Telehealth – FAQs

When can telehealth be used
Telehealth can be used whenever it is clinically appropriate. The use of telehealth can support clinical care (consultation, examination, review, therapy etc) case consultation / review, education and supervision.

Telehealth should be offered to a patient as an alternative modality of care that can support their healthcare journey. Clinicians and patients should discuss the benefits and be assured the health care standards will be maintained at the highest level.

The opportunities to integrate telehealth into clinical practice are endless and can occur across all NSW Health settings including first response, emergency, admitted and non-admitted clinics. Even when the patient is attending in person, telehealth should be offered to support carers to be involved in the care of the patient and also provide the opportunity to integrate care with other providers involved in the patients care.

Consent

Do you need to gain / keep formal consent from a patient when offering or providing Telehealth services?

Patient consent to medical treatment can be in writing, given verbally, or implied by the patient's participation or acquiescence to treatment (for example, holding out their arm to receive a needle).

You should be able to imply a patients consent to a consultation (whether face to face or by video conferring) based on their participation in the consultation. No special consent is required to offer or provide services via telehealth modalities.

However, ideally, patients should be offered the option of a face to face or telehealth consult, and should be informed of any limitations for either approach.

For research purposes, ethics applications will require approval of participation and may also include the recording of clinical sessions. This documentation will need to be kept and the process requirements will be included as a part of the ethics approval process.

Recording

What permissions are necessary i.e. written/oral from the patient/all participants to record any Telehealth sessions be they clinical or administrative?
Patients or staff should not be recorded without their knowledge and consent.

If you are seeking permission a discussion should occur with the patient prior to event to ensure that the patient has been provided sufficient time to ask questions and consider the reasons and benefits to record the session. Information will need to be provided to the patient in regards to the use, storage and management of the recording. This needs to be in line with existing NSW Health Policies. The recording can be provided to the patient.

If a consult is recorded, it would be enough to begin the recording by saying – 'this is being recorded – are you happy to proceed on that basis?', and include the response in the recording. Separate

(additional) written consent would not be necessary. If the patient's agreement to being recorded is not itself recorded, the Health professional should note (in the health record) that the patient provided consent before the recording commenced.

Patients should be aware that if they do not consent to a consult being recorded, that does not mean that no record will be kept. The Health Professional would still be obliged to keep a written record of the consultation in the health record.

When is it appropriate to record a TELEHEALTH session?
Whilst rare to record a clinical consult, recording a consult may be appropriate. It could be replayed for another health professional involved in the case of the patient, to document progress of a treatment plan, to manage risks, or for education and training. If a session is being recorded and the recording will be used for purposes not related to the care and treatment of the individual patient (i.e. for research or training) then written consent of the patient should be obtained for that use.

How do I get a session recorded?
For Pexip recordings you can contact the Conference Services Team on 1300 679 727. To enable recording capability for skype for business speak with your Telehealth Manager or Lead.

Credentialing

What are the key things that should be included in an MOU / SLA between districts for Telehealth services?

Telehealth is the modality of delivery, existing SLA and MOU templates that support clinical service delivery will apply.

Credentialing of service providers will occur as part of the normal processes. This ensures that providers are credentialed to provide the service within their scope of practice. The mode of delivery (face to face or via telehealth) does not require specific credentialing.

Some additional requirements should include technology implications and escalation processes if connection issues are experienced and inclusions to support a quality user experience at the clinician and patient end. The local Telehealth Manager will be able to provide advice on adjustments to support a quality telehealth service to be implemented.

What credentialing if any is needed for a clinician to provide telehealth?

No separate credentialing requirements are required to provide clinical services via telehealth.

What is classified as advice as opposed to providing clinical services across boundaries?

Providing advice is considered a normal expectation under the employment of NSW Health. This is discussed in detail in the NSW Health Policy: *Credentialing & Delineating Clinical Privileges for Senior Medical Practitioners & Senior Dentists PD: 2019_011.* This is not the clinical management of a patient and the primary provider maintains responsible for the patients care plan. Credentialing is not required for the provision of advice.

How are 'ad hoc' advice between practitioners defined? Does that mean if a Telehealth clinic is created it is not really ad hoc?

If advice is provided to a patient or another clinician as a once off scenario, or on an urgent basis, it might be reasonable in all the circumstances for the advice to be provided using the clinician's own

device (for example). However, if a telehealth clinic is established to see patients with appointments and more structure, it would not be reasonable for this service to run without appropriate secure technology.

Providing advice to and from jurisdictions other than NSW

How does differing state laws/ LHD policy impact Telehealth consult if the clinician is conducting the consult while physically located in another jurisdiction?

The Australian Health Practitioner Regulation Agency (AHPRA) is the organisation responsible for the implementation of the National Registration and Accreditation Scheme across Australia. The role of the Agency Management Committee is to oversee the affairs of AHPRA, to decide its policies, and to ensure AHPRA functions properly, effectively and efficiently working with the National Health Practitioner Boards.

AHPRA works with 15 National Health Practitioner Boards in implementing the National Registration and Accreditation Scheme.

Within Australia
Registration

The National Law for the registration of medical, nursing and allied health practitioners means that registered practitioners can now legally practice in all jurisdictions in Australia.

Medical Board of Australia: https://www.medicalboard.gov.au/Codes-Guidelines-Policies/FAQ/Information-interjurisdictional-technology-consultations.aspx

The Board expects that medical practitioners:

- providing medical services to patients in Australia will be registered with the Board regardless of where the practitioner is located
- consider the appropriateness of a technology based consultation for each patient's circumstances
- comply with the requirements of the Health Practitioner Regulation National Law as in force in each state and territory (the National Law) and the Board's registration standards, codes and guidelines including the *Professional Indemnity Insurance Registration Standard* which requires that a medical practitioner is covered for all aspects of their medical practice
- who conduct technology based consultations with a patient who is outside Australia establish whether they are required to be registered by the medical regulator in that jurisdiction (for example, the General Medical Council for a patient in the United Kingdom)
- ensure that their patients are informed in relation to billing arrangements for consultations and whether the patient will be able to access Medicare or private health insurance rebates.

Conduct (misconduct)

Conduct complaints and investigations are managed in the jurisdiction in which the conduct in question occurred. Therefore a practitioner whose principal place of practice is in NSW who misconducts themselves when providing telehealth advice to a patient whilst at a conference in Melbourne would have that matter dealt with in Victoria. Medical Defence Organisations may have views as to whether they would assist a practitioner respond to a conduct issue in another jurisdiction

Performance (impairment)

If a health practitioner has an incident being dealt with as a performance issue or a health issue, it would be managed in the jurisdiction of their principal place of practice.

Negligence claims

Patients can commence claims in the jurisdiction where the incident occurred or where they reside. There needs to be a connection between the claim and where it is filed. This means that if advice is provided outside NSW, patients may be able to choose which jurisdiction to bring their claim. Some jurisdictions are able to award higher amounts of compensation than others and this would be a consideration. Generally we want any claims against NSW Health health professionals to be filed in NSW Courts. This is so they can be managed by local lawyers according to NSW laws, thereby saving costs. Whether insurance cover would apply to claims commenced in other jurisdictions would also need to be considered.

Insurance

The existing insurance arrangements for NSW Health staff are as follows:

- All employee doctors including Level 1 Staff Specialists (including when treating private patients) and Level 2-5 Staff Specialists when treating public patients are covered by the legal liability section of the Treasury Managed Fund Statement of Cover (currently version 4.1.1) ('TMF').

- Relevantly, sub-clause 4.1(a) of the TMF provides that the TMF covers all sums which the TMF Agency becomes legally liable to pay by way of compensation and damages in respect of claims, caused by an occurrence, in connection with the activities of that agency worldwide and happening during the period of cover. Sub-clause 4.1(c) extends this cover to an employee of a TMF Agency, subject to the exclusions in clause 4.3.

- Where such an employee is delivering services within the scope of their employment, acts reasonably in the circumstances and makes full and frank disclosure of all relevant circumstances, they will likely be covered by the liability section of the TMF, subject to the exclusions in clause 4.3.

- For Level 2 to 5 Staff Specialists exercising rights of private practice and who have entered into a contract of liability coverage for indemnity under the TMF, there is indemnity in respect of services provided to private rural and/or paediatric patients in or at public hospitals or as part of other services provided by the Public Health Organisation.

- For Visiting Medical Officers (VMOs), indemnity for particular services will depend on their specific contract of liability coverage. We note that the TMF will not cover any claim that does not fall within the terms of coverage set out in the contract of liability coverage between the Local Health District and the VMO.

The question of whether or not a service is within one's scope of employment (or specifically set out in the contract for VMOs) may depend on the local policies of the organisation. Currently, the 'Guidelines for the use of Telehealth for Clinical and Non Clinical Settings in NSW' and the 'NSW Health Telehealth Framework and Implementation Strategy 2016-2021' appear to be silent on circumstances where patients access services using their own devices outside of Australia and unaccompanied. Where there is no documented or agreed protocol, there may be a risk that a service is not considered to be within a practitioner's scope of employment.

Outside Australia

People are increasingly accessing services on their personal devices remotely and unaccompanied, whilst outside Australia. We that in most cases the patient has a chronic condition, a management plan and regular scheduled appointments with a practitioner.

In general, there appears to be an unquantifiable legal risk in that a practitioner needs to ensure that providing services to a patient located in another country does not breach any legal requirements of that country, and the legislation of each country varies globally. For example, a practitioner may need to comply with the registration requirements of the medical regulator of the jurisdiction in which the patient is located before delivering medical services to the patient. Issues of liability and choice of law/jurisdiction may also arise.

The legal risks with providing services overseas are impossible to quantify and not recommended without a thorough review of such services and the incorporation of explicit advice about this in policy. This may include considering whether the Telehealth service is clinically necessary or whether there are alternative options, such as rescheduling the appointment or advising the patient to seek the advice of a local practitioner at their overseas location. It would also be advisable to develop a protocol where a preamble is used when a patient signs into a service, which states that the advice is provided to the patient on the understanding that they are in Australia and the patient must let the practitioner know if this is not the case.

Service Provision and Access

Can you refuse to provide a service if you don't think it is clinically appropriate to deliver by telehealth?

Yes, this will need to be explained to the patient, carers or other providers (if required). Generally, a practitioner should be satisfied that an examination or observation using a method such as a Telehealth videoconference can be carried out with sufficient skill and care so as to form an opinion about a person. The practitioner should be competent at communicating over the relevant medium (in this case, videoconferencing) and using any remotely controlled devices involved, as well as understand the possible limitations of the telehealth process. Such limitations could include an inability to do a hands-on assessment where required, lack of appropriate technology or potential issues with the quality of images or audio and video links.

There may be alternatives in regards to who can provide support at the patient end to assist in ensuring that it is clinically appropriate.

Can a clinician identify participants not suitable for Telehealth e.g. dementia, disability or is it a case by case determination?

Patient's should be assessed on a case by case basis and based on their functional capacity, rather than on their condition or diagnosis.

Where a patient is assessed as not having capacity it may still be possible for them to participate in a telehealth consultation with their parent/guardian/person responsible.

Can you provide telehealth appointments to people on holidays in Australia and abroad?

Technically, it is possible to provide service and the situation would need to determine the provision of service. Generally not recommended, a clinical decision is required to determine the need to continue the service which will take into account the service required and time away from home or possibility to transfer care to a local provider whilst away. See advice **Providing advice to and from jurisdictions other than NSW** for further information.

Providing advice in the event of an emergency or supporting continuity of care of a patient receiving treatment overseas would be considered appropriate and a part of normal expectations.

Can a clinician Medical Officers (MO) refuse to provide support services via video if the LHD has developed an appropriate Model of care (MoC) to use when there is no MO onsite?

This is an employment / code of conduct issue for the LHD to manage with their staff.

Using telehealth for assisted (Senior Doctor to Inexperienced Doctor) for examination purposes post sexual assault, are there legal points to be aware of?

In these circumstances particular attention needs to be focussed on ensuring appropriate consent is obtained.

In this traumatic event, there will be numerous legal requirements however the patient needs are a priority and matter is to be treated with greatest sensitivity. Generally access to a suitably qualified Senior Doctor skilled to collect the evidence within the time required to collect the samples will be difficult to align with the patient's needs (may not want to be transported to another facility to have assessment) that meet the Informing the patient of the opportunity to access this service close to home under the guidance of an experienced Senior Doctor

Access to appropriate trained and qualified senior doctors to provide specialised assessment is paramount.

Is a misdiagnosis via Telehealth any different to a misdiagnosis following a face to face appointment?
No. Clinicians have a duty of care to their patients regardless of whether they review in person of by video.

However, the precise nature of the duty owed to the patient might vary depending on the circumstances and whether advice is provided by video. Need to ensure you ask the right questions and give the right, or at least reasonable answers and are mindful of any impact the technology is having on your ability to do this.

There might be some increased risks, some decreased risks, and some new risks, as with any new service method.

Patient Information

Do our patient NSW Health patient brochures need to be amended to include Telehealth? Eg complaints or are they suitable regardless of modality?

Patient brochures are the same regardless of the modality, there are no special requirements for services delivered by telehealth. Clinicians may need to consider how they provide these to the patient if their service does not include an initial face to face service. This may require emailing or sending by post to the patient or to the secondary service provider to provide at the time of service.

Medical Documentation

Who needs to document in a telehealth consult?
All providers should document in the patient record. Where there are multiple providers in one LHD it is reasonable to review and note that you have reviewed the entry and add any further detail (as required).

It is expected that clinicians across LHD boundaries should register the patient and document in the patient record. Alternatively a patient documentation can be provided by the other LHD and uploaded in to the local file to support a clinical note.

This requirement will be removed when a single digital patient record is available across NSW Health however that is not expected to be available for a few years.

When providing a consult over Telehealth and where images are not stored but are used to form the diagnosis, what are the implications around this?

This would be a risk for the facility and health professionals. It would be difficult to later prove that the diagnosis or treatment was reasonable if it was based on an image or other record that was not kept.

Technology Devices

What equipment does the patient need?

The equipment required by a patient will depend on the service, clinical need and the modality chosen to suit the patient needs. Most patients will have access to a phone, not all patients will have an appropriate device (smart phone, tablet) with a data plan that allows them to do video calls. This also applied to personal devices, peripherals or other remote monitoring devices that may be used to support clinical care. Clinicians should not assume that patients have access to the required technology and should have a conversation about what the patient has access to, this may include a discussion about their personal devices or those that they can access through a carer, workplace or from another health facility or social care provider.

What equipment does the clinician need?

The equipment required by a clinician will be determined by the clinical requirement and the telehealth modality deemed suitable. NSW Health employees should use equipment that is fit for purpose. This will assure that the clinical information can be provided completely and that all participants will have a quality experience. There is a vast range of technology available to support clinical needs and the appropriate equipment should be identified by a clinician detailing their current clinical workflow that reflects best practice standards. The technology should be matched to support the clinical workflow not expected to be changed to fit the technology. A Telehealth Manager can assist to identify appropriate technology and should be a first point of contact to discuss your clinical needs.

Can I use earbuds in lieu of a headset?

It is not recommended to use earbuds as they generally do not provide the quality of sound to support a quality experience for all participants. It is preferred to use approved headset and speakers that provide high quality audio, reduce or cancel background noise and static.

Funding of clinical services

How does the billing work for my Telehealth sessions?

This is dependent on the service and is relevant to how we count and cost services in NSW. Determining whether your service is block funded, activity based funded or is able to be Medicare billed should involve a discussion between your Service Manager, Telehealth Manager and finance team to ensure that you receive the right advice and set up your clinic correctly.