



WEBINAR

# TOP TAKEAWAYS

## TELEHEALTH IN THE HOT SEAT: PROACTIVE COMPLIANCE IN THE FACE OF HEIGHTENED ENFORCEMENT

Telehealth has become an integral part of care delivery, particularly in light of the waivers instituted during the COVID-19 pandemic. However, these flexibilities remain in flux, and at the same time, government scrutiny and enforcement of arrangements involving telehealth has intensified, culminating in a growing number of criminal cases. Taking thoughtful, proactive action to mitigate risk is a must for all entities engaging, deploying and developing virtual care tools and technologies. In this webinar, McDermott partners James A. Cannatti III, Amanda Enyeart and Brian Stimson set out a roadmap for supporting compliance on all fronts and reviewed lessons learned from recent enforcement actions.

1

Many states are reviewing their existing professional licensure rules in view of the temporary regulatory waivers and flexibilities introduced during the COVID-19 public health emergency. States are considering adding “existing patient” and “reciprocity” exceptions, and expanding their interstate medical, physical therapy, psychology and other compacts. The Uniform Law Commission is focused on developing model legislation that would ease remote prescribing rules, and some Medicaid programs are expanding coverage and easing enrollment requirements.

2

The Centers for Medicare and Medicaid Services has attempted to create a runway for permanent reforms. The Physician Fee Schedule Final rule added more than 60 services to the Medicare telehealth list and created a commission to study the effectiveness of telehealth flexibilities. Several telehealth reform bills are also pending in the US House of Representatives, including the Telehealth Modernization Act, which would remove the originating and geographic site restrictions for telehealth services.

3

Despite the ongoing pandemic, there has been no slowdown in enforcement or oversight of activities and arrangements involving telehealth in 2021. As we move toward a post-COVID-19 environment, expect to see this heightened scrutiny continue, especially in view of recent statements from the US Department of Justice (DOJ) and the Office of Inspector General. This enforcement focus may even include civil actions—in February 2021, Acting Assistant Attorney General Brian Boynton identified telehealth as a priority area for DOJ’s civil division.

4

In light of increasing enforcement, entities engaging in telehealth services should assess the risks through an informed lens. Enforcement activity for regulatory noncompliance can range from loss of professional licensure to civil and criminal fines, leading to erosion of public trust and reputation damage for both the company and individual executives and providers.

5

To mitigate risk, ensure that state-level requirements to establish a legitimate physician-patient relationship are satisfied. This involves evaluating the proposed arrangement under applicable state laws and regulations, some of which have changed in light of COVID-19 and may continue to evolve. Organizations should also be particularly diligent in the design and compliance oversight of marketing strategies to confirm that patients are reached through appropriate channels. When engaging with partners in a telehealth collaborations, make sure that each entity has a robust compliance focus, including with regard to its marketing practices and compensation arrangements.

VISIT [MWE.COM/HEALTH](https://www.mwe.com/health)

©9/20/2021 McDermott Will & Emery. McDermott Will & Emery conducts its practice through separate legal entities in each of the countries where it has offices. For a complete list visit [mwe.com/legalnotices](https://www.mwe.com/legalnotices).

McDermott  
Will & Emery