

The regulation of telehealth in the UAE during COVID-19

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COVID-19 has spurred many changes this year; there does not seem to be any industry that has not been impacted. Within healthcare, one almost universal change, and I would argue extremely positive change, has been the lightning speed with which telehealth has been propelled forward. Telehealth has been a topic for decades but the adoption of telehealth regulations and insurance reimbursement for it have been slow, at best. Now, it is one of the greatest solutions to access to care issues during this global pandemic, and reducing the spread of the virus through decreased person to person interactions.

While the Emirates of Abu Dhabi and Dubai have in recent years implemented telehealth policies, COVID-19 really pushed the needle forward. Below we highlight the development in regard to telehealth in Dubai and Abu Dhabi.

As a brief background, the regulation of telemedicine is fragmented across the emirates, with responsible authorities including the UAE Ministry of Health and Prevention ('MOHAP') in the Northern Emirates, the Department of Health Abu Dhabi ('DOH') in the Emirate of Abu Dhabi, the Dubai Health Authority ('DHA') in the Emirate of Dubai (excluding Dubai Healthcare City), and the Dubai Healthcare City Authority ('DHCA') in the Dubai Healthcare City.

Emirate of Abu Dhabi

New telehealth standard

The DOH issued its initial telemedicine regulatory framework in 2014; since then, the industry has awaited updates to the same and a more comprehensive acceptance of new telehealth providers in the emirate. In September 2020, the DOH issued an updated DOH Standard on Tele-Medicine ('DOH Telemedicine Standard'), bringing Abu Dhabi's telemedicine standards in line with recent federal legislation, and current care delivery models. The standard sets out the minimum requirements for the provision of telemedicine services by DOH licensed providers, covering:

- telediagnosis;
- telecounselling;
- telemedical interventions;
- teleconsultation;
- teleprescription; and
- telemonitoring.

It remains that a DOH licence is required by the healthcare facility for the provision of telemedicine services, either to provide telemedicine services as a supplemental service or as the primary service. Stand-alone telemedicine providers however, are not permitted to engage in telemedicine interventions and telediagnostic services. The individual healthcare professional is not required to obtain a specific telemedicine licence; merely, the provider must be credentialed/privileged by a healthcare facility with a telemedicine licence in order to provide telemedicine services. This leaves the onus on the healthcare facility to ensure that its healthcare professionals engaging in telemedicine services have the appropriate skills, training, knowledge, and technological infrastructure to deliver the services.

1. Telediagnosis

Telediagnosis is further limited to being provided between a UAE licensed healthcare facility and the DOH licensed facility, through a formal contractual arrangement. The primary responsibility for the clinical and medical healthcare decisions in relation to the patient continues to reside with the originating facility that is seeking the telediagnostic service.

2. Telecounselling

The DOH Telemedicine Standard does open the door for certain telemedicine services to be provided across borders, with providers outside of the UAE, such as telecounselling. Although, and this is a big caveat, the sharing of healthcare data outside of the UAE requires authorisation from the DOH, as per the UAE Federal Law No. 2 of 2019 (see our November 2019 article entitled

The Federal Law regulating the Use of Information and Communication Technology in the UAE Healthcare Sector, available at <https://www.tamimi.com/law-update-articles/the-federal-law-regulating-the-use-of-information-and-communication-technology-in-the-uae-healthcare-sector/>; see also our November 2020 article entitled You are in my system - The implementing regulations on Federal law regulating the use of ICT in the UAE healthcare sector, available at <https://www.tamimi.com/law-update-articles/you-are-in-my-system-the-implementing-regulations-on-federal-law-regulating-the-use-of-ict-in-the-uae-healthcare-sector/>. The primary responsibility for the clinical and medical healthcare decisions in relation to the patient continues to reside with the originating facility that is engaging in the telecounselling services. A written agreement (i.e. agreement, memoranda of understanding and/or contract) between the telecounselling services providers is expected. Such agreements and partnerships must be with healthcare entities demonstrating compliance with their country specific regulatory body, including having medical liability insurance. Further, and this may be a bit of a hindrance to some international providers providing their expertise to Abu Dhabi facilities, where a telecounselling partner is located outside of Abu Dhabi, the contractual relationship with that partner requires that partner to comply with the relevant country as well as Abu Dhabi specific regulations. This could be interpreted to make the foreign partner and its providers liable to claims within Abu Dhabi, but we will keep an eye on this to see how it pans-out in practice.

3. Telemedical interventions

In relation to telemedical interventions, the primary responsibility towards the patient resides with the healthcare professional and facility where the medical intervention is taking place. It is unclear whether this means the place at which the physician is manipulating the robot or where the patient is located. Another section of the standard indicates that the primary responsibility for clinical and medical healthcare decisions resides with the facility where the patient is located. Clarity is required in this regard, where the distant facility's responsibility begins and ends and where the local facility sits, as this will certainly impact the agreements in place between the facilities, as well as providers' willingness to engage in telemedical interventions.

The physician performing the telemedical intervention should be licensed by the DOH, if located in Abu Dhabi, or by the respective regulatory authority in the UAE or country specific regulator, if located outside of the UAE. Further, it is required that a licensed healthcare professional is with the patient at all times, ready to intervene in the event of failure in the tele-robotic system, including handling the robot at the intervention site.

Only assistive technology, not autonomous technology replacing the healthcare professional, is permitted. The tele-robotic system must be operated and controlled by the healthcare professional. Further, the telemedicine intervention system must be a clinically approved system with international certification and/or approval agencies recognised by MOHAP.

4. Teleconsultation

In accordance with 2019 federal law updates (see our section below), teleprescription is now permitted. Further, it is permitted to issue one day of sick leave by teleconsultation, given that it is not an extension of an existing sick leave and is not issued retroactively. This will greatly cut down on the burden of sick individuals needing to leave their home, interact with others, and/or visit a doctor in person for short illnesses (such as influenza or gastroenterological infections). Further, providers may apply to the DOH for approval of teleconsultation medical services that are not currently listed in the standard, such as structured patient education, disease management counselling and services, rehabilitation, speech, and physical therapy.

5. Teleprescribing

Teleprescribing for non-urgent and non-emergency medical conditions is now permitted by healthcare facilities that have been licensed by DOH to provide teleconsultation services. Systems must be in place to allow prescribers to add electronic signatures on the prescription. Further, the prescription should be issued through the HIS system of the facility, and submitted electronically to the associated pharmacy with access to the HIS system. In the absence of an associated pharmacy with access to the HIS system of the facility, then an original prescription must be issued and collected from the facility. Prescription of controlled, semi-controlled, and narcotic medications will continue to have the limitations put in place by federal laws and DOH regulations.

6. Telemonitoring

Telemonitoring involves the use of 'devices and supporting systems used to automatically transmit signals from patients to a central station where abnormalities will trigger a response by healthcare professionals or those that support the monitoring data quality, utilisation management review, and risk management'. In addition to the general duties of telemedicine providers, providers of telemonitoring services must: 1) ensure that telemonitoring services are offered in at least Arabic and/or English languages; 2) uphold the principles of consent to also include consent for: a) monitoring and sharing of data; and b) surgical insertion of monitoring devices; and 3) incorporate clinically relevant telemonitoring data forms into the EMR. There are also additional technical, technology and equipment, and data related, as well as clinical and quality governance, requirements.

COVID-19 related changes

The DOH Telemedicine Standard is in addition to and supplements the circulars issued over the past few months in relation to DOH's COVID-19 response. One such development was the mandate that telemedicine is required to be a benefit in all insurance products, until further notice. Another such development was the launch of the DOH Remote Care Platform for virtual care visits for certain approved specialisations (which includes psychotherapy services). It aims to provide safe, convenient, and equitable access to healthcare. This was instituted as a temporary measure to allow those providers that have enrolled in the DOH Remote Care Platform to provide telehealth services, particularly to Thiqa and Basic healthcare plan patients, without the need to undergo the usual DOH telehealth licensing process. The registration process provides for automatic approval, with the caveat that controlled medications require special approvals by DOH before they may be delivered to the patient's home. Besides the special requirements for controlled medicines, teleprescription and delivering of medications is permitted (and encouraged) through the platform. DOH's intention is that this is a temporary measure, following which formal licensing will be required once the pandemic is deemed to be over.

Of note is that the DOH has waived the requirement for (a) and (b) Basic insurance package patients to first seek care from a general practitioner prior to being referred to a specialist. On the DOH Remote Care Platform, Basic members may seek treatment directly from specialists on the platform. The DOH has confirmed that verbal consent to the telehealth consultation is sufficient, as long as it is documented by

the provider in the patient's medical record, as per the DOH Telemedicine Standard. Utilisation restrictions are in place however, in accordance with the DOH Claims & Adjudication Rules.

For outpatient pharmacies seeking to provide home delivery of medications, an automatic three month temporary approval will be granted by the DOH upon application, following which an application for permanent licensing must be obtained. At all times, such pharmacies are required to comply with the DOH Standard on Delivery of Pharmacy Medications. All home deliveries are to be based on a prescription and are without utilisation limitations. There is to be no co-payment or co-insurance collected from members of any health insurance scheme in Abu Dhabi for telemedicine or telepharmacy services.

Historically, the DOH issued a telemedicine licence to the Abu Dhabi Telemedicine Centre as a "pilot", but generally did not issue further stand-alone telehealth centre licenses. Thus, while the regulatory framework required that a healthcare facility seeking to provide telehealth services in Abu Dhabi obtain a DOH telehealth licence (either as part of an existing healthcare facility or as a stand-alone telehealth centre) to do so, in practice, such licenses were not readily granted. Thus, the DOH Telemedicine Standard is a highly welcomed development.

Emirate of Dubai

The DHA issued its first telehealth regulation in 2017 and revamped the same in 2019. Our November 2019 article (see DHA Issues New Standard for Telehealth Services, available at <https://www.tamimi.com/law-update-articles/dha-issues-new-standard-for-telehealth-services/>) highlights the key elements of the 2019 DHA Telehealth Standard. Since then, the DHA has issued a slew of circulars addressing exemptions and insurance coverage afforded during these current times.

For example, DHA General Circular No.9 of 2020, on teleconsultation DSL Codes established five new Dubai Service List ('DSL') codes for billing purposes to cater to teleconsultation services, with effect from 5 April 2020. The codes included those for teleconsultation with a general practitioner, specialist, consultant, allied health provider, and psychotherapy (psychologist) however, it does not include nursing consultations.

All categories of general practitioners, specialists, and consultants conducting teleconsultations will be covered in the respective codes. All service providers insurers, and third party administrators are encouraged to begin discussions on pricing immediately. As per Policy Directive No. 2 of 2020, all payers must encourage and accept any claims, regardless of whether they had previously not agreed to telehealth services from the same network providers. To clarify, the directive does not mandate the default inclusion of any telehealth providers licensed by DHA who is not part of a payers' network; rather, the directive applies to those network providers with whom the payer has not extended telehealth services previously, which should now be included. The objective is to reduce unnecessary patient visits to medical facilities, where possible, during the COVID-19 pandemic.

Federal Medical Liability Law

An annex to the 2019 Federal Medical Liability and Practice of Human Medicine Resolution set out the Federal rules for governing telehealth services, the first piece of federal legislation to support the initiatives, implemented years prior thereto, by the DHA, DOH, and DHCA. The resolution provides necessary additional details to implement the provisions of the Medical Liability Law (Federal Law Decree No. 4 of 2016 concerning medical liability). The Resolution also sets out the terms and conditions for the provision of remote health services, solidifying, at the federal level, the permissibility and parameters for

providing telehealth services in the UAE.

We further discuss this resolution in our November 2019 Law Update article entitled Significant Developments: UAE Medical Liability Law, available at <https://www.tamimi.com/law-update-articles/significant-developments-uae-medical-liability-law/>.

Conclusion

Whether the quick and widespread adoption of telehealth and associated regulations is here to stay or will be scaled back post- pandemic is yet to be seen. As the current environment has pushed both regulators, and patients alike, to become more comfortable with remote care delivery models, we expect it to become a standard offering. We also expect to see further regulatory developments in the way of: data localisation laws and providing for necessary exemptions; more robust data privacy regulations; and further guidance on the use of artificial intelligence and cloud storage in the healthcare industry.

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