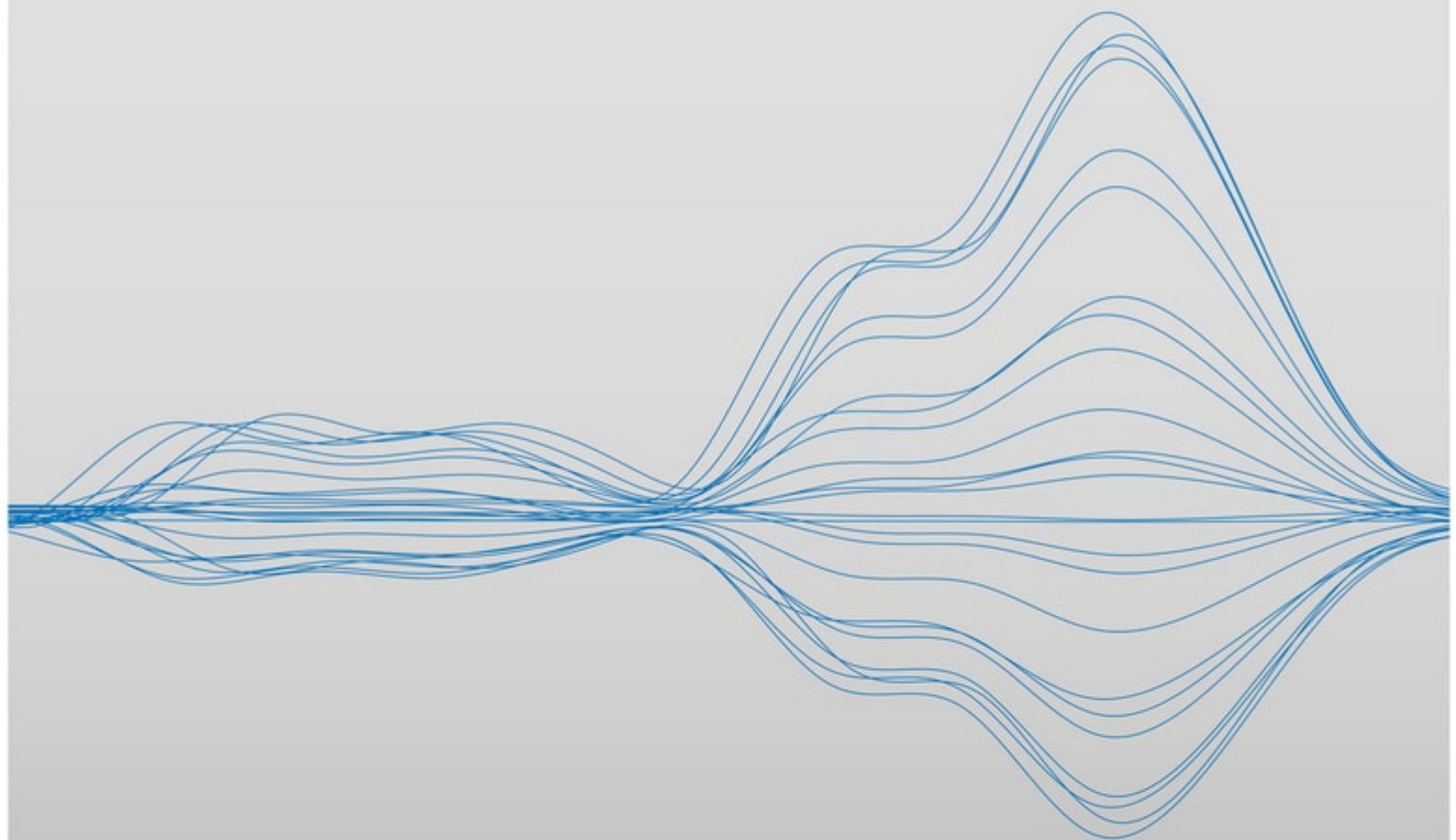


MEXICO

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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Mexico

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Is the use of telehealth permitted?

Yes, telehealth is permitted in Mexico, though it is not expressly provided for under relevant local laws.

How is telehealth regulated?

There are no specific laws that relate to, and / or regulate, telehealth.

After an initial project from December 2015 till 27 April 2018 – being the Mexican Official Standard "*PROY-NOM-036-SSA3-2015 for the regulation of distance medical attention*" ("**NOM Project**"), which established regulation of procedures for healthcare personnel conducting remote healthcare services – the Mexican Government has taken the approach that telehealth is an activity integrated in health services and therefore, the laws and regulations (such as the General Health Law and the Regulations of the General Health Law in Matters of the Provision of Health Care Services) applicable to general healthcare services, shall apply to telehealth too.

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?

Telehealth is currently available for any type of healthcare services as long as it complies with the regulatory framework applicable for healthcare services generally and, if necessary, with the regulatory framework applicable to each specific sector and / or activity within the field of healthcare.

Mexican laws do not establish any kind of requirement or set forth any indication regarding the platforms that must be used when providing telehealth services. However, NOM-024-SSA3-2012 (discussed below) regulates the exchange of information between electronic health record information systems ("**SIRES**"), which is an information system that allows the capture, management and exchange of structured and integrated information from the patient's clinical record, as well as geographic, social, financial, infrastructure and any other information that documents medical care. SIRES must obtain a certification under NOM-024-SSA3-2012.

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?

Yes, the Mexican Social Security Institute ("**IMSS**") and the Institute for Social Security and Services for State Workers ("**ISSSTE**") provide telehealth services.

However, those services are limited to patients from difficult-to-access parts of the Mexican Republic who require medical attention in a certain medical specialty. Such services are part of the social security of Mexican workers.

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

Yes, there are several relevant laws and standards that will apply to the provision of telehealth in Mexico:

- Mexican Law for the Protection of Personal Data in Possession of Private Parties (and together with its regulations and guidelines, the "**Data Privacy Laws**"), ensures the correct processing of personal information held by third parties, especially in digital environments and promotes good practices and strengthens personal data protection controls outside the government sphere.
- Mexican Law for the Protection of Personal Data in Possession of Obligated Parties establishes the basis, principles and procedures for individuals' right to the protection of their personal data which is in the possession of Obligated Parties (being any authority, entity, organ and body of the Executive, Legislative and Judicial branches, autonomous bodies, political parties, trusts and public funds).
- NOM-024-SSA3-2012 regulates the exchange of health information, electronic record information systems for health, SIRES, and establishes the mechanisms for health service providers to register, exchange and consolidate information.
- NOM-035-SSA3-2012 establishes criteria and procedures that must be followed to produce, capture, integrate, process, systematise, evaluate and disclose health information.
- NOM-004-SSA3-2012 concerns clinical files, and establishes the mandatory scientific, ethical, technological and administrative criteria applicable to the preparation, integration, use, management, filing, conservation, ownership and confidentiality of the clinical 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?

Under Article 36 of the Data Privacy Law, as a general rule, transfers of personal data to national or foreign third parties requires the holder (i.e. transferor) to issue to the third party a privacy notice and details of the purposes for which that information can be used. The processing of the data must be done as agreed in the privacy notice (which will contain a clause indicating whether or not the owner consents to the transfer of the data), and additionally, the third party recipient, will assume the same obligations that correspond to the responsible who transferred the data.

However, there are some relevant and important exceptions to the general rule that telehealth providers should be aware of. In particular, Article 37 of the Data Privacy Law establishes that national or international transfers of data may be carried out without the consent of the holder when the transfer is necessary for prevention or medical diagnosis, the provision of healthcare, medical treatment or the management of health services. The recipient of the personal data must always assume the same obligations that correspond to the party that transferred the personal data. The party responsible for transferring the personal data may use contractual clauses or other legal instruments to provide for at least the same obligations to which the person responsible for the transfer of the personal data is subject, as well as the conditions under which the holder consented to the processing of the personal data.

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

Not that we are aware of. But, despite the fact that telehealth is not specifically regulated in Mexico, given the Data Privacy Law, those responsible for the processing of personal data must observe the principles of lawfulness, consent, information, quality, purpose, loyalty, proportionality and responsibility and personal data must be collected and processed in a lawful manner. Likewise, the Regulations of the General Health Law regarding the Provision of Medical Care Services, NOM-004-SSA3-2012 (concerning the clinical files), and NOM-035-SSA3-2012 (regarding health information), describe how the information contained in the clinical record is handled under the principles of discretion and confidentiality, principles that must also be followed in telehealth.

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

Given the current regulatory landscape in Mexico, there are no specific laws, regulations, and / or regulatory instruments expected to be adopted soon. This view is supported by the 2018 cancellation of the NOM Project mentioned in [Availability of Telehealth](#).

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