms with practice guidelines issued by national associations.		
Uniform referral and scheduling guidelines are drafted and included in partnership agreements.		
A formal policy for reserving TM/TH equipment and space is promulgated , which includes a conflict resolution protocol.		
A written protocol is instituted to guide the patient selection process , which includes specific parameters for referral to TM/TH providers, such as patients who require the following types of treatment:		
• Chronic care management.		
• Acute, uncomplicated care.		
• Medication management.		
• Pre- and post-operative care.		
• Mental health therapy.		
• Nutrition services.		
• Specialty care referral.		

Compliance Measures**Status****Action Plan****Basic Business and Operational Considerations (continued)**

A consistent patient registration process is implemented for distant site facilities.

Formal procedures are established for patient testing and notification, including documentation of test results and follow-up measures in the patient healthcare information record.

A procedure to escalate care in emergency situations is adopted, which includes consulting with other providers, accessing backup technology for immediate use and arranging prompt in-person intervention if necessary.

Provider Fitness and Preparedness

Licensure verification records are maintained for physicians, nurse practitioners, physician assistants and other designated healthcare professionals (hereafter "providers") involved in the delivery of virtual care.

TM/TH credentialing, privileging and peer review processes are developed for providers, reflecting patient safety, jurisdictional and liability considerations.

Roles and responsibilities related to the provision of virtual care are clearly defined by regularly updated formal policies, which are disseminated to different medical disciplines and staff levels.

Guidelines are adopted to ensure that TM/TH services are offered only when there is a professional relationship between the provider and the patient, as defined by the following criteria, among others:

- **Knowledge of the patient and the patient's health status** through an ongoing personal or professional relationship.
- **A previously conducted in-person examination** of the patient.
- **Availability for appropriate follow-up care** at medically necessary intervals.
- **Past treatment of the patient in consultation with another professional** who has an ongoing relationship with the patient.
- **An on-call or cross-coverage arrangement** with the patient's regular treating healthcare professional.

Providers are formally instructed and regularly informed that the same standard of care applies to both TM/TH services and in-person care, and it is neither modified, enhanced nor reduced simply because a patient visit is conducted remotely.

Receipt of TM/TH-related policies and procedures is acknowledged in writing by providers, who are tested on their comprehension, including how and when to do the following:

- Schedule a consultation.
- Arrange for a consulting room.
- Set up necessary equipment.
- Establish network connections.
- Prepare and advise the patient and consulting provider, if applicable.
- Document consultation findings.
- Secure and back up required data.
- Prepare reports of virtual care episodes.

Compliance Measures**Status****Action Plan****Basic Business and Operational Considerations (continued)**

Educational and professional development requirements are specified in writing , including participation in pilot programs, as well as familiarity with clinical protocols, equipment capabilities and documentation requirements.		
Providers and staff members are tested for general computer proficiency , as well as knowledge of software applications and device features and connectivity, and records are maintained of testing results.		
Providers are trained on an ongoing basis in virtual care protocols , including proper documentation practices.		
Staff members are trained in incident reporting , and adverse TM/TH occurrences are tracked and trended for quality improvement purposes.		

Technical Safeguards

Organizational standards and technical specifications are developed to promote safe and effective delivery of care, covering such areas as bandwidth, interoperability, verification of data transmission, equipment maintenance and on-site technical support.		
A private and secure computer network is maintained to protect patient confidentiality and the integrity of data exchanged between sites and providers.		
Equipment and software are catalogued by make, model and serial number , and are tested for functionality and interoperability prior to use.		
Warranties on all TM/TH equipment are filed for easy reference , as are all equipment maintenance records.		
A system is created to swiftly inform staff of technical glitches – such as a disconnection with a remote site during a consultation – that may affect clinical outcomes.		

Privacy and Security Provisions

All TM/TH policies and procedures are reviewed periodically for compliance with extant regulations relating to patient privacy.		
Rules are established regarding the virtual consultation process and environment , including the following, among others:		
• TM/TH sessions are scheduled in a suitable clinical setting that offers both seclusion and professional amenities, when possible.		
• Consulting spaces are identified by clearly visible signs , indicating that a private patient session is in progress.		
• Appropriate security measures are implemented during the transmission process , including such critical functions as authentication, patient identification, data control and tracking, and Wi-Fi protected access.		
Measures are taken to protect the confidentiality of patient information , including the following, among others:		
• Electronic privacy safeguards, such as use of passwords and/or encryption.		
• Physical site security.		
• Securing of store-and-forward images and other patient records.		
• Confidentiality agreements for all personnel involved in TM/TH, including vendor staff.		

Compliance Measures

Status

Action Plan

Privacy and Security Provisions (continued)

Providers are trained to comply with HIPAA, CMS, CDC and other state and federal regulations and guidelines relating to protection of patient privacy and confidentiality.		
A policy is adopted prohibiting use of personal email accounts for the exchange of protected patient health information, and mandating use of network-based accounts or secure, facility-approved messaging applications.		

Clinical Documentation and Recordkeeping

A standard method of collecting and storing TM/TH information is implemented at both originating and distant sites, if applicable.		
TM/TH documentation formats are standardized and integrated with electronic patient health information records.		
Virtual care encounters are thoroughly documented, including, but not limited to, the following information:		
• Patient name and identification number.		
• Originating facility's name.		
• Distant facility's name, if applicable.		
• Registration information (i.e., patient identification number and provider assignment) at distant site, if applicable.		
• Date of service.		
• Referring provider's name, if applicable.		
• TM/TH provider's name.		
• Type of evaluation to be performed.		
• Informed consent form and signature.		
• Diagnosis/impression of providers.		
• Recommendations for further treatment.		
A formal process is established for obtaining and documenting patients' informed consent for TM/TH services, encompassing the following information, per the Federation of State Medical Boards :		
• Patient identification, including name and date of birth.		
• Names, credentials, organizational affiliations and locations of physician and/or other healthcare professionals involved in the visit.		
• Name and description of the recommended procedure.		
• Potential benefits and risks of the procedure.		
• Possible alternatives, including no treatment.		
• Risks of declining the treatment/service.		
• Confirmation that patient understands and accepts remote care delivery mode.		
• Contingency plans in the event of technical problems during the procedure.		
• Explanation of how care is to be documented and accessed.		
• Security, privacy and confidentiality measures to be employed, as well as extent of risk to privacy notwithstanding such safeguards.		
• Names of those responsible for ongoing care.		
• Reiteration of the right to revoke consent or refuse treatment at any time.		
• Consent of patient to forward patient-identifiable data to a third party.		

Quality Improvement

<p>A formal TM/TH quality improvement program and review process is implemented, which tracks the following quality of care indicators, among others:</p>		
<ul style="list-style-type: none"> • Equipment or connectivity failures. 		
<ul style="list-style-type: none"> • Number of attempted and completed visits. 		
<ul style="list-style-type: none"> • Average waiting times. 		
<ul style="list-style-type: none"> • Patient and provider satisfaction with virtual patient encounters. 		
<ul style="list-style-type: none"> • Patient or provider complaints related to virtual visits. 		
<p>Outcome metrics are decided upon to monitor and assess the clinical quality and efficiency of virtual care encounters, including the following:</p>		
<ul style="list-style-type: none"> • Patient complication and morbidity rates. 		
<ul style="list-style-type: none"> • Provider compliance with performance criteria, including productivity and patient satisfaction levels. 		
<ul style="list-style-type: none"> • Diagnostic accuracy. 		
<ul style="list-style-type: none"> • Adherence to evidence-based clinical protocols. 		
<ul style="list-style-type: none"> • Referral rates. 		
<ul style="list-style-type: none"> • Cost per case. 		
<ul style="list-style-type: none"> • Delays in accessing consultations, referrals or specialty practitioners. 		
<p>Outcome findings are reported to the Quality Improvement Committee (QIC) on an ongoing basis.</p>		
<p>Written guidelines are developed for auditing TM/TH practitioners and sharing internal review information – including virtual care-related adverse events – with established quality improvement and risk management programs.</p>		
<p>TM/TH-related policies, procedures and staff training efforts are reviewed every six to 12 months, with revisions based upon incident report findings and assessment of the program’s overall safety, effectiveness and efficiency.</p>		
<p>Regular equipment testing and maintenance is performed and documented, including post-installation testing and pre-session calibration, as well as ongoing quality checks of audio, video and data transmission capabilities.</p>		
<p>Routine audits of equipment and software functionality are conducted, and reports are prepared for the QIC.</p>		

This resource serves as a reference for healthcare organizations seeking to evaluate risk exposures associated with telemedicine and telehealth. The content is not intended to represent a comprehensive listing of all actions needed to address the subject matter, but rather is a means of initiating internal discussion and self-examination. Your organization and risks may be different from those addressed herein, and you may wish to modify the activities and questions noted herein to suit your individual organizational practice and patient needs. The information contained herein is not intended to establish any standard of care, or address the circumstances of any specific healthcare organization. It is not intended to serve as legal advice appropriate for any particular factual situations, or to provide an acknowledgement that any given factual situation is covered under any CNA insurance policy. The material presented is not intended to constitute a binding contract. These statements do not constitute a risk management directive from CNA. No organization or individual should act upon this information without appropriate professional advice, including advice of legal counsel, given after a thorough examination of the individual situation, encompassing a review of relevant facts, laws and regulations. CNA assumes no responsibility for the consequences of the use or nonuse of this information.

REFERENCES/ADDITIONAL RESOURCES

American Physical Therapy Association (APTA): Telehealth in Practice. <https://www.apta.org/your-practice/practice-models-and-settings/telehealth-practice>

American Health Information Management Association. Telehealth and Remote Patient Monitoring Technologies. <https://ahima.org/advocacy/policy-statements/telehealth-and-remote-patient-monitoring-technologies/>

Federation of State Boards of Physical Therapy. Telehealth in Physical Therapy. <https://www.fsbpt.org/Free-Resources/Regulatory-Resources/Telehealth-in-Physical-Therapy>

PT Compact. <https://ptcompact.org/>

HHS Telehealth resources for providers: <https://telehealth.hhs.gov/providers/>

American Telemedicine Association: Practice Guidelines for Telehealth: <https://info.americantelemed.org/practice-guidelines-interest>

National Consortium of Telehealth Resource Centers (NCTRC): <https://telehealthresourcecenter.org/centers/>

Physical Therapy Spotlight:

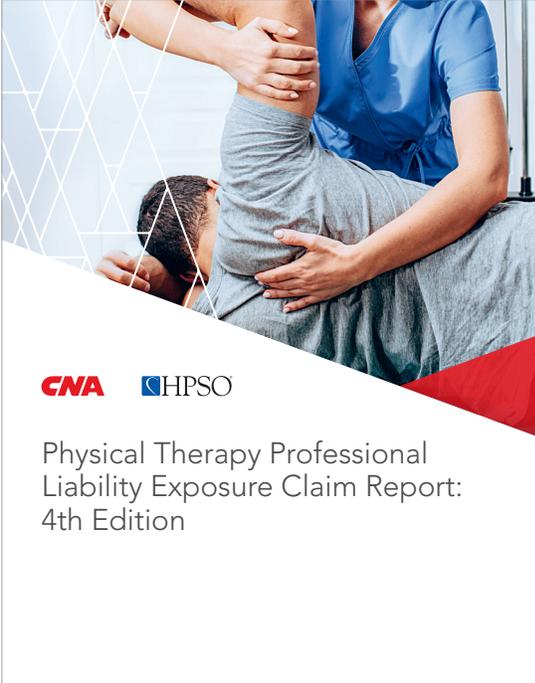
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This information was excerpted from HPSO and CNA's full report, *Physical Therapy Professional Liability Claim Report: 4th Edition*.

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