

PORTUGAL

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.

Key contacts

**Greg Bodulovic**

Partner

DLA Piper Australia

T +61 2 9286 8218

greg.bodulovic@dlapiper.com[View bio](#)**Marco de Morigio**

Partner

DLA Piper Studio Legale

Tributario Associato

T +39 0 668 8801

marco.demorigio@dlapiper.com[View bio](#)**Stephanie Wang**

Senior Associate

DLA Piper Australia

T +61 2 9286 8205

steph.wang@dlapiper.com[View bio](#)**Eliza Jane Saunders**

Special Counsel

DLA Piper Australia

T +61 3 9274 5291

eliza.saunders@dlapiper.com[View bio](#)



Portugal

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Is the use of telehealth permitted?

Yes.

How is telehealth regulated?

There are relevant rules (e.g. The Order of Physicians Ethics Code – "*Código Deontológico da Ordem dos Médicos*"), Dispatches of the Deputy Secretary of State of the Minister of Health and normative rulings from the Health General Directorate (*Direção Geral da Saúde*) regulating the use of telehealth in the scope (and outside the scope) of the National Healthcare System ("SNS"). Establishments providing healthcare services, notably, telehealth equipment and units are subject to National Health Regulatory Authority (ERS) regulation, in particular, to mandatory registration before ERS.

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 applicable to all medical areas (where possible) but the consultations that can be carried out depend on the healthcare professional's assessment of its appropriateness and on the technological capacity of the healthcare institutions of SNS. Health Regional Authorities provide for the equipment needed to implement teleconsultations. There is no legal imposition in relation to the use of specific technological platforms, but in the scope of the SNS, teleconsultations are performed through a platform developed for such purposes (RSE Live).

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 SNS includes telehealth services, notably appointments with medical doctors using videoconference, teleradiology, telecardiology, telepsychiatry and tele-emergency. Telehealth services have been expanding since 2017, aiming to increase the number of SNS establishments providing such services and, for those already using telehealth, increasing the types of services available.

The specific format of teleconsultations to be provided – teleconsultation in real time, teleconsultation in deferred time (stored and forwarded), and dermatologic tele-screening – is established by Dispatch of the Deputy Secretary of State of the Minister of Health. The first consultation should be in the presence of the doctor / patient without prejudice of specific rules applicable to dermatology.

In primary healthcare, it is possible for patients to request a teleconsultation appointment, whilst within the scope of hospital healthcare, teleconsultation appointments are always subject to evaluation by healthcare professionals.

The provision of primary healthcare (specifically, appointments with a medical doctor, emergency hospital services, and additional diagnostic and therapeutic tests) when performed on services belonging to the SNS is for a fee. This standard user fee (and its

exemptions) also applies to telehealth services. Payment for telehealth services provided by the SNS to its users can either be subsidised or reimbursed, as applicable.

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

Yes. Without prejudice of cybersecurity related laws and regulations applicable to the health sector, the collection and processing of personal data in this scope is governed by the following laws and regulations:

- Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons regarding the processing of personal data and on the free movement of such data ("GDPR");
- Law no. 58/2019, 8 August ensuring execution to GDPR;
- Law 12/2005, 26 January on health and genetic data; and
- Law no. 26/2016, 22 August on public sector data / information.

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?

Cross-border transfers are governed by GDPR, being allowed under the terms of articles 44 to 49 GDPR.

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

Not specifically for telehealth. However, a Health Sector Privacy Guide was made available by *SPMS – Serviços Partilhados do Ministério da Saúde, EPE* ("SPMS") in order to provide information to SNS entities in relation to health sector data protection main aspects and Teleconsultation's Best Practices Guides for health professionals and patients has been published.

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

There are no specific laws and/or regulations to be adopted at this stage. However, the Strategic National Plan for Telehealth 2019-2022 points out the review of the telehealth legal framework and identification of gaps as a priority in order to ensure operational conditions for the execution of telehealth.

The Portuguese Parliament approved new draft Resolutions on telehealth in 2021, in which it notably recommended the update and implementation of the Strategic National Plan for Telehealth approved in 2019, proposed measures for investment on telehealth and recommended measures to allow an actual implementation of the telehealth in the SNS.

The relevance of telemedicine in the Portuguese national context, particularly in the National Health System (SNS), has been highlighted in Decree-Law no. 52/2022, of 4 August, which establishes that SNS establishments shall "develop responses of proximity to the care needs at all levels of provision, considering equity, efficiency and quality objectives and using telehealth and home care, whenever appropriate."

Key contacts



Margarida Leitão Nogueira

Senior Associate

DLA Piper ABBC

T +35 12 1358 3673

margarida.nogueira@dlapiper.com

[View bio](#)



Mariana Ricardo

Senior Associate

DLA Piper ABBC

T +35 12 1358 3661

mariana.ricardo@dlapiper.com

[View bio](#)

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