

The COVID-19 response has caused health care providers in Virginia to further explore and apply telehealth with the goals of:

- reducing spread
- alleviating system capacity demands
- providing an alternative to in-person care during the emergency period.

Doing so raises a number of legal, regulatory, and technological questions. This document seeks to provide answers to frequently asked questions for Virginia providers and direct them to available resources for further assistance.

If you have any questions or require additional information, please contact Brent Rawlings brawlings@vhha.com or Emma Valinski evalinski@vhha.com.

Licensure

During the state of emergency, can an out-of-state physician not licensed in Virginia furnish telehealth services to a Virginia resident (distant site out-of-state; originating site in Virginia)?

Yes, but only if there is an established practitioner-patient relationship. During the COVID-19 emergency, and in the interest of continuity of care, physicians licensed in other states and the District of Columbia are authorized to provide telehealth services to Virginia residents with whom they have an established practitioner-patient relationship. Establishing a new relationship with a Virginia resident requires a license from the Virginia Board of Medicine.

During the state of emergency, can a physician licensed in Virginia furnish telehealth services from a distant site in Virginia to an out-of-state resident (distant site Virginia; originating site out-of-state)?

This varies by state. For example, in response to COVID-19 the District of Columbia permits this, but only if the physician is providing health care services to patients “at a licensed healthcare facility located in the District of Columbia. This includes providing any services via telehealth.” In addition, this is only permitted if the physician “has an existing relationship with a patient who has returned to the District of Columbia” and “is providing continuity of healthcare services to said patient via telehealth” in accordance with the [Guidance for Use of Telehealth in the District of Columbia published March 12, 2020](#). See [District of Columbia Administrative Order 2020-02](#)

Similarly, in Maryland, a physician who holds a valid, unexpired license issued by an adjoining state may practice telehealth to the extent authorized by the home state license without obtaining a Maryland license, but only to “treat existing Maryland patients to provide continuity of care during the state of emergency.” See [Maryland Board of Physicians Notice March 20, 2020](#) and [Executive Order 20-04-01-01](#).

If a Virginia license is required, are there any expedited procedures for obtaining a license?

During the declared coronavirus emergency in Virginia, the board of medicine is streamlining its licensing process for the following professions: medicine and surgery, osteopathic medicine and surgery, physician assistant, podiatry, and respiratory therapy. The following are not required in the application process:

- Transcripts of professional education
- Form b employment verifications
- State verifications of licensure

In addition, the Board already has an expedited licensure by endorsement process for medicine and osteopathy applicants who:

- Have practiced in another state for 5 years
- Are board certified

See: <https://www.dhp.virginia.gov/medicine/covid19Info.htm>

Additionally, for Virginia licensed physicians whose license expired or became inactive in the past four years, the Board of Medicine has allowed a temporary waiver to reinstate or reactivate a license for a doctor of medicine or osteopathic medicine, a physician assistant, or a respiratory therapist. During the period in which the Governor's Declaration of Emergency is in effect, the Board of Medicine will waive the regulations relating to fees and continuing education for reinstatement or reactivation of licensure for doctors of medicine, osteopathic medicine, physician assistants, and respiratory therapists who held an unencumbered, active license within the past four years. To request reinstatement or reactivation, providers are instructed to submit an email to medbd@dhp.virginia.gov or call 804-367-4600.

Informed Consent and Documentation Requirements

What informed consent is required for telehealth services?

The Board of Medicine discourages rendering medical advice and/or care using telemedicine services without obtaining appropriate consents from requesting patients after disclosures regarding the delivery models and treatment methods or limitations, including any special informed consents regarding the use of telemedicine service. Appropriate informed consent should, as a baseline, include the following:

- Identification of the patient, the practitioner, and the practitioner's credentials;
- Types of activities permitted using telemedicine services (e.g. prescription refills, appointment scheduling, patient education, etc.);
- Agreement by the patient that it is the role of the practitioner to determine whether or not the condition being diagnosed and/or treated is appropriate for a telemedicine encounter;
- Details on security measures taken with the use of telemedicine services, such as encrypting date of service, password protected screen savers, encrypting data files, or utilizing other reliable authentication techniques, as well as potential risks to privacy notwithstanding such measures;
- Hold harmless clause for information lost due to technical failures; and
- Requirement for express patient consent to forward patient-identifiable information to a third party.

See [Guidance Document 85-12](#) (physicians) [Guidance Document 90-64](#) (nurse practitioners).

Can informed consent be obtained verbally for telehealth services?

Yes, informed consent can be obtained verbally, but evidence documenting informed consent for the use of telehealth services must be obtained and maintained. This can be accomplished through electronic forms. The Board of Medicine also permits informed consent to be documented through notes in the patient's health record.

See [Guidance Document 85-12](#) (physicians) [Guidance Document 90-64](#) (nurse practitioners).

Establishing Practitioner-Patient Relationship

Can a physician establish a practitioner-patient relationship using telehealth, without a previous face-to-face encounter or physical examination?

The Board of Medicine provides that, "while each circumstance is unique, such practitioner-patient relationships may be established using telemedicine services provided the standard of care is met." The physician must take steps to establish practitioner-patient relationship consistent with applicable law and standard of care. Physicians are discouraged from rendering telemedicine without (1) fully verifying and authenticating location and to the extent possible identity of the requesting patient (2) disclosing and validating the practitioner's identity and applicable credentials and (3) obtaining appropriate consents from patient after disclosures regarding the delivery models and treatment methods or limitations, including any special informed consents regarding the use of telemedicine services.



Prescribing controlled substances requires the establishment of a bona fide practitioner-patient relationship in accordance with § 54.1-3303 (A) of the Code of Virginia. A bona fide practitioner-patient relationship shall exist if the practitioner has (i) obtained or caused to be obtained a medical or drug history of the patient; (ii) provided information to the patient about the benefits and risks of the drug being prescribed; (iii) performed or caused to be performed an appropriate examination of the patient, either physically or by the use of instrumentation and diagnostic equipment through which images and medical records may be transmitted electronically; and (iv) initiated additional interventions and follow-up care, if necessary, especially if a prescribed drug may have serious side effects.

See [Guidance Document 85-12](#) (physicians) [Guidance Document 90-64](#) (nurse practitioners). See [Va. Code § 54.1-3303](#)

State Privacy Law

Does state privacy law allow flexibility on the types of communications technologies that can be used during the emergency?

It is unclear at this time. The Office of Civil Rights (OCR) in the US Department of Health and Human Services has issued a [Notification of Enforcement Discretion for Telehealth Remote Communications During the COVID-19 Nationwide Public Health Emergency](#). OCR will not enforce good faith use of everyday communications technologies (e.g., FaceTime or Skype). Providers are encouraged to notify patients that these applications potentially introduce privacy risks, and providers should enable all available encryption and privacy modes when using such applications. OCR has further stated that it will not impose penalties for lack of a Business Association Agreement with video communication vendors.

Virginia's health records privacy law [Va. Code § 32.1-127.1:03](#) generally mirrors federal HIPAA and HITECH laws and regulations, but state regulators have not issued any guidance to indicate that they would follow the same enforcement discretion issued by OCR.

Additional Resources

[Virginia Board of Medicine COVID-19 Information](#)

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