Federation of
Medical Regulatory
Authorities of Canada

Fédération des
ordres des médecins
du Canada

Federation of Medical Regulatory Authorities of Canada
Framework on Virtual Care

INTRODUCTION

The Federation of Medical Regulatory Authorities of Canada (FMRAC) recognizes the importance of virtual care in providing access to care, particularly in a pandemic or state of emergency and especially for patients: in distant rural and remote or underserviced areas; patients with disabilities; patients in institutional settings; patients with limited psychosocial supports or economic means; as well as for special populations.[1] Ideally, virtual care should be used to optimize, and be integrated with, in-person patient care.

PURPOSE

The purpose of this Framework is to propose recommendations and minimum regulatory standards to the members of FMRAC. It is intended to help inform the development of the Medical Regulatory Authorities' (MRAs') policies and guidance to their physicians[2] and promote pan-Canadian consistency. Furthermore, it acknowledges that the role of the Medical Regulatory Authorities is to regulate their members and their use of technology, not the technology itself.

It is incumbent on each MRA to develop policy and approaches to ensure effective regulation. As FMRAC has no authority over its members, it is the discretion of each individual MRA to adopt or adapt this Framework and recommendations as it deems appropriate and/or feasible.

DEFINITION

Virtual care

Virtual care means the provision of care (including synchronous and asynchronous) by means of electronic communication (telephone, video, email, text, or other internet hosted service or app) where the patient and the physician are at different locations, including but not limited to interviewing, examining, advising, diagnosing and/or treating the patient.

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[1] This context is assumed throughout the Framework although may not be described specifically.

[2] This Framework includes all potential categories of members and registrants of medical regulatory authorities, recognizing that not all categories are members in all jurisdictions. As such, "medical registrants" refers to practising physicians, medical students, and medical residents in applicable jurisdictions.

Note: Please refer to FMRAC's Statement on Military Physicians (www.fmrac.ca) for special considerations regarding Canadian Health Services physicians practising within the federal jurisdiction; as such, some aspects of this Framework may not be applicable.

ETHICAL, PROFESSIONAL AND LEGAL OBLIGATIONS

The use of virtual care does not alter the ethical, professional and legal obligations of physicians. The standard of care provided by physicians to patients remains unchanged, whether it is delivered in person or by virtual means. Physicians who use virtual care must comply with relevant federal legislation and the legislation in their province/territory of licensure, in addition to those in the jurisdiction where the patient is located.

Compliance with legal and current regulatory policies and guidance is also expected, including but not limited to the following:

a) professionalism and ethical conduct;
b) licensure;
c) the establishment of a patient-physician relationship;
d) informed consent (including consent as related to virtual care technologies and privacy issues, as well as assessment and treatment);
e) privacy, confidentiality and security of patient information, including the collection, use or disclosure of this information;
f) the appropriateness of the use of virtual care;
g) medical records;
h) prescribing issues;
i) follow up with patients and ensuring continuity of care;
j) referrals and consultations;
k) charging for insured and uninsured services*;*
l) conflict of interest;
m) expectations of ongoing competence, including as it applies to current and evolving technologies used in virtual care;
n) advertising and communication with the public, as well as the sale of goods and services; and
o) photographic, video and audio recording of patients.

MODEL STANDARDS FOR VIRTUAL CARE

In addition to the aforementioned expectations and obligations, the following recommended minimum standards for virtual care are proposed.[3]

1. Providing good medical care

Physicians are expected to provide all elements of good medical care, as required. The standard of care expected is the same whether the patient is seen in person or by virtual means. Physicians who seek to use virtual care to provide medical services to patients should first ensure that they have a physical clinic[4], or a prior formal arrangement with a physical clinic, within reasonable travel proximity of the patient, to see them in person so as to fulfil the need for in-person care when appropriate or required, or if requested by the patient.

Furthermore, referring a patient to another healthcare facility, a walk-in clinic, or the urgent care or emergency department in non-urgent or non-emergent circumstances in lieu of arranging an in-

[3] Note: Some of the Model Standards may be applicable across other sections.
[4] "Physical clinic" can be interpreted to mean a clinic, location, office, agency or other.

person assessment is not appropriate care. A blended care model balancing in-person and virtual care is strongly recommended if providing virtual care.

In addition, physicians are expected to consult with the appropriate MRAs (i.e., where both they and the patient are located) and the Canadian Medical Protective Association, or other applicable insurance carrier or liability protection provider, for unique situations that include, but are not limited to, the provision of virtual care such as: when either the physicians or patients are temporarily outside of Canada; medical assistance in dying; and involuntary psychiatric assessment.

2. Licensure

For every jurisdiction in which physicians seek to use virtual means to provide medical services to patients, they must first:

a) be aware of and comply with the licensing requirements:
   - in the physician's province/territory of licensure; and,
   - in the jurisdiction where the patient is located; and

b) have and maintain appropriate liability protection that provides indemnity for malpractice.

3. Establishing the patient-physician relationship

Providing virtual care establishes a patient-physician relationship. In addition, physicians:

a) are expected to ensure they have sufficient knowledge, skill, judgment, and competency (including technological) to manage patient care through virtual means;
b) should ensure they adhere to best practices for confidentiality and security, and have a suitable platform and infrastructure to engage in virtual care;
c) are expected to disclose their identity, location, contact information and licensure status to the patient, especially if there is not a pre-existing relationship, and ensure that the identities of all other participants involved in the virtual care encounter are disclosed to and approved by the patient, as well as documented in the patient record;
d) must take appropriate steps to confirm the identity and location of the patient;
e) must ask the patient if the physical setting is appropriate, safe, private and secure given the context of the encounter, and ensure their consent to proceed;
f) should explain in plain language the appropriateness and limitations of medical services provided by virtual care;
g) must obtain, document and maintain all aspects of informed patient consent in a virtual care encounter;
h) must use their clinical judgement to determine whether virtual care is appropriate;
i) should offer and arrange for the option of in-person evaluation and care, if it is the patient's preference;
j) must ensure there is a plan in place to manage adverse events and/or emergencies and make patients aware of appropriate steps to take in these instances;
k) must document the rationale for referring a patient to another healthcare facility, a walk-in clinic, or the urgent care or emergency department; and
l) have the same obligations to their patients, including appropriate follow up with relevant providers, with documentation, on behalf of their patients.

Physicians must also ensure that patients referred to consulting specialists are appropriately investigated and treated before referral. Furthermore, if an assessment of the patient's presentation requires a physical examination before referral, the referring physician must ensure that one is undertaken. It is unacceptable to defer such a physical assessment to the specialist unless agreed to in advance.

In exceptional circumstances if it is not possible for physicians to meet this standard, they must provide and document the reasons for this (e.g., patients in distant rural, remote, or institutional locations if this will hinder access to care). If safe for the patient, a physician providing care in a remote community may rely on a nurse practitioner or other duly qualified health care professional in the community to perform a physical assessment, or a specialist may rely upon a family doctor in a rural area to perform a physical assessment.

4. Medical records and the privacy, confidentiality, security of and access to patient information

Physicians are required to create and maintain a medical record as part of the provision of care in a virtual care encounter. The requirement to create such a record is the same whether the care is provided in person or remotely. As such, physicians are expected to comply with jurisdictional requirements for the privacy, confidentiality and security of patient information including, but not limited to:

a) medical record-keeping, including documentation, retention, access, transmission, archiving and retrieval;
b) ensuring patient access to their medical records; and
c) the availability of the medical record to other health care professionals for the necessary provision of patient care and follow up.

5. Assessing the appropriateness of the use of virtual care for each patient encounter

Physicians using virtual care to provide medical services to patients are expected to use their professional judgement and:

a) use the most appropriate technology that is available and in the best interest of the patient;
b) assess patients' presenting condition and the appropriateness of virtual care to provide care and, if not appropriate, must recommend and offer an in-person assessment;
c) have the ability to provide a timely physical assessment of the patient; in exceptional circumstances if it is not possible for physicians to meet this standard, they must provide and document the reasons for this (e.g., patients in distant rural, remote, or institutional locations if this will hinder access to required care);
d) take reasonable steps to assess all available resources that may be required to provide medical services, including patient information[5], the technology, the presence of support staff (both where the physician is located and where the patient is located), linkages with other services (e.g., laboratory), etc., and proceed only if those resources are available, safe and secure, and can be used effectively and in a private manner;
e) pay additional attention to ensuring the patient understands the information exchanged and is not hindered by the technology; and
f) when possible, adapt the technology for virtual care for patients who are deaf, hard of hearing, or visually impaired.

6. Prescribing practices

Physicians using virtual care to provide medical services to patients are expected to:

a) conduct an assessment in accordance with standards of care before prescribing or authorizing any drug, substance or device and only proceed if appropriate;
b) be aware of jurisdictional requirements and risk of patient harm pertaining to the prescribing of controlled substances and the authorization of cannabis for medical purposes.

[5] This includes, but is not limited to, pharmaceutical, laboratory, diagnostic imaging or hospital discharge information, etc.

Furthermore, it is expected that physicians will not prescribe opioids or other controlled medications to patients whom they have not examined in person, or with whom they do not have a longitudinal treating relationship, unless they are in direct communication with another regulated health professional who has examined the patient.

7. Current and emerging technologies (regulated and unregulated)

Various technologies, including those that incorporate artificial intelligence, may increasingly have a role in helping physicians manage patient care, including in a virtual environment. It is important, however, that physicians are competent with these technologies and use them to assist or augment clinical decision-making and not rely on them exclusively to make patient diagnoses or treatment recommendations. These technologies include those regulated by Health Canada[6] (such as medical devices, software and applications) and those that are not.

Furthermore, physicians:

a) are expected to have a general understanding of a patient's comfort level and access to these technologies before using and/or recommending them;
b) when using or recommending these technologies to patients in the context noted above, are expected to have in place the appropriate safeguards to ensure the privacy and security of patient information, as previously noted, and avoid conflicts of interest;
c) should take reasonable measures to ensure that their patients understand the risks (e.g., false negative rate) and limitations of unregulated technologies; and
d) should consult with other bodies that have endorsed and/or critically appraised unregulated technologies, such as professional associations or medical societies.

FMRAC'S RECOMMENDATIONS TO ITS MEMBERS

FMRAC recommends that, where feasible and appropriate, all Medical Regulatory Authorities develop minimum standards and guidance on the following:

1) the importance of informed patient consent regarding the use of virtual care as well as any technologies used as part of the encounter;
2) those circumstances in which licensure is, and is not, required when physicians provide medical services into their jurisdiction;
3) patient follow-up and continuity of care;
4) medical records in a virtual care encounter, including issues relating to: privacy, access by health care personnel, permissible electronic transactions, documentation, retention, transmission, archiving and retrieval;
5) the provision of virtual care as an uninsured service and address issues such as:
    a) disclosure of fees for services;
    b) disclosure of conflicts of interest in any information, products or services provided or recommended by a physician;
    c) rights of patients with respect to access to their personal information, including to whom it may be disclosed and for what purpose;
    d) disclosure of information collected; and
    e) any passive tracking mechanisms utilized.

[6] Health Canada defines medical devices and describes how they are licensed and regulated in Canada, including software and applications. https://www.canada.ca/en/health-canada/corporate/about-health-canada/branches-agencies/health-products-food-branch/medical-devices-directorate.html

It also recommended that all Medical Regulatory Authorities:

6) provide plain language information to patients on factors and questions to consider when thinking about accessing virtual care services, as well as information for patients on:
   a) the complaints process, including the obligation of the MRA to follow up on complaints arising from care in their jurisdiction; and
   b) guidance on how to verify that the physician meets the licensure requirements of the jurisdiction in which the patient resides
7) collect data on the amount of time that physicians spend on virtual care specifically;
8) work with other MRAs in Canada to establish a protocol for addressing complaints about physicians;
9) work with other MRAs in Canada to identify requirements for physicians to maintain currency of practice and quality of care, and aim to establish pan-Canadian consistency in this regard;
10) work with other MRAs and stakeholders to identify the requirements for assessment and/or training for those physicians who provide virtual care only and now wish to return to providing in-person patient care;
11) ensure their policies and guidance documents relating to virtual care adopt consistent language that does not inadvertently create confusion for those physicians practising in federal health jurisdictions located within the province/territory's geographical boundaries;
12) collaborate with their respective provincial/territorial governments and other stakeholders to advance, on behalf of patients, legislation that safeguards patient information held by third parties;
13) work with the Association of Faculties of Medicine of Canada, national certifying bodies (the Royal College of Physicians and Surgeons of Canada and the College of Family Physicians of Canada) and other stakeholders to promote better understanding of the ethical and legal aspects of virtual care by medical students, residents and practising physicians, and to enhance digital professionalism and literacy;
14) work with others to update codes of ethics and other expectations of professionalism and responsibilities of physicians who provide virtual care;
15) collaborate with or contribute to the work of stakeholders to determine:
   a) when virtual care is an acceptable alternative to in-person care for specialty services;
   b) when visual contact and/or physical contact is necessary to make or confirm a diagnosis, and to understand other psychosocial factors and determinants of health;
   c) whether the physical examination can be reasonably done by another person, either regulated or unregulated; and
   d) the appropriate combination of both in-person and remote care provided by a physician in a post-pandemic environment;
16) contribute to the work of other stakeholders in developing standards for virtual care platforms; and
17) review and update their policies and guidance to physicians regarding virtual care, as required.

Acknowledgement: Some aspects of this Framework were adopted or adapted from the College of Physicians and Surgeons of Manitoba's Standard of Practice on Virtual Care (2021).