

The evolving regulatory landscape of virtual care in Canada

JANUARY 11, 2023 9 MIN READ



Related Expertise

- [Health Law Practice](#)

Authors: [Michael Watts](#), [Susan Newell](#)

With several years of experience, including more than two years during the pandemic alone, virtual care is no longer considered a novel health service in Canada. However, the legal framework for virtual care remains inconsistent and varied among health professions and across the provinces and territories. Changes implemented by many health regulatory authorities during 2022 created a disjointed patchwork of rules. This suggests that further deviation is likely in the coming years and it may be some time before a consistent approach to the virtual care regulatory landscape emerges in Canada.

As a result, regulated health professionals, health technology platforms and other industry stakeholders in the health industry that facilitate the delivery of virtual care services in various jurisdictions of Canada or that offer interdisciplinary health services through virtual care have a challenging task of understanding and complying with a variety of different legal frameworks. And these regulatory landscapes are continuously evolving.

Virtual care defined

The terms “virtual care,” “telemedicine” and “telehealth” do not have universally accepted definitions. For example, in a [report](#) [PDF] of the Virtual Care Task Force, a joint task force of the Canadian Medical Association, the College of Family Physicians of Canada and the Royal College of Physicians and Surgeons of Canada, “virtual care” was defined as “any interaction between patients and/or members of their circle of care, occurring remotely, using any form of communication or information technologies with the aim of facilitating or maximizing the quality and effectiveness of patient care.”

The terms “telemedicine” and “telepractice” are generally considered to refer more narrowly to clinical services delivered by a health professional to a patient through electronic communications or information technologies. Conversely, the term “telehealth” is often considered to have broader application to include telemedicine and provider-to-provider communication through electronic communications or information technologies.

Virtual care services may be provided synchronously in real time, for example, through telephone or video communications that provide the ability for a patient and a healthcare professional to engage in a live discussion. Interactions may also be asynchronous – i.e., communications that do not provide real-time interaction – such as messaging or email that

can be accessed and read at any time.

Evolution of the virtual care regulatory landscape in Canada

The delivery of health services in Canada is governed by the provinces and territories. In each jurisdiction, standards of care for each health profession are established by a self-governing regulatory body. Prior to the onset of the COVID-19 pandemic, there were many established virtual care providers and health technology platforms in Canada. However, as a result of the pandemic, virtual care throughout 2020 suddenly represented a majority of patient interactions. Accordingly, all health regulatory authorities were forced to consider the appropriateness of their existing virtual care policies or quickly react to implement new ones. Governments also had to rapidly ensure that physicians could bill applicable government health insurance plans for virtual care services, albeit on a limited or temporary basis, without the luxury of time to consider the broader potential impacts on the health system.

Throughout 2021 and 2022, as virtual care providers became more experienced, a variety of organizations and task forces undertook studies and published reports on virtual care in Canada, including [physician associations](#) [PDF], provincial working groups and [Health Canada](#). As lockdowns eased and in-person services resumed, many health regulatory authorities had a chance to reflect on the successes or deficiencies of their virtual care policies and to consider approaches to billing for physician virtual care services. This resulted in a number of health regulatory authorities updating their virtual care policies throughout 2021 and 2022. For example, in 2022, the virtual care policies published by health regulatory authorities for physicians in British Columbia, Alberta, Manitoba, Ontario and New Brunswick were updated. Some provinces also updated their approach to the remuneration of physician virtual care services, such as Ontario, New Brunswick, and Newfoundland and Labrador.

Key differences in the regulation of virtual care across Canada

As outlined below, there are a number of ways in which regulation of virtual care in Canada differs by jurisdiction.

Where does virtual care take place?

The location where a health service is deemed to be rendered is an important factor in the approach to regulation. The majority of health regulatory authorities consider the health service to be rendered in the jurisdiction where the patient is located.

However, there are some exceptions to this interpretation. For example, the College of Physicians and Surgeons of Newfoundland and Labrador [considers](#) [PDF] the practice of medicine to take place in Newfoundland and Labrador when a physician practises medicine while physically located in Newfoundland and Labrador.

Licensing of extra-provincial virtual care providers

Each health regulatory authority takes a different view regarding licensing requirements. Most health regulatory authorities permit their health professionals to provide services to patients in other jurisdictions if the health professional complies with the rules in the jurisdiction where the patient is located and holds the necessary professional liability coverage.

However, there are certain differences in each health regulatory authority's approach to

whether a health professional licensed in another jurisdiction of Canada may provide services to individuals located in their jurisdiction. For example, the College of Physicians and Surgeons of Ontario (CPSO) recently updated its [virtual care policy](#) to provide that physicians must be registered by the CPSO to provide virtual care to patients located in Ontario unless the provision of virtual care from a physician licensed elsewhere is in the patient's best interest. Examples of acceptable circumstances that reflect the patient's best interest referenced by the CPSO include where the care sought is not readily available in Ontario, such as specialty care, or where the care sought is provided within an existing physician-patient relationship and is intended to bridge a gap in care. Exceptions may also be available for urgent or emergency assessment or treatment of a patient.

In other jurisdictions, such as [British Columbia \[PDF\]](#), physicians licensed in other provinces do not need to be licensed by the College of Physicians and Surgeons of British Columbia to provide services to patients in British Columbia. By contrast, New Brunswick has established a [Telemedicine Provider List](#) that allows out-of-province physicians to register to provide virtual care services to patients located in New Brunswick.

Need for in-person options

Most virtual care policies state that virtual care is meant to be a complement to, and not a replacement for, in-person care. In certain provinces, such as [Manitoba \[PDF\]](#), [New Brunswick](#) and [Nova Scotia](#), medical regulatory authorities have interpreted this to mean that each physician's practice must include timely in-person care when clinically indicated or requested by the patient. These types of requirements can have significant implications on the provision of virtual care in the province because health professionals are only able to provide virtual care to patients within a reasonable geographic proximity to their location.

Other regulators have determined that requiring physicians to make in-person care available to all patients has the effect of limiting patient choice or access to services for patients in rural areas. As a result, they have adopted policies that permit in-person care requirements to be satisfied through other means. For example, in British Columbia, physicians are required to have a pre-established agreement or formal affiliation with other health professionals who can make in-person care available to patients if the physician is not able to personally provide in-person care to a patient.

Other provinces, such as Alberta, have adopted specific standards of practice regarding [episodic care](#) to ensure that patients are able to obtain the follow-up care needed. Still other provinces, such as Ontario, do not explicitly require that physicians offer in-person services at all, as long as the physician is able to provide or arrange for appropriate follow-up care for the patient.

Scope of permitted virtual services

Most virtual care policies require health professionals to continue to meet the same standard of care for the applicable health service when providing in-person or virtual care.

Certain health regulatory authorities have imposed specific requirements regarding the services that are or are not appropriate for virtual care. For example, the prescription of opioid medication outside a longitudinal relationship or without satisfying specific criteria is not permitted through virtual care in some jurisdictions.

Billing for virtual care services

Billing of virtual care services to government health insurance plans is an important consideration for the provision of virtual care by physicians. Although all jurisdictions in Canada have included virtual services as part of their insured services, the criteria that must be met for a service to be insured differ across Canada. For example, certain provinces have only included telephone or video interactions as insured virtual care services.

Some provinces have implemented billing structures that pay physicians different amounts for a virtual service than the amount that would be paid to render the same service through an in-person visit. There are further deviations in billing structures based on type of interaction or the nature of the physician-patient relationship. In Ontario, as of December 1, 2022, when there is no pre-existing relationship between a physician and a patient, Ontario will pay the physician less for certain services rendered through virtual care than would be payable if the service were rendered through virtual care to a patient with a pre-existing physician-patient relationship or if the service were rendered in-person. Fees paid to physicians are also lower when the service is rendered by telephone than would be payable for in-person services or services rendered by video. If the physician provides certain insured services to a patient by phone, the amount payable would only be 85% of the in-person fee. Introducing different payment structures for the same service will likely impact the way physicians make care available to their patients.

Technology standards for virtual care

Provincial and territorial governments have also begun to implement technology standards for the provision of virtual care. In 2022, Ontario Health introduced a virtual visit verification standard for virtual care technology solution providers.

Under the new Ontario Schedule of Benefits for Physician Services, physicians will be required to use a technology solution provider with verification status in order to bill the government health insurance plan for virtual care services provided by video. Other jurisdictions in Canada may implement similar mandatory technology requirements that must be met, either to satisfy the appropriate standard of care in the jurisdiction or to be eligible to charge the government health insurance plan for services rendered. The previous approach taken by health regulatory authorities was limited to regulating a health professional's use of technology and not the technology itself.

Establishing a verification system for technology solutions may have unintended practical consequences by expanding the role of health regulatory authorities to include regulation of health technology outside the medical device context.

Protection of personal health information

Personal health information associated with the provision of health care services is often highly sensitive. As a result, it remains critically important for virtual care providers to understand and comply with applicable privacy requirements in each jurisdiction in which they operate.

Although virtual care is not considered new, health professionals are required to explain the appropriateness, limitations and privacy risks related to virtual care to their patients. While generally similar, the requirements for these communications differ in each jurisdiction.

Looking ahead

With many nuances and differences between jurisdictions, navigating the evolving regulatory landscape of virtual care across Canada can be a complex exercise. While we anticipate the virtual care regulatory landscape will continue to change in the coming years, virtual care is now firmly entrenched as a method of health service delivery in Canada. It will be important for industry stakeholders to remain vigilant as the virtual care rules continue to develop in order to ensure ongoing compliance with the applicable policies and standards of care.