

HEALTHCARE

Risk Management Bulletin

August 2021 Issue



Telemedicine – Risk and Indemnity Coverage Considerations for Medical Professionals



While telemedicine is not a new concept, the COVID-19 pandemic has accelerated the global uptake of telemedicine and online medical platforms. Medical professionals, organizations, and regulators globally are looking at this space keenly. There are a number of issues applicable to the medical professional specialist risks which need to be examined.

In Malaysia, the Malaysian Medical Council (MMC) has come up with the Advisory on Virtual Consultation where it is clearly stated that doctors are allowed to engage in telemedicine, and they must endeavour to provide the same quality and standard of care as in-person medical care. There are generally four main domains of telemedicine. As different considerations may apply to each domain, healthcare providers need to be clear which domain(s) of telemedicine they are providing.

Varied Stakeholder Concerns

For individual doctors, their most immediate concerns usually center on the provision of tele-treatment:

- Which mode of technology is appropriate to provide treatment?
- How do we reasonably meet the standard of care without physical and/or personal examination of the patient?
- How do we secure patient data?
- What are the potential risks and liability exposure accompanying tele-treatment?
- How do we ensure that the right medication is delivered to the right patient?

For healthcare organizations (hospitals and clinics), they will need to assess their organizational readiness in implementing tele-medicine services. These include examining system requirements, and how to provide tele-medicine services in a secured environment whilst supporting their doctors to do their work efficiently and effectively. Unless there is a national framework and system for doctors to subscribe to, the investment requirements to build a secured platform and infrastructure may mean that only large hospitals, clinic groups, or specialist online portals would be able to provide the complete scope of tele-medicine services.

Four main domains of telemedicine:

1. Tele-consult or tele-treatment

Refers to interactions between remote healthcare professionals and patients/caregivers for the purposes of direct clinical care. The patient/caregiver is involved directly at one end of the interaction.

2. Tele-monitoring

Refers to collection of biomedical and other forms of data directly from patients/caregivers by remote systems which are used by healthcare professionals for clinical purposes such as vital signs monitoring and home nursing.

3. Tele-collaboration

Refers to interactions between (facility-based or mobile) onsite and remote healthcare professionals for clinical purposes.

4. Tele-support

Refers to the use of online services for non-clinical purposes to support the patient/caregiver (e.g. education and administration).



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For regulators, they will only be able to regulate services provided by medical professionals licensed and registered within their jurisdiction. It remains to be seen if doctors would be known as breaching local licensing requirements by providing tele-treatment (knowingly or unknowingly) to foreign patients.

Medical Indemnity Coverage for Medical Professionals

We focus on the provision of tele-treatment and consequently what healthcare establishments and individual doctors should look out for when arranging for their own medical professional liability insurance.

As a rule of thumb, healthcare establishments and doctors should contact their insurance/indemnity provider to understand the coverage for tele-medicine or tele-treatment. Most Medical Indemnity Coverage policies/certificates may not contain specific exclusions to tele-medicine, as most Insurers/ Takaful Operators view tele-medicine as just another means of healthcare establishment, and doctor providing medical services to their patients.

Importantly, healthcare establishments and doctors should check local regulations to confirm that telemedicine services are allowed in their jurisdictions.

Under the broad header of tele-treatment, MEDEFEND Insurers/ Takaful Operators would typically categorize the type of work into three areas and we will look at the coverage possibly provided under each category:

- **Tele-treatment provided in the licensed jurisdiction, for patients residing in the said jurisdiction (either full-time tele-consult set up, or to support or complement their existing clinic services)**
Policies/ Certificates could extend to cover medical services provided via telemedicine.
- **Incidental tele-treatment provided to existing patients, who may be currently based or residing outside licensed jurisdiction on a short-term basis (with a view to come back to the said jurisdiction)**
Policies/ Certificates could also extend cover for an existing patient (who has returned to his/her home country and is currently based or residing outside the said jurisdiction due to travel restrictions) via tele-treatment for follow-up. Coverage could be extended to the doctor for such telemedicine work on the basis that there is intention for the patient to return to the said jurisdiction for treatment and the presence of a continued doctor-patient relationship
- **Tele-treatment targeting foreign patients based outside licensed jurisdiction**
Policies/ Certificates are unlikely to provide coverage for such medical services targeting foreign patients residing outside the said jurisdiction. Such work would not be viewed as incidental overseas work to support the doctors' existing patients.

For any overseas work, a doctor would need to ensure that he or she is appropriately credentialed and licensed in the foreign country prior to conducting telemedicine work for the patient residing in the foreign country. If a doctor is found to be deliberately practicing without the appropriate license, such practice of medicine is contrary to the law and the policy will not provide coverage for such "illegal" services.

Please note that the above is based on general coverage position, without taking into consideration specific conditions of each claim, hence whether or not a claim is covered under policies/ certificates will always be subject to the full terms and conditions of each respective policies/ certificates.

Risk Management Tips:

We would caution healthcare establishments and doctors that there are some limitations on the remote provision of medical services and the application of appropriate legal principles should a dispute arise. As good risk management practices, doctors have shared with us the following tips based on their experience:

1. Consider setting up a standard disclaimer language in consent forms, highlighting some of the constraints with tele-treatment and having an upfront discussion with your patients on tele-medicine.
2. Having the first consultation in-person will help the doctor to assess if the patient and their medical conditions are suitable for tele-treatment.
3. Establish a process to facilitate tele-treatment. These can include confidentiality policies to safeguard patient information and records, communication protocols to suit the healthcare delivery mode, and familiarizing patients and/or caregivers with these policies and protocols.
4. Put in place a protocol for emergency situations. For instance, if you need to call for an ambulance should the patient collapse in the midst of the consultation, you will have to register the patient and collect the patient's location address upfront.

To learn more about medical indemnity coverage, visit medefend.com.my

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