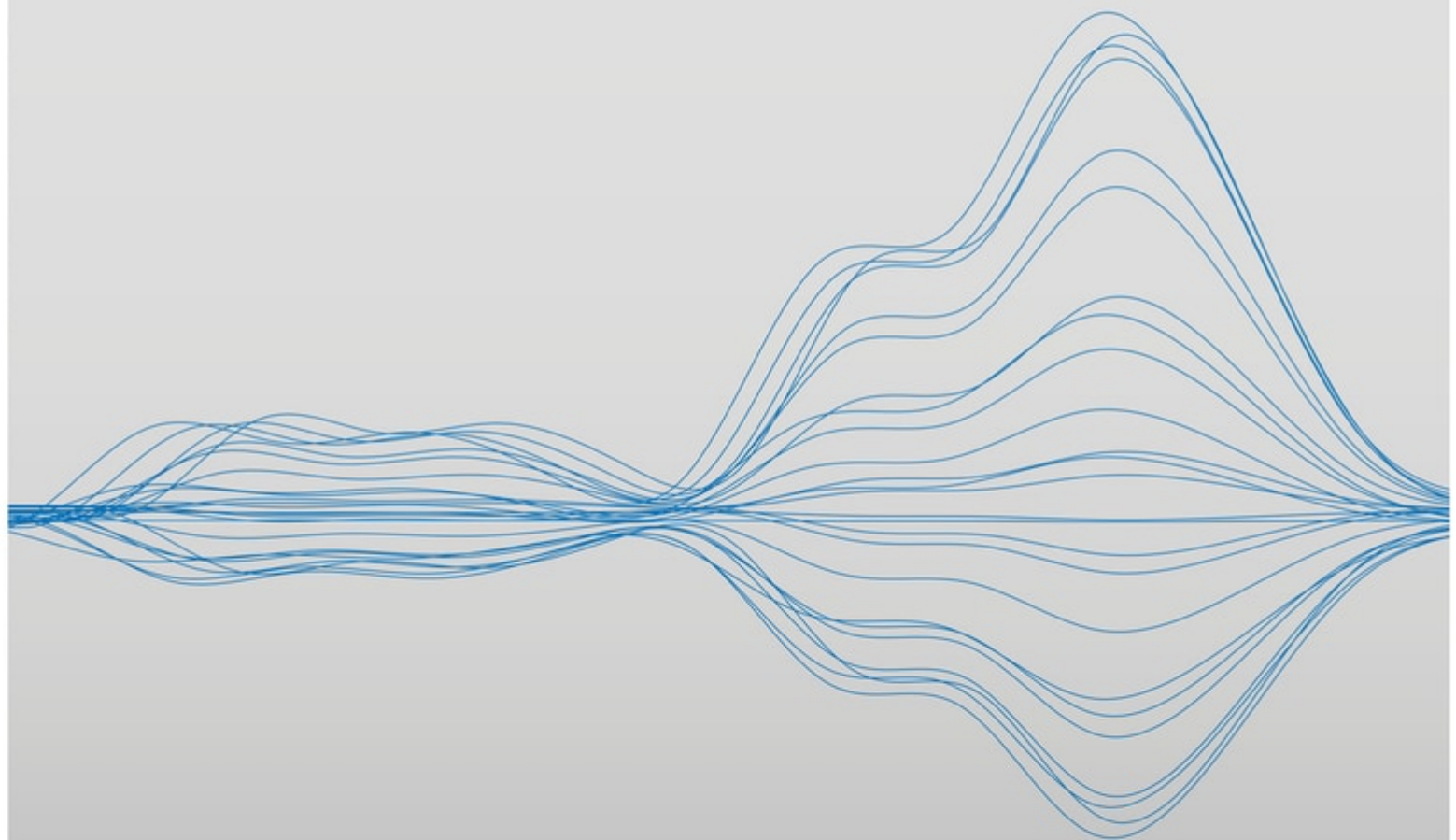


POLAND

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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Is the use of telehealth permitted?

Yes, it is expressly stated in the Act of 5 December 1996 on the *Professions of Physician and Dentist* that professional activities of a physician / dentist may be performed using ICT.

How is telehealth regulated?

There is no comprehensive domestic regulation on telehealth – telemedicine is regulated fragmentarily in a few acts of law. Act of 5 December 1996 on the Professions of Physician and Dentist provides a general possibility of rendering the telemedical services. Some other acts regulate certain aspects of telemedical services.

Recently a new the Regulation of the Minister of Health of 12 August 2020 *on the organisational standard of teleporting in primary healthcare* entered into force and sets forth rules on providing telemedical services within primary care.

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?

All types of healthcare services may be rendered this way. Obviously, physician must act with due diligence and follow current state of medical knowledge – if telemedical service is not sufficient from the medical standpoint, then the standard visit should occur.

There are no general rules what tools (platforms, apps etc.) should be used while rendering telehealth services.

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 telehealth services in regard of certain types of healthcare services (e.g. primary health, outpatient services etc.) and subject to certain conditions laid down in the law and ordinances of the President of the National Health Fund.

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

There are no specific regulations related to privacy in telehealth services, however general privacy regulations are applicable, in particular, Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC ("GDPR") and the Polish Act on Personal Data Protection of 10 May 2018.

The majority of the relevant obligations are established in the GDPR, including a number of obligations of the data controllers, rights of the data subject and legal basis for personal data processing. International data transfers are also regulated, with specific rules on extra-EEA transfers. Furthermore, the GDPR establishes specific rules on disclosing or entrusting the processing of personal data to third parties. All personal data processing activities related to the personal data of EU-based data subjects would need to be compliant with both the GDPR and any local regulations. Additionally, due to the special character of personal data processed (i.e. health data) a high and up-to-date level of organisational and technical safeguards would need to be ensured, in line with Article 32 of the GDPR.

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 the GDPR (see also [Privacy and data protection](#)), transfers of personal data within the EEA are permitted.

However, all extra-EEA transfers need to be based on one of the following: (i) an adequacy decision of the Commission (applicable to a limited number of jurisdictions); (ii) one of the appropriate safeguards under Article 46 of the GDPR, such as standard contractual clauses approved by the Commission ("SCC") or approved binding corporate rules; or (iii) one of the exemptions listed in Article 49 of the GDPR. In addition, as a result of the recent CJEU ruling in the Schrems II case (C-311/18), international transfers based on the SCCs will need to be preceded by an internal analysis of risks of transfer to a particular jurisdiction and necessary safeguards to be introduced by the data controller in order to ensure a safe transfer. The result of such analysis may indicate that SCC alone would be insufficient and additional contractual safeguards are necessary.

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

There are no official codes of conduct; however, certain aspects of telehealth are regulated in the law, e.g. in the Regulation of the Minister of Health of 12 August 2020 *on the organisational standard of telemedicine in primary healthcare*.

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

No specific instruments are known / expected at present.

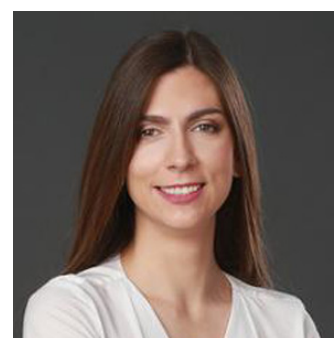
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