

# AN ANALYSIS OF STATE TELEHEALTH LAWS AND REGULATIONS FOR OCCUPATIONAL THERAPY AND PHYSICAL THERAPY

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## ABSTRACT

This study conducted a scan of telehealth occupational therapy and physical therapy state laws and regulations. The laws and regulations were analyzed to determine the potential effect they could have on occupational therapists' and physical therapists' utilization of telehealth. The results indicate that the majority of occupational therapy and physical therapy boards are silent on telehealth. A handful of physical therapy laws and regulations address "consultation by means of telecommunication," but do not provide any guidance for practitioners seeking to provide direct telehealth-delivered services to patients. Of the few states that do provide guidance, policy had the potential to provide clarity or inhibit adoption. The findings suggest that as state boards consider crafting telehealth regulations, they should do so in a manner that facilitates, rather than hampers adoption, while upholding their providers to a high standard of care.

*Keywords: Laws and regulations, occupational therapy, physical therapy, policy, telehealth*

Telehealth is the use of electronic digital telecommunication modalities to deliver health care services across a distance. Historically regarded as a tool for rural communities that face health care provider shortages, telehealth is an increasingly valuable resource to expand care access in any geographic setting. Similarly, while telehealth has been employed primarily by medical professionals delivering clinical care services (i.e., typically physicians or nurses), a multitude of other health professionals are exploring ways to apply these technological tools to their professions.

Full implementation of the Patient Protection and Affordable Care Act (ACA; Pub. L. No. 111-148) is expected to increase the demand for allied health professionals such as occupational therapists (OTs) and physical therapists (PTs). Telehealth technologies are poised to offer mechanisms to extend practices and provide services to meet these anticipated needs. Telehealth will only grow in its importance to these health care professionals as health systems become more patient-centered, and adopt more team-based approaches to deliver services. Despite the rapid rise in interest in technology-enabled care, state policymakers and regulatory boards have been slow to respond.

In March 2013, the Center for Connected Health Policy (CCHP) released a scan of state reimbursement laws and regulations on telehealth that revealed that state telehealth reimbursement policies differ significantly (CCHP, 2013). These policies have the potential to either threaten or facilitate the expansion of telehealth in any given state.

In an effort to determine how occupational therapy and physical therapy boards are addressing telehealth, the researchers conducted a review of laws and regulations related to these two professions. This paper reports upon the findings of the scan, and analyzes the potential effects of these laws and regulations on telehealth utilization by OTs and PTs. It also suggests that as telehealth becomes more critical to meeting health-related needs of those newly insured as a result of the ACA, regulatory boards should begin to address telehealth provision in a way that fosters appropriate adoption while upholding providers to the same standard of care as would be required in an equivalent in-person encounter.

## METHODOLOGY

Each state's occupational therapy and physical therapy licensing board websites were reviewed for applicable laws and regulations during the month of February 2014. Each of the Board's cited laws and regulations were accessed on the LexisNexis search engine to ensure that the material was current. Additionally, each state's relevant Administrative Code sections and statutes were searched using the following terms: telecommunication, telehealth, telepractice, tele-, telemedicine, telerehabilitation, teletherapy, video and electronic. Laws and regulations containing these search terms were examined for relevance, and any policies outlining

definitions for telehealth-related terms, or rules for OTs or PTs utilizing telehealth to deliver services or provide consultation to another health professional were flagged and noted. Language referencing a therapist's ability to complete continuing education units through video or electronic means was disregarded for this study, as were any policies directly related to supervision of other health professionals via telecommunications systems. States with policies representing the spectrum of current occupational therapy and physical therapy telehealth laws and regulations were identified as case studies for this article, and were used to make general observations about what a law or regulation's impact might be on telehealth utilization in these fields.

## FINDINGS

The majority of states lack telehealth laws and regulations (regs) that specifically apply to OTs and/or PTs. States that do have applicable laws or regulations vary widely in their approaches. Table 1 summarizes these initial findings.

Table 1. State Occupational Therapy and Physical Therapy Laws and Regulations

State	OT laws/regs	OT additional requirements to normal law/regs	PT laws/regs	PT additional requirements to normal law/regs
Alabama	--	--	--	--
Alaska (12 AK Admin. Code 54.530 & 54.825, 2008)	✓	* Must be physically present in state when performing telerehabilitation	✓	* Must be physically present in state when performing telerehabilitation
Arizona	--	--	--	--
Arkansas (AR Code § 17-93-102, 2009)	--	--	✓	--
California (16 CA Code of Regs. 4172, 2013)	✓	* Informed consent acquired at distant site * Make a determination about whether in-person evaluation or intervention is necessary based on certain criteria	--	--
Colorado (CO Occupational Therapy Practice Act, 2013)	✓	--	--	--
Connecticut	--	--	--	--
District of Columbia	--	--	--	--
Delaware	--	--	--	--
Florida	--	--	--	--
Georgia	--	--	--	--
Hawaii	--	--	--	--
Idaho	--	--	--	--
Illinois (IL Occupational Therapy Practice Act, 2013)	✓	--	--	--
Indiana	--	--	--	--
Iowa	--	--	--	--
Kansas	--	--	--	--
Kentucky (201 KY Admin Reg. 22:160, 2014 & KY House Bill 177, 2000)	✓	* Must obtain informed consent	✓	* Must obtain informed consent
Louisiana	--	--	--	--
Maine	--	--	--	--
Maryland	--	--	--	--
Massachusetts	--	--	--	--
Michigan	--	--	--	--
Minnesota	--	--	--	--
Mississippi (Code of MS Rules 50-034-001, 2008)	--	--	✓	--
Missouri	--	--	--	--
Montana	--	--	--	--
Nebraska	--	--	--	--
Nevada	--	--	--	--
New Hampshire (NH Physical Therapy Practice Act, 2002)	--	--	✓	--
New Jersey	--	--	--	--
New Mexico	--	--	--	--
New York	--	--	--	--
North Carolina	--	--	--	--
North Dakota (ND Admin. Code 61.5-01-02-01, 2006)	--	--	✓	* Written or verbal consent
Ohio	--	--	--	--
Oklahoma	--	--	--	--
Oregon (OR Revised Statute, § 688.030, 2007)	--	--	✓	--
Pennsylvania (PA Physical Therapy Practice Act, 2008)	--	--	✓	--
Rhode Island	--	--	--	--
South Carolina	--	--	--	--
South Dakota	--	--	--	--
Tennessee	--	--	--	--
Texas	--	--	--	--
Utah (UT Physical Therapy Practice Act, 2009)	--	--	✓	--
Vermont	--	--	--	--
Virginia	--	--	--	--
Washington (WA Admin. Code § 246-915-187, 2011)	--	--	✓	* Must identify in the patient record that the physical therapy occurred via telehealth.
West Virginia	--	--	--	--
Wisconsin	--	--	--	--
Wyoming (Code of WY Rules 006-062-001, 2010)	--	--	✓	* Written or verbal consent

The results indicate that the majority of state occupational therapy and physical therapy regulatory boards are silent on telehealth-related issues. Only a handful of physical therapy laws and regulations address “consultation by means of telecommunication,” but do not offer guidance for providing direct telehealth services to patients. Of the few states that provide some guidance, the study found that the policy had the potential to provide clarity for OTs and PTs, or inhibit the adoption of telehealth. These categories are examined below.

## TELEHEALTH PARITY LAWS AND REGULATION

A small number of state occupational therapy and physical therapy telehealth laws and regulations hold OTs and PTs to the same standard of care whether services are provided in-person or via telehealth, thereby maintaining patient safety.

Illinois achieved this feat of parity by incorporating telehealth into the definition of occupational therapy. The definition simply states, “Occupational therapy may be provided via technology or telecommunication methods, also known as telehealth, however the standard of care shall be the same whether a patient is seen in person, through telehealth, or other method of electronically enabled health care” (Illinois Occupational Therapy Practice Act, 2013). Illinois laws and regulations make no further mention of additional requirements for telehealth use in occupational therapy.

Similarly, Mississippi’s physical therapy administrative code includes telehealth under the definition of “practice of physical therapy” stating, “Telehealth is an appropriate model of service delivery when it is provided in a manner consistent with the standards of practice, ethical principles, rules and regulations for Mississippi physical therapy practitioners” (Code of Mississippi Rules 50-034-001, 2008). Similar to Illinois law, Mississippi laws and regulations place no further requirements or restrictions on telehealth use in physical therapy.

These policies demonstrate states’ ability to allow their health professionals to utilize telehealth to deliver services, while also ensuring a high standard of care is maintained. Telehealth is treated as a tool for the professional to use, and not distinguished or treated differently from in-person care. Telehealth is neither allowed to meet a lower standard of care, nor required to meet a higher standard than in-person delivered services.

## TELEHEALTH CONSULTATION LAWS AND REGULATION

Several states limit telehealth-related regulations to the provision of consultative services. By limiting the use of telehealth to consultations, it would appear that for these states, PTs or OTs may only use telehealth to act as a consultant to another health care professional and not render services directly to a patient. For example, Arkansas’s Board of Physical Therapy Practice Act (2009) defines “consultation by means of telecommunication” as the “rendering of a professional opinion, expert opinion or advice by a physical therapist to another physical therapist or health care provider through telecommunication.” Other states such as North Dakota, Wyoming, Utah, and Pennsylvania have similar definitions. These states also make a licensure exception for licensed out-of-state physical therapists that provide consultation to a licensed in-state therapist (Pennsylvania Physical Therapy Practice Act b, 2008). Direct patient care is not covered by these regulations, or in any other section, seemingly not allowing a PT or OT to provide direct telehealth-delivered services.

Applicable laws and regulations typically reemphasize that PTs and OTs must comply with existing federal and state laws regarding privacy and security. North Dakota and Wyoming’s administrative codes provide further guidance, indicating that PTs should incorporate any records resulting from a consultation by means of telecommunication into the patient’s record, and comply with applicable confidentiality laws and regulations (Code of Wyoming Rules 006-062-001, 2010; and North Dakota Administrative Code 61.5-01-02-01, 2006). These requirements merely intend to ensure compliance with laws, regulations and care standards that would exist regardless of whether the PT engaged in a telehealth-delivered consultation. However, the two states also require PTs to obtain a patient’s written or verbal consent prior to a telehealth-delivered consultation, adding an extra step PTs must take when utilizing telehealth. Approximately half of states have additional informed consent requirements related to telehealth in the provision of medical services, so it is not surprising to see this policy replicated for PTs and OTs.

## TELEHEALTH-INHIBITING LAWS AND REGULATION

A few states have more restrictive telehealth laws or regulations, requiring OTs and/or PTs to comply with standards above and beyond the normal standard of care. This approach often acts as a barrier to telehealth utilization.

## ALASKA

Alaska is the only state whose administrative code has specific written telehealth standards of practice for both OTs and PTs. For the most part, the administrative code outlines normal standard of care procedures. For example, it allows OTs and PTs to conduct one-on-one consultations, including initial evaluation via telerehabilitation. The regulation also clarifies that the rules and requirements physical therapists are already expected to adhere to during in-person services also apply for telehealth-delivered services, including maintaining the same ethical conduct and integrity and ensuring client confidentiality and HIPAA compliance (Alaska Administrative Code 12 AAC 54.825 and 12 AAC 54.530, 2008).

The unique condition included in Alaska's telehealth standards is that OTs and PTs must be physically present in the state while performing telerehabilitation. This means that even if an OT or PT has a license to practice in Alaska, they may not treat a patient via telehealth when they are physically located in another state.

## CALIFORNIA

California's Board of Occupational Therapy recently approved a new regulation, effective April 2014, that establishes and clarifies standards and expectations associated with the delivery of occupational therapy services via information and communication technologies. The rule clarifies that OTs and occupational therapy assistants (OTAs) using telehealth must have a valid and current license, exercise the same standard of care for telehealth-delivered services as in-person services, provide services consistent with the section of California's Business and Professions Code relating to occupational therapy, and comply with all other provisions of the Occupational Therapy Practice Act and related regulations (California Code of Regulations 16 CCR 4172, 2013). As already required in California Business and Professions Code 2290.5 (2011), oral informed consent must be obtained prior to the use of telehealth to deliver health services.

What distinguishes California's occupational therapy regulations is the requirement that an OT must assess whether or not an in-person evaluation or intervention is necessary, and consider a number of specific factors outlined in the rule, before a telehealth visit can take place. If an in-person encounter is determined to be more appropriate, an on-site therapist, OT, or OTA must be available. This requirement is unique to California OT regulations and is not required in any other telehealth related law or regulation in the state.

## KENTUCKY

In 2000 Kentucky passed House Bill (HB) 177, which defines telehealth and addresses the responsibilities of OTs and PTs utilizing telehealth. The law requires OTs and PTs to obtain informed consent from the patient before services are rendered through telehealth (which is also required of other professionals, such as physicians), and that the confidentiality of the patient's medical information is maintained, as required by law. It also prompts the boards of occupational therapy and physical therapy to create rules to address abuse and fraud; fee-splitting; and telehealth use in the provision of occupational therapy, physical therapy and continuing education (HB 177, 2000).

In March 2014 the Kentucky Board of Physical Therapy approved a rule that makes Kentucky the US state with the most detailed telehealth regulations related to physical therapy. The rule lays out a number of tasks that a PT using telehealth must complete upon initial contact or throughout the treatment of a patient:

- "Make reasonable attempts to verify the identity of the patient;
- Obtain alternative means of contacting the patient;
- Provide to the patient alternative means of contacting the therapist;
- Provide contact methods of alternative communication the therapist could use for emergency purposes;
- Not using personal identifying information in non-secure communications;
- Inform the patient and documenting consent;
- Be responsible for determining and documenting that telehealth is appropriate in the provision of physical therapy;
- Limit the practice of telephysical therapy to the area of competence in which proficiency has been gained through education, training and experience;
- Document which physical therapy services were provided by telephysical therapy;
- Follow the record keeping requirements of state law;
- Ensure the confidentiality of communications; and
- Be licensed or authorized by law to practice where the patient is physically located" (KY Administrative Regulations 201 KAR 22:160, 2014).

While many of the above requirements would need to be met as a result of other laws or regulations the PT is required to follow, regardless of the proposed regulation, the Kentucky Board of Physical Therapists opted to re-emphasize them for the use of telehealth.

## DISCUSSION

The study found that the occupational therapy and physical therapy laws and regulations that are the most likely to facilitate the use of telehealth include language that explicitly permits telehealth, as well as statements that OT and PT tele-practitioners must adhere to the same standards as expected for in-person service delivery. These laws and regulations contain straight-forward language that clarifies that while OTs and PTs are allowed to use telehealth to deliver direct services, they will still be held to the same confidentiality, record keeping, licensing, privacy, ethics, and care standard laws and regulations that they would otherwise need to follow for in-person delivery.

In contrast, states that either do not address telehealth at all, or only address it in terms of a consultation model of care, can discourage telehealth adoption by leaving OTs and PTs unclear about whether telehealth is an acceptable form of service delivery.

States that incorporate extra telehealth requirements for OTs and PTs risk unnecessarily deterring telehealth use. An example of this is California's Occupational Therapy regulation which places additional burdens upon the OT or OTA before a service via telehealth may be delivered. As noted above, the California Occupational Therapy Board requires that an OT or OTA must determine if an in-person visit is more appropriate before a telehealth visit can take place. If so, an on-site therapist, OT, or OTA (depending on whether the visit is an evaluation or intervention) must be available. This rule raises a number of concerns:

- In order to sufficiently consider the factors outlined in the regulation, an OT may need to first evaluate the patient. If this evaluation cannot take place via telehealth (since these factors need to be taken into account prior to a telehealth-delivered encounter), then it must take place in-person, effectively eliminating telehealth as an option for evaluation.
- It is unclear whether the regulations require this determination to be made before each and every telehealth-delivered service. The current language appears to require the in-person evaluation to take place before any telehealth delivered service occurs, regardless of whether it is the first treatment or one in a series.
- Telehealth is often used when patients do not have local access to a particular provider. Therefore, it may not be feasible for an OT or OTA to be on-site in the event that the distant site OT or OTA determines an in-person service to be more appropriate.

This additional requirement by the California Board of Occupational Therapy negates an important benefit of telehealth, delivering care from a specialist when one is not available locally, and severely hampers patient access to OTs.

Other requirements that are not required in law, or by any other profession, potentially inhibit telehealth use. For example, the California regulation requires the OT to obtain oral informed consent prior to using telehealth to deliver health services. The provision in California Business and Professions Code Section 2290.5(b) (2011) states that the originating site's (the patient's location) health care provider shall obtain the oral informed consent. If the patient decides to directly initiate a telehealth consultation without the presence of a healthcare provider at an originating site, informed consent is not required under the California Business and Professions Code. The California OT regulation now places an additional burden on the OT who presumably would be at the distant site (the location of the treating specialist) if telehealth is used. Such regulations are likely disincentives for OTs to utilize telehealth as a means of service delivery in California as it creates an additional administrative burden, potentially exacerbating provider shortages in some areas throughout the state.

Items included in Kentucky's PT regulation are largely consistent with existing law or common practice. However, it may necessitate PTs providing telehealth-delivered services to develop separate and additional procedures to ensure they can document compliance with all of the regulation's requirements. Although it is reasonable for licensing boards to develop rules designed to protect patient safety, privacy, confidentiality, system security and provider efficacy, in many cases these protections are already covered in other laws and regulations, with proper documentation procedures already in place. Adding another layer of regulation will only serve to complicate matters. As is the case for California's OTs, Kentucky's over-regulation of telehealth can potentially deter PTs from engaging in this service delivery model.

While the California occupational therapy and Kentucky physical therapy regulations are currently unique cases, there is the danger that similar policies will be replicated by other California or Kentucky professional boards, or in other physical or occupational therapy boards in other states. For example, Alaska's Physical Therapy and Occupational Therapy Board replicated their telehealth policy for both the OT and PT professions (Alaska Administrative Code 12 AAC 54.825 and 12 AAC 54.530, 2008). Wyoming and North Dakota's nearly identical telehealth language in regulation further demonstrates the potential for boards in different states to use existing rules and regulations as a template for their own (Code of Wyoming Rules 006-062-001, 2010 & North Dakota Administrative Code 61.5-01-02-01, 2006).

## CONCLUSION

Telehealth use and impact for occupational therapy and physical therapy is slowly being explored by states. Most boards remain silent on the issue, and the small number of boards that have ventured into regulating its use have taken various approaches. However, they represent a small percentage. Some state boards constructed legal and regulatory language to clearly allow for telehealth use that adheres OTs and PTs to the same laws and regulations expected for an in-person service. These laws and regulations were found to have the greatest potential to advance telehealth use while simultaneously protecting patient safety and professional integrity. Other state boards enacted more explicit and sometimes potentially restrictive policy, as was the case in a few states such as California, where restrictions placed on telehealth-delivered occupational therapy far exceed what would be the case for an in-person service.

Telehealth standards and regulations created by state OT and PT licensing boards will likely increase, since both the American Occupational Therapy Association (AOTA) and the American Physical Therapy Association (APTA) released guidelines for practice using telehealth. These guidelines outline many of the same policies seen in state law and regulation, including the requirement that OTs and PTs adhere to the same care, ethics, documentation, and privacy standards as in-person service delivery (AOTA, 2013; APTA, 2009). It is anticipated that as states and professional boards consider regulating telehealth, they will look to existing laws and regulations to craft their language. States should be aware of the benefits telehealth provides in terms of meeting the increased patient population spurred by the ACA, and carefully write their laws and regulations in a manner that maintains safety, but also does not gratuitously impede telehealth adoption.

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