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Malpractice Liability Considerations for Telehealth

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As the use of telehealth continues to increase, providers need to be mindful of the liability laws in the jurisdictions that they operate in. Similar to in-person medical practices, telehealth services carry liability and malpractice risks. Once a provider virtually crosses a state line, he or she becomes subject to the liability laws of the other state.

California enacted the Medical Injury Compensation Reform Act (MICRA) in 1975 to decrease providers' potential liability. Most notably, MICRA places a \$250,000 cap on non-economic damages in medical malpractice cases. Non-economic damages include claims for pain and suffering, mental anguish, anxiety, loss of companionship, and all other losses that do not directly relate to economic losses. While this greatly limits California providers' potential liability, telehealth providers who virtually leave California are no longer under the protection of MICRA.

Although the majority of states currently have some form of cap on non-economic damages in medical malpractice cases, very few have a cap as low as California's. For example, South Dakota's cap on non-economic damages is set at \$500,000, Hawaii's cap is set at \$375,000 and Nevada's cap is set at \$350,000. Unfortunately, there are still several states, such as New York, Arizona, and Connecticut, that have no cap on non-economic malpractice damages.

California providers rendering telehealth services to patients in other states need to be aware that MICRA will not travel with them. Telehealth providers are subject to the liability laws of the state in which the patient is located. For this reason, it is very important that no providers render services outside of their home state without making sure that they have malpractice coverage for their expanded activities.

If you have any questions or are encountering a similar situation, please contact Buchalter's [Telehealth Practice Group](#).

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