

Questions from telehealth webinars

Thank you to everyone for your participation and interest in our series of webinars about telehealth. We have consolidated the questions received during these sessions and provided answers below.

Some of the questions are answered by the wealth of resources on the Avant Learning Centre listed below. We have also included links to useful external resources.

The **Avant Telehealth landing page** has collected many of these in one place, including recordings of the recent webinars, factsheets and articles we have prepared to support our members in understanding telehealth.

This advice is general in nature.

If you have a specific question to discuss, you should call our
Medico-legal Advisory Service on **1800 128 268**.

Telehealth – delivery of care

Are there any differences from a medico legal perspective regarding the standard expected of me during a telehealth context?

What legal provisions do doctors have in a case of misdiagnosis in the context of limited physical examination?

Can I be sued for asking a patient to come in for a face-to-face consultation where they have not revealed they are a COVID contact awaiting results from a test?

Can the doctor or practice refuse to offer telehealth?

What is your advice regarding physical examinations and is it acceptable to defer these to GPs for patients that live a long distance away?

Can I refer a patient for investigation, for example an ultrasound, because I am unable to physically examine them?

How does the inability to physically examine the patient put me at risk by using telehealth even if it at the patient's request?

Doctors have a duty to exercise reasonable care and skill in the treatment of their patients. Reasonable care is a question of degree and will depend on the circumstances of each patient. Whether care is reasonable is determined by reference to the standard widely accepted by your peers.

The Medical Board's guidelines on technology-based consultations make it clear that doctors should exercise their judgement about whether or not telehealth is appropriate for their patient in each case.

It is a matter for your clinical judgement as to whether or not a physical examination is required to properly assess the patient. If it is, you then need to consider the best way to achieve this. Depending on the circumstances, options include asking the patient to come and see you or another doctor (in your practice, or somewhere else) face-to-face, or asking the patient to undergo another appropriate investigation if that could assist you to assess their condition.

If you consider that telehealth is not suitable, you should explain that to the patient and arrange to see them in person. If you are unable to offer telehealth, for example for technology reasons, you can explain this to your patients and indicate appropriate arrangements for them to be seen in person by you or access telehealth through a different practitioner.

If you are unable to see the patient in person, you should explain this to the patient and put in place arrangements to see someone else in person and then follow up accordingly. It may also be appropriate to arrange further investigation for the patient, as clinically relevant for their presentation, and explain to them the limitations of what you can do for them where you are unable to see them in person and examine them.

A patient may be reluctant to have or may refuse to have a physical examination. Like any other recommendation you make for treatment or investigation, your obligation is to discuss with the patient the reasons for the physical examination and the risks for them if they do not have a physical examination. This discussion should be documented in your records.

If an adverse outcome occurs as a result of a telehealth consultation, the relevant standard of care would include consideration of whether a telehealth consultation was appropriate for the patient's circumstances and other external factors at that time that might have limited your ability to offer a face-to-face consultation or physical examination.

If you determine that a patient needs to come in for a face-to-face consultation to be appropriately treated, the patient should disclose to you if they are awaiting results from a previously undertaken COVID-19 test. It is reasonable to ask patients whether they have any symptoms of COVID-19, or if they are awaiting results from a COVID-19 test before they come in.

If the patient comes into the practice and discloses then that they are waiting for a COVID-19 test result, then you should follow protocols from the Department of Health in managing contact with that patient.

Are there increased telehealth medico-legal risks for locums?

If working as a locum, the same obligations regarding performing telehealth consultations would apply. It is important to ensure appropriate handover and that follow up arrangements were clear, as with any locum position. If an issue were to arise, the care provided by a locum would be considered in the circumstances of that locum arrangement.

How do I best choose between video or telephone consultations? Is there any evidence that video is better than telephone?

What are the medico legal issues with new patient assessments by telephone without video?

The choice of a telephone consultation or a video consultation is a decision for the doctor, practice and patient. This should be a part of the triage process of the practice or for doctors, one of the initial considerations before commencing the consultation or at the start of the consult if that is your first opportunity. This is the same for new patients.

The Medical Board's guidelines require doctors to consider the appropriate use of telehealth and video is strongly recommended by the Board. Avant recommends video consultations as the preferred method of telehealth consultations. The addition of visual images and cues can improve the quality and safety of the consultations. It can assist the doctor to build a rapport with a patient and form an accurate diagnosis.

Just as you decide whether a telehealth consultation is clinically appropriate as opposed to a face-to-face consultation, you will need to make a judgement about whether a telephone consult is appropriate as opposed to a video consultation. This will depend on all the circumstances of the patient and the external circumstances including the options available to you at the time.

From a Medicare perspective, the Department of Health has stated that for the temporary COVID MBS items, a video consultation is preferred over telephone to replace a face-to-face consultation. The telehealth item numbers for Medicare make it clear that telephone consultations should only be used where video is unavailable.

Do I need to document the method used for the consultation (face-to-face, video or telephone) and the reason for this?

The impact of COVID-19 and the need to take precautions to minimise face-to-face contact will have different implementations in different settings and locations and at different times.

In all situations, it is important to consider whether or not a telehealth consultation is appropriate for the clinical needs of that patient. If it is, add a simple note in the clinical records confirming that telehealth was chosen, why it was done (e.g. it was due to the pandemic), and document whether it was by phone or video. As the level of restrictions and risk change over time, the detail of the documentation required to support the decision to conduct the consultation via telehealth may also change.

Is there a limit on the number of telehealth consultations you can have with one patient?

There is no limit on the number of telehealth consultations you can have with a patient, but for each consultation, it is important to consider whether telehealth is appropriate. If you have not seen a patient face-to-face for some months, there may be circumstances where a face-to-face consultation is needed so you can physically examine a patient.

Can I issue a death certificate for a patient I have only seen via telehealth in recent months?

The laws in each state and territory are different regarding how recently you must have seen a patient before issuing a death certificate. In some cases, this will be based on having conducted a consultation with them, including via telehealth, and not necessarily require having seen them in person. See Avant's factsheets on death certificates in your state or territory. Please contact the Medico-legal Advisory Service for advice if a specific situation arises.

Patients and treatment

Should first consultations be in person wherever possible?

Should patients be informed of the limitations of telehealth?

Essentially, yes and yes (subject to any MBS billing requirements). If possible, you want to have had the opportunity to see a patient in person for the first consultation. However, this may not be possible due to any restrictions and precautions as guided by the Department of Health.

If you cannot see the patient in person but some aspects of the consultation can be conducted by telehealth, this can proceed. Documentation should be made of the limitations.

The Medical Board's guidelines regarding technology-based consultations confirm that for each consultation, it is important to consider whether telehealth is appropriate. The guidelines also state that you should provide an explanation to the patient of the particular process involved in the technology-based patient consultation. Discussion about the limitations of telehealth can be included in that discussion and can also guide whether or not a patient needs to be seen in person, for example for follow up at a later date.

Is consent for telehealth implied when patient logs on to the link or does it need to be expressly repeated?

How do I best confirm patient consent or obtain a patient's signature if needed?

To a degree, there is consent demonstrated by the patient logging in to the consultation. This might be consent for telehealth but does not extend to any billing arrangements or consent for treatment covered in that consultation. Therefore, consent for those aspects does still need to be discussed and documented.

A patient's consent to treatment, or further steps such as a referral, can be provided verbally during the telehealth consultation and then documented by you in the patient's clinical records. If you need a patient's signature on a document, there is legislation which suggests that an electronic or digital signature on a letter would generally be acceptable for most documents.

Is it possible to ask patient to complete forms online or electronically prior to admission?

Can we obtain pre-operative histories via telehealth?

This will depend on the clinical setting and whether or not telehealth via video or telephone is a suitable way to obtain the information from the patient. It may also depend on whether or not the facility where a procedure is taking place supports the documentation being submitted online or electronically. This is likely to be a developing area. You should still have the option of contacting the patient to follow up on any information you have received electronically, to ensure you have all the information you need, and that you have had any necessary discussions with the patient.

What is my role if, after a telehealth consultation, it is determined the patient needs to be seen face-to-face but the patient does not attend?

It is important to set patient expectations from the beginning of the consultation, including the possible need for a face-to-face consultation or physical examination. If the patient refuses, try to reiterate the importance and benefits of the face-to-face consultation and the risks of not attending. Try to find out the reason for their resistance and if you can overcome it (for example, perhaps the person is not local to you or your practice and there is another practice they can attend). Ensure you thoroughly document the conversation you had with the patient, including the advice that you gave.

What are my obligations in situations where telehealth is sufficient and safer for the patient and practice, but the patient wants to be seen in person?

Start by explaining to the patient the reasons why telehealth is appropriate and why it is the best option for the patient in their circumstances. Document this discussion. If the patient insists on being seen in person, politely explain that you cannot offer this to them and the reasons – for example, risk of exposure to infection following the Department of Health guidelines. If the patient does not accept the reasons, then they can contact another practitioner or practice to be seen in person by them. You should make a note of your discussion with the patient in their clinical records.

Do patients have a 'right' to be seen? Can I refuse a telephone consultation?

A patient does not have a right to be seen in person or via telehealth, and there is no requirement that you offer telehealth. You should discuss with the patient their options for treatment. If you do not believe you can treat the patient, you could offer to refer them to another practitioner.

How do you manage patients who continue to request phone consultations that may not be clinically indicated?

Setting patient expectations can be difficult, particularly when things are changing quickly and often. It would help to have an agreed approach within the practice and include it in your policies or operations manual so all staff can have access to it. This might include some standard wording explaining the situation to the patient and a way of escalating if the situation continues. Please see Avant's factsheet 'Managing patient expectations' for further information.

There may also be times where these repeated requests from a patient suggest that they may need a further consultation.

Can the doctor initiate the consultation, such as for necessary follow up or discussing results of an investigation?

When is it appropriate for the doctor, rather than the patient, to initiate a telehealth consultation?

The initiation of consultations should follow what happens with face-to-face consultations. Where clinically relevant, a practitioner may contact an existing patient for a video or telephone attendance as part of appropriate, ongoing care.

If you received significant test results back and you would like to discuss these with the patient, you should contact the patient to make an appointment to discuss those results as you would do normally. As with all appointments, this should be arranged in advance and made clear that this will be an appointment and outline the billing arrangements.

Are there any guidelines on how to ensure patients comply with telehealth etiquette such as privacy, location, sharing, etc?

A telehealth consultation should reflect a face-to-face consultation as much as possible. Fundamental issues such as the consultation being held in a private and quiet setting, who else is included in the consultation, or can overhear, are all relevant considerations.

Much of this may be common sense but may not occur to patients in advance so you may wish to have some standard information you provide to patients when the consultation is booked, or confirm at the start of the consultation that they are somewhere private and quiet. If you notice other people included in the consultation, clarify who they are and that the patient is happy for them to be included, and document this.

If the patient is not complying with reasonable requests or you are concerned the patient is distracted or you are unable to conduct the consultation properly, you can decide to terminate the consultation and reschedule it for another time when the consultation can properly take place.

Prescribing

How do I best respond to online requests from patients for prescriptions?

Doctors are responsible for ensuring that all prescriptions they issue are clinically indicated. If you wish to offer patients the option of using an online system for indicating they would like a repeat prescription, you need to ensure you take steps to assess and address this.

When doing e-scripts and referrals etc from home, which are generated at the practice, who is authorised to sign the documents?

With a remote review, what is the best way to sign medication orders? Can we use electronic/ scanned signatures?

Referrals can have electronic signatures.

Doctors should always sign their own prescriptions. If you are conducting telehealth consultations, you should still create and sign the prescription as normal. Then you make a digital image of the prescription (photograph or scan) and send it to the patient's pharmacist. This is known as 'image-based prescribing' and was created to help deliver telehealth during COVID-19.

If you are unable to print and sign the prescription yourself, you may need to make other arrangements.

If the doctor cannot sign the script from home, then it would be a matter of indicating in the notes the prescription recommended based on the clinical assessment of the patient, and then for the doctor who consulted with the patient to liaise with a doctor onsite at the practice to review the medical records and then for that doctor on site to issue the script. This may be a straightforward process for repeat prescriptions for chronic conditions but would need a higher level of involvement for prescriptions for new medications.

In that situation, there would be separate considerations about whether or not telehealth was sufficient to prescribe a new medication. Information about these considerations is set out in Avant's COVID-19 FAQs on the website under the heading "What else do I need to consider when conducting telehealth consultations?".

Is it safe to prescribe Schedule 4 and Schedule 8 drugs with telehealth consultations?

What are the legal implications?

If you do not think you can safely assess the patient via telehealth and judge whether it is clinically appropriate to prescribe a particular medication, then you should have a face-to-face consultation. Ordinary clinical standards should be followed when prescribing any medication, including Schedule 4 and Schedule 8 drugs.

The principles of patient safety underpinned by good medical practice are unchanged regardless of the mode of delivery of healthcare. In prescribing Schedule 8 medication for patients, on each occasion of prescription you are required to undertake a comprehensive patient assessment that demonstrates an ongoing clinical need for opioids. If there is a legal requirement for an authority, ensure the authority is in place and prescribe in accordance with that authority. However, during the pandemic, the factors to be considered in determining whether or not a repeat prescription for the patient is warranted may be slightly different in a telehealth situation.

Each state and territory have different laws about schedule 8 drugs and image-based prescribing. The Department of Health has prepared this summary for each state or territory: <https://www.health.gov.au/sites/default/files/documents/2020/10/prescriptions-via-telehealth-state-and-territory-rules.pdf>

Many states do not allow the prescription of Schedule 8 and some Schedule 4 drugs through image-based prescribing. Therefore, unless electronic prescribing (the token model) is available in your area, it may not be possible to prescribe these medications during a telehealth consultation. There are exceptions but these are based on the state where you practice. You can contact our Medico-legal Advisory Service for specific advice.

Can a patient being prescribed Medicinal Cannabis be treated through private telehealth completely?

Medicinal cannabis is a Schedule 8 medication, or Schedule 4 depending on the components, so the above applies. Ensure you comply with TGA requirements and your state or territory's specific requirements when prescribing medicinal cannabis. More information about prescribing medicinal cannabis can be found in Avant's article and the links included: avant.org.au/news/medicinal-cannabis.

Electronic prescribing

Please briefly explain the introduction of electronic prescribing and other developments.

Image-based prescribing was an innovation to assist during the pandemic and has been extended until March 2021.

The Department of Health and the Australia Digital Health Agency is also rolling out electronic prescribing around the country. There are two types of electronic prescribing. Phase 1 is the Token model, and Phase 2 is the Active Script List.

The token model is available in most of Victoria and will be rolled out around the rest of the country soon. In this new form of prescribing an electronic token is sent from your prescribing software directly to a patient's mobile as an SMS, or as an e-mail.

The Active Script List will be available towards the end of 2020/beginning of 2021.

Can I email a prescription directly to the pharmacy for a patient?

Image based prescribing is an interim measure during the pandemic and has been extended until March 2021. The government has allowed for images of prescriptions to be emailed directly to the patient's pharmacy, so that the patient does not have to pick up and handle a physical prescription.

Documentation and transmitting information

Please provide guidance regarding any safe and unsafe methods of transferring scripts, pathology forms, medical certificates and letters to the reception and patients.

Privacy legislation does not prescribe how you can send patient information as long as you take reasonable steps to protect the privacy of your patient and ensure the security of the information. Therefore, you can use whichever method of communication is most suitable, and this can include email.

What are the relevant considerations about using email or SMS to communicate with patients?

Please see Avant's factsheets regarding email communication and SMS linked above.

Patients are sending me photographs or videos in this time of telehealth, or parents are sending me videos of children's behaviours. Am I required to open the image or video when I receive it, or can I wait for the consultation?

Can or should I keep the recording or just document what I have seen?

Clinical images can be helpful when conducting a telehealth consultation as additional information to help you assess the patient where you are unable to see them in a face-to-face consultation. They are part of the consultation, so you don't need to open and review them when they are received. It is helpful to set patient expectations about this, explaining that they can send any video or photographs to you on a particular method and they will be reviewed as part of the consultation.

These images and videos form part of the clinical record and therefore should be stored with the patient's clinical records. You can confirm the patient understands that this is the case and document their consent, so there is no need to feel uncomfortable about keeping the video. If the patient, or their parent, indicates they do not want you to store the image or video, then document that they have not provided consent and then you can describe what you have seen in the video or image in your clinical records.

Medicare and billing

Can patients be privately billed for telehealth consultations?

From 1 October 2020 for general practitioners, and from 20 April 2020 for all other specialists and allied health service providers, the new telehealth item numbers are not required to be bulk-billed to patients.

There are separate billing codes for specialists, physicians, psychiatrists, paediatricians, geriatricians, public health physicians, neurosurgeons and anaesthetists. The requirements are:

- you still need a referral from a GP (existing referrals remain valid); and
- the patient must be an out-patient.

There are specific requirements depending on the item number used, so check each item number carefully and ensure your documentation supports your use of the particular item number.

For patients who are not entitled to be bulk-billed, you can bill patients privately as long as you have informed financial consent from your patients before providing the service. You should therefore provide your patients with:

- Details of your fees, including any out-of-pocket costs.
- Details of the amount of any Medicare rebate.

A doctor and patient can agree that there will be no Medicare benefit for the service (and the doctor will issue a receipt which cannot be used by the patient to claim a Medicare benefit). If you choose to do this, you should inform patients that other practices may bulk-bill the service under the COVID-19 telehealth item numbers, so they are aware of their options.

See Avant's COVID-19 FAQs for more information.

If on telehealth and you think you need to see the patient, how do you charge Medicare?

Where a single service, provided by the same practitioner, is comprised of a telehealth and face-to-face component, the appropriate item to bill – that is telehealth or face-to-face – is determined by the type of service which took the greater amount of time.

For example, a practitioner may take the patient history in an initial telehealth attendance and, during that attendance, decide to schedule a face-to-face attendance later that day. The other components of the service are provided at the second attendance. The two services together would comprise a single attendance. You cannot charge Medicare for two consultations in this situation.

Can you charge Medicare for two separate consults if a telehealth consultation results in you needing to see the patient face-to-face the next day?

Yes, if certain conditions are met. The COVID-19 MBS items are subject to the same requirements as standard attendance items. Practitioners may claim a COVID-19 telehealth or telephone item and a face-to-face attendance item for the same patient, if:

- both are clinically necessary;
- the requirements of both items are fully met; and
- the second attendance is not a continuation of the first.

Telehealth item numbers cannot be used for triaging.

Can you clarify the rules regarding Medicare billing when you don't talk directly to patient? For example, talking to a parent of a young child or a nurse at a nursing home.

Patients, including residents of Residential Aged Care Facilities (RACFs), must be present when receiving MBS services whether face-to-face, by video or by telephone.

Nurses or other health practitioners cannot represent a patient in a consultation with a doctor without the patient being present.

Third parties, such as parents of young children or carers of people with communication difficulties, may need to communicate with the health professional at certain times during, or for the entirety of, a telehealth consultation. They may also need to facilitate activities at the patient-end of the consultation e.g. checking whether a patient has a fever.

Guidance issued by professional bodies may assist in determining whether another person is needed to support the patient during the telehealth or telephone consultation. For example, the RACGP provides GPs with a framework and standards, outlining the criteria for video consultations with patients accompanied by a third party or requiring assistance due to cognitive impairment or disability.

Resources

Avant resources

- [COVID-19 FAQs](#)
- [COVID-19 telehealth essentials factsheet](#)
- [Managing patient expectations factsheet](#)
- [Repeat prescriptions factsheet](#)
- [Recording of consults is complex – Doctors should proceed with caution article](#)
- [Email communication factsheet](#)
- [Medical certificates – your responsibilities factsheet](#)
- [Patient follow up and recalls factsheet](#)

External resources

- [Medical Board of Australia: Guidelines for technology-based consultations](#)
- [Medicare COVID-19 item numbers](#)
- [Electronic prescribing: A convenient alternative to paper prescriptions](#)
- [State and territory arrangements regarding electronic prescribing](#)
- [Pharmaceutical Society of Australia](#)

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