







<p>CHAMBLISS <small>ATTORNEYS AT LAW</small></p> <p>fiercely loyal.</p> <p>November 16, 2008</p> <p> HCCA <small>Health Care Compliance Association</small></p> <p><small>© 2008 Chambliss, Bahner & Gooden, P.C. All Rights Reserved.</small></p>	<h2 style="margin: 0;">Key Legal and Compliance Issues in Telehealth</h2> <p style="margin: 20px 0;"><i>Presented by</i></p> <p style="margin: 0;">Cal Marshall</p> <p style="font-size: 8px; margin-top: 20px;"> Chambliss Bahner & Gooden, P.C. Liberty Tower • 400 Charlotte Street, Suite 1200 • Chattanooga, TN 37402 • 423.764.3000 www.chambliss.com </p>
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<p>CHAMBLISS</p> <hr/> <p>fiercely loyal.</p> 	<h3 style="text-align: center;">What Are Telemedicine and Telehealth?</h3> <ul style="list-style-type: none"> • ATA Definition: Telemedicine is the remote delivery of health care services and clinical information using telecommunications technology. ATA uses the terms “telemedicine” and “telehealth” interchangeably while clarifying telehealth is a broader term not necessarily limited to clinical services. • In this presentation, telemedicine is specific to physicians. Telehealth refers to physicians plus certain other practitioners.
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<p>CHAMBLISS</p> <hr/> <p>fiercely loyal.</p> 	<h3 style="text-align: center;">What Are Telemedicine and Telehealth?</h3> <ul style="list-style-type: none"> • Tennessee law creates a safe harbor for “telemedicine” practice. The TN definition is key. • “Telemedicine” <u>includes</u> activities such as secure video conferencing and the use of store-and-forward technology • “Telemedicine” <u>excludes</u> audio only telephone conversation, e-mail/instant messaging or fax • The technology involved must replicate the traditional practitioner-patient interaction
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<p>CHAMBLISS</p> <hr/> <p>fiercely loyal.</p> 	<h3 style="text-align: center;">What Are Telemedicine and Telehealth?</h3> <ul style="list-style-type: none"> • Key Terms <ul style="list-style-type: none"> – Originating Site = Patient Site – Distant Site = Physician/Practitioner Site
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	<ul style="list-style-type: none"> • General idea: physician or other practitioner must be licensed where the <u>patient</u> is located at the time of a telehealth encounter • But don't assume practitioner need not be licensed in distant site state if providing services from outside Tennessee


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	<ul style="list-style-type: none"> • What telemedicine activities trigger the medical licensure requirement in TN? <ul style="list-style-type: none"> – Practicing medicine in TN (diagnosing and/or treating a patient located in TN) using information transmitted through electronic or “other” means – Some exceptions exist, including: <ul style="list-style-type: none"> • TN physician calls a physician licensed in another state to consult/obtain a second opinion • US military physicians operating within federal jurisdiction and within applicable regulations


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	<ul style="list-style-type: none"> • What are licensure categories for medicine? <ul style="list-style-type: none"> – Regular physician license – Special telemedicine license <ul style="list-style-type: none"> • TN no longer grants special telemedicine licenses, but <u>existing</u> licenses can be renewed (and could be converted to full license up until October 31, 2018) • Must be renewed timely, holders must maintain current ABMS specialty board certification • Limited licensees are limited to medical interpretation in their specialty • Limited licensees <u>may not prescribe</u>


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<p>CHAMBLISS</p> <p>fiercely loyal.</p> 	<h3 style="text-align: center;">E-Prescribing</h3> <ul style="list-style-type: none"> Generally, under TN law, physicians may prescribe in connection with telemedicine encounters if they, with limited exceptions: <ul style="list-style-type: none"> – Perform an appropriate history and physical examination (presents a standard of care issue); – Make a diagnosis based upon the examination and medical tests and consistent with good medical care; – Formulate and discuss a therapeutic plan with the patient, as well as the basis for the plan and the risks and benefits of various treatment options; and – Ensure availability of the physician or coverage for the patient for follow up care But see caveats in the following slides
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	<ul style="list-style-type: none"> • Federal caveats for <u>controlled substances</u> <ul style="list-style-type: none"> – DEA registration required in each applicable state – Practitioners must also comply with DEA e-prescribing requirements (systems must comply with rules, system breach reporting obligations and record retention obligations) – Federal DEA regulations require an at least 1 in-person evaluation for prescribing of controlled substances, with limited exceptions


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	<ul style="list-style-type: none"> • Limited exceptions to in-person requirement, such as (real-time av system required): <ul style="list-style-type: none"> – Prescribing while covering for another practitioner who has seen patient in previous 24 months and is temporarily unavailable – Patient treated in presence of a DEA-registered treating practitioner – Patient treated and located at a DEA-registered hospital or clinic during the telemedicine encounter by a DEA-registered practitioner – Treating practitioner has special registration


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	<ul style="list-style-type: none"> • Special registration <ul style="list-style-type: none"> – Concept was enacted over 10 years ago but never made available by the DEA – In 2016, DEA announced its intention to issue regulations but has not acted since – On Oct 3, Congress enacted new opioids crisis response legislation (SUPPORT for Patients and Communities Act), which requires creation of the special telemedicine registration within 1 year <ul style="list-style-type: none"> • Calls for US AG to issue regulations specifying the “limited circumstances” for issuance of special registrations, procedure for obtaining same


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<p>CHAMBLISS</p> <hr/> <p>fiercely loyal.</p> 	<div style="text-align: right; margin-bottom: 10px;">  Cal Marshall </div> <p>Cal is an attorney in the Health Care and Business Practice Groups at Chambliss. He works with clients on a variety of health care and business matters, including medical practice contracting and compliance issues, HIPAA/HITECH compliance, data breach response, telehealth issues, fraud and abuse law, Medicare enrollment and payment issues, and compliance with state laws and regulations. Prior to practicing law, Cal served as an aide to several members of the U.S. House of Representatives, working on health care policy and government oversight matters, among others. Cal writes and speaks on health care legal issues and serves in multiple leadership roles within the American Bar Association's Health Law Section.</p> <p>http://www.chamblisslaw.com/People/Calvin-Marshall</p>
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