

HONG KONG

Telehealth around the world: a global guide



Introduction

The COVID-19 pandemic has caused healthcare systems around the globe to rapidly, and in some cases, radically rethink the delivery of medical care. The global expansion of telehealth services is one way we have seen this transformation occur. This has resulted in significant opportunities in the field, as well as unprecedented regulatory change.

As a quickly evolving area, 'telehealth' can have different meanings in different contexts. In this Global Guide, telehealth refers to the delivery of healthcare services where patients and providers are separated by distance, using information and communications technology for the exchange of information for the diagnosis or treatment of diseases and injuries. We have adapted this definition from the World Health Organisation's definition of telehealth.

Telehealth is not a new concept – healthcare providers, academics and technology developers have been advocating for its use for decades. There are many benefits to the widespread adoption of telehealth, including improved access to healthcare services, risk mitigation, convenience and flexibility, and in many cases, a reduction in overhead costs. However, the use of telehealth is not without its challenges. For example, it is not suited to all forms of healthcare, its implementation and adoption can be time consuming and costly, and additional care must be taken in relation to the transfer of patient health information.

The restrictions of movement in many parts of the world due to COVID-19 has caused governments to recognise the potential of telehealth, and amend laws and regulations seemingly overnight to enable healthcare providers to deploy telehealth solutions. Many governments have adopted telehealth reforms in a matter of weeks, which may otherwise have taken years to be considered and introduced.

Although many of these reforms presently have an expiration date (dependent on the duration of the COVID-19 pandemic), there is likely to be continued growth in telehealth due to the advantages of such a service – even after the pandemic. There are enormous opportunities in the telehealth space for businesses already operating in this field, businesses considering expanding into telehealth, and start-ups.

This Global Guide provides an overview of the current state of telehealth regulations worldwide and assists readers to identify the opportunities, challenges and risks, on a country-by-country basis. As the field of telehealth, and the regulations underpinning it, remain highly dynamic and subject to change, this document is intended as a general guide and does not constitute legal advice. Should you wish to discuss any aspects of telehealth with a specialist lawyer, please contact us below.

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Hong Kong

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Is the use of telehealth permitted?

Yes. Telehealth is referred to as 'telemedicine' in Hong Kong SAR, which is defined as *"... the practice of medicine over a distance, in which interventions, diagnoses, therapeutic decisions, and subsequent treatment recommendations are based on patient data, documents and other information transmitted through telecommunication systems"* in the Ethical Guidelines on Practice of Telemedicine issued by The Medical Council of Hong Kong in December 2019 (the **"Guidelines"**). This follows the definition of telemedicine in the World Medical Association (**"WMA"**) Statement on the Ethics of Telemedicine, last amended in October 2018 (page 2, para. 8).

How is telehealth regulated?

There is no legislation or regulation governing telemedicine in Hong Kong. The Guidelines issued by the Medical Council are not binding and not exhaustive. The Guidelines state that they are to be read in conjunction with the WMA Statement on the Ethics of Telemedicine, however, the provisions of the Guidelines shall prevail if those set out in the latter are different (Guidelines, page 2, para. 8).

Telemedicine includes a wide range of activities, including but not limited to the following four principal areas:

- i. Tele-treatment of patients within the definition of WMA;
- ii. Collaboration between doctors and / or with other healthcare professionals through telecommunication systems;
- iii. Monitoring of patients through telecommunication systems; and
- iv. Dissemination of service information and / or health education to the public (including patients) through telecommunication systems.

(The Guidelines focus on the first three areas. Doctors practising in Hong Kong are therefore advised to familiarise themselves with the requirements under Part B of the Code of Professional Conduct issued by the Medical Council before carrying out any activities falling under the fourth area (Guidelines, pages 1, para. 4).)

The Guidelines do not constitute a legal document, however, contravention of the Guidelines may render doctors liable to disciplinary proceedings. The Guidelines are not intended to be applied to overseas-qualified doctors who practise telemedicine on patients in Hong Kong (Guidelines, page 2, para. 7). The Medical Council, however, may report any unregistered medical practitioners practising telemedicine on patients in Hong Kong to the relevant professional body and / or law enforcement agency.

Are there specific fields of healthcare in relation to which telehealth services are currently available, and do they involve the use of proprietary technology or platforms?

There are various types of healthcare services for which telehealth is available, including general practice, psychiatry, dermatology, dentistry, geriatrics, and occupational and physiotherapy services. Almost all types of healthcare services utilise telehealth through the "HA Go" app provided by the Hospital Authority (**"HA"**), a statutory body managing government hospitals and institutions in Hong Kong (see [Costs of Telehealth](#) for further details). Such healthcare services are made available to the public through the use of existing messenger and teleconferencing apps (e.g. WeChat and Zoom), as well as proprietary platforms and apps.

Does the public health system include telehealth services, and if so, are such services free of charge, subsidised or reimbursed? Where the public health system does not include telehealth services, are such services covered by private health insurance?

The public health system includes a wide range of telehealth services provided by HA, which manages 43 public hospitals and institutions, 49 Specialist Outpatient Clinics and 73 General Outpatient Clinics in Hong Kong.

The provision of telehealth services is done via HA Go, a one-stop mobile app for patients to access the HA services launched on 12 December 2019. HA Go allows its users to check appointments made with HA hospitals or clinics, pay HA bills and drug charges (excluding self-financed items), book appointment for general outpatient services and new case of specialist outpatient services, view medication and perform rehabilitation exercise following prescriptions.

The use of HA Go is free of charge, however, it is limited to patients over 18 years old who possess a Hong Kong Identification Card ("HKID"). Patients must activate the app at designated HA hospitals and clinics before using it. HA has announced that it will expand availability of the app to those who do not have a HKID and currently excluded groups in the future. Via HA Go, patients can also download various mobile apps published by HA.

In addition, a suite of apps have been launched on clinical mobile devices to allow clinicians to access patient data in the Clinical Management System On-ramp ("CMS"), a clinical management system that allows sharing of patients' clinical data with the Electronic Health Record Sharing System ("eHRSS") in Hong Kong.

Do specific privacy and/or data protection laws apply to the provision of telehealth services?

There are no specific privacy and / or data protection laws that apply to the provision of telehealth services in Hong Kong.

The Personal Data (Privacy) Ordinance (Cap. 486) ("PDPO") regulates the general collection and handling of personal data. Under the Code of Professional Conduct for the Guidance of Registered Medical Practitioners issued by the Medical Council of Hong Kong, Hong Kong registered doctors should have regard to their responsibilities and liabilities under the PDPO, in particular, patient's rights of access to and correction of information in the medical record.

How should the cross-border transfer of personal information collected and processed in the course of telehealth services be carried out to ensure compliance with applicable privacy laws?

"Telehealth data" is undefined in Hong Kong. However the PDPO defines "personal data" as any data relating directly or indirectly to a living individual. This broad definition of "personal data" would likely include the data generated during a telemedical consultation between a doctor and the patient.

There are currently no restrictions on transfer of personal data outside of Hong Kong, as the cross-border transfer restrictions set out in section 33 of the PDPO were held back and have not yet come into force. Section 33 of the PDPO prohibits the transfer of personal data to a place outside Hong Kong unless certain conditions are met (including a white list of jurisdictions; separate and voluntary consent obtained from the data subject; and an enforceable data transfer agreement).

Non-binding best practice guidance issued by the Hong Kong Office of the Privacy Commissioner for Personal Data ("PCPD") encourages compliance with the cross-border transfer restrictions in section 33 of the PDPO. To that end, the PCPD has also provided suggested model clauses for organisations to use. In practice, companies in Hong Kong will typically include these clauses into their data transfer agreements where personal data is being transferred out of Hong Kong.

Are there any currently applicable codes of conduct on the use of telehealth systems and/or security of telehealth data in your jurisdiction?

The Medical Council of Hong Kong has issued the Guidelines, with supplemental Questions and Answers issued in March 2022 that should be read in conjunction with the Guidelines (the “Q&As”). The Guidelines and Q&As are not legislation in Hong Kong. However, doctors registered in Hong Kong are expected to adhere to them, and contravention of the Guidelines may render them liable to disciplinary proceedings.

Among other things:

- Article 21 of the Guidelines provide that any telemedicine service must be provided as part of a structured and well-organised system and the overall standard of care delivered by the system must not be less compared to a service not involving telemedicine. A Hong Kong registered doctor should receive proper training on the use and operation of the system. The doctor must also ensure that the device to be used in the system is fit for its purpose and with high stability.
- Articles 13 and 29 of the Guidelines provide that, when practising telemedicine, Hong Kong registered doctors owe the same professional responsibilities in respect of medical record keeping as for in-person consultation with patients, and should adhere to well-established principles and standards guiding privacy and security of records and informed consent.
- Article 34 of the Guidelines expressly provides that Hong Kong registered doctors must aim to ensure that patient confidentiality and data integrity are not compromised. Data obtained during a telemedical consultation must be secured through encryption and other security precautions must be taken to prevent access by unauthorised persons.

Are any specific laws, regulations, or self-regulatory instruments expected to be adopted in the near future?

No.

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