

Professional Liability and Teleaudiology Services

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Considerable clinical research supports the validity of audiology applications of telehealth or teleaudiology, including the identification, diagnostic assessment, and management of hearing loss.^{1,2} Teleaudiology concepts and techniques are explained in other recent articles published in *The Hearing Journal* (e.g., <https://bit.ly/2YdB5Pb>, “Making Audiology Work during COVID-19 and Beyond”). In this article, we'll focus on the intersection of professional liability and the identification and diagnosis of hearing loss and related disorders (e.g., bothersome tinnitus).



Adobe Stock/Maksym Yemelyanov, telehealth, audiology, legal.

Synchronous or real-time teleaudiology services are typically provided with the assistance of an on-site facilitator or technician, with the patient and the audiologist in another location. With teleaudiology, audiologist can complete each step of a typical hearing assessment process without direct face-to-face interaction with the patient, including a focused history taking to rule out ear disease in a pediatric or adult patient,³ remote otoscopic inspection of the ear,⁴ hearing screening,⁵ pure tone threshold assessment,⁶ evaluation of word recognition performance in quiet, and even an evaluation of speech perception in noise.^{7,8}

In a relatively brief time frame, the global COVID-19 pandemic has led to a widespread interest in and demand for teleaudiology services in countries with well-established audiological services, as well as in global regions that lack adequate audiological services and access to quality hearing health care. The contagious nature of COVID-19 has created a serious challenge in the remote delivery of audiological services, in addition to the marked increase in demand. The use of technicians, facilitators, or other non-audiology personnel to interact directly with patients is not in compliance with physical distancing recommendations and stay-at-home or self-quarantine orders being implemented in many U.S. states at the time of this writing. Fortunately, a variety of online options and mobile applications are now available for the assessment of hearing loss and related disorders, at least for older children and adult patients. The creative application of these technologies allows the delivery of quality hearing health services while minimizing the risk of patient

infection. It is therefore possible for enterprising and motivated audiologists to conduct or coordinate each step of the hearing assessment process without direct patient contact, that is, with patients collecting their own audiological data either independently with self-test systems or with the assistance of a family member.

The new and pressing demand for no-touch teleaudiology in the home setting (read Swanepoel and Hall in this issue of *The Hearing Journal*) raises some compelling professional practice concerns that largely stem from distinct differences between a controlled and regulated audiology clinic setting and an informal home setting. Let's examine these concerns and setting distinctions.

Patient Rights: Patients must be informed of what test procedures will be performed and what is expected of them during the assessment.⁹ Audiologists should maintain a written record of communications with patients, including the explanation of patient rights. Options for ensuring that patients in a home setting receive and understand their rights might include a written explanation delivered via email or regular mail before services are provided or a verbal explanation of rights via a voice or video call or online chat (e.g., via Skype or Zoom).

Patient Consent: Patients should provide written consent for the assessment and any subsequent treatment after the process is explained.⁹ They should also be given an opportunity to ask questions. Parents or legal guardians must consent for hearing assessment of minors (patients under 18 years old in most U.S. states). A legally recognized caregiver or someone with the appropriate credentials (e.g., durable power of attorney) must provide written consent for an adult who has been declared mentally incompetent. The written consent typically used in the clinic setting may be mailed to the patient for signature in advance of service delivery and signed in the virtual presence of the audiologist (via telephone or online communication). Audiologists should make every attempt to verify that the patient or the legal guardian is the person who signs the consent form, perhaps with the patient or legal guardian displaying a photograph identification via a video call.

Patient Privacy & Security: Patient privacy is an essential aspect of health care delivery. Protected health information (PHI) must remain confidential. Security in a health care setting, including the home, includes physical and technical safeguards that limit and control access to PHI and prevent accidental or intentional disclosure of information to unauthorized people or entities. Audiologists in the United States who are providing services in a home setting must still comply with federal laws, such as the Health Insurance Portability and Accountability Act (HIPAA) and state laws on patient privacy and security.⁹ Health care challenges during the COVID-19 crisis have prompted the relaxation of some regulations. Audiologists should stay updated on current federal and state laws and regulations regarding patient privacy and security. Various challenges are associated with ensuring patient privacy and security when delivering remote audiology services, including possible violations of HIPAA compliance with unsecured telephone and email patient communications and the presence of an unauthorized person in the patient's space (or within earshot of the patient's space) during remote care delivery.

At least three reasonable common sense steps to safeguard patient privacy would seem to be warranted. First, audiologists who cannot reach a patient directly via telephone should leave a simple voice message requesting a callback, without disclosing any PHI in the message. For telephone communications with patients, audiologists would be well-advised to either use a dedicated clinical phone number or to take steps to prevent the patient from accessing a personal cell phone number. Second, upon reaching a patient via telephone or online (e.g., via Skype or Zoom), audiologists might ask the patient to relocate to a private area in the house, preferably a room with the door closed. Third, if patient communication and services must take place within a common space in the residence, such as the living room or dining room, the audiologist should first confirm that the patient is alone or that the patient

consents to proceeding with the assessment in the presence of one or more people and/or family members. The audiologist should document in writing the patient's decisions regarding his or her privacy, including the names of those present during service delivery.

Patient Safety: In a conventional clinic setting, maintaining patient safety includes taking universal precautions to control and prevent infection, implementing policies regarding fall prevention, and maintaining a safe environment of care. Audiologists should attempt to ensure that the home environment meets these expectations, including the patient's use of current recommended personal protective equipment (PPE) to minimize the risk of infection (e.g., face masks, medical gloves, disinfecting equipment, supplies, and surfaces, etc.)

Standard of Care: Standard of care is the degree of prudence and caution that audiologists should exercise when providing care in a given clinical situation.⁹ In a formal health care setting, the standard of care is generally defined as in compliance with published evidence-based clinical practice guidelines. These guidelines and recommendations are generated by audiology professional organizations and multidisciplinary professional groups, such as the Joint Committee on Infant Hearing. Standard of care in audiology must also be consistent with statements of scope of practice, code of ethics, state licensure laws and regulations, and federal health care regulatory entities like the Centers for Medicare & Medicaid Services (CMS).

Of note, none of the above resources and documents address the standard of care for audiology services provided remotely in a home setting. Also, state and federal laws have been modified and continue to evolve since the onset of the COVID-19 crisis. As mentioned, audiologists should regularly seek out updates on credible online resources, such as the websites of the U.S. Department of Health and Human Services (www.hhs.gov) and those of professional organizations (e.g., www.audiology.org, www.asha.org, www.audiologist.org).

Patient Communication & Documentation: Maintaining and documenting communication with patients and family members reduce the risk of an audiologist's professional liability and violation of state or federal civil or criminal law. Audiologists should consistently, carefully, and completely document in writing everything that was done with and to the patient. Supplement written notes with printouts of all test findings and/or photographic documentation (e.g., video-otoscopy images). Of course, all documentation must be safeguarded for patient privacy. Common legal advice about documentation is quite straightforward: If you did not document what you did, then you did not do it.

State Licensure: Compliance with state licensure laws is a final and serious consideration for the provision of no-touch teleaudiology services. Policies, laws, and regulations for telehealth in the United States vary considerably from state to state. State policies, laws, and regulations regarding telehealth are often quite different for audiologists versus other health care providers (e.g., physicians, nurses, optometrists, dentists) within a state. Furthermore, state policies, laws, and regulations often do not pertain to audiology students, externs, technicians, or assistants. Information on licensure laws of U.S. states can also be found online (e.g., www.asha.org, <https://www.telehealthresourcecenter.org/cchp/>, www.audiology.org, www.audiologist.org).

Even with unprecedented constraints due to the COVID-19 pandemic, audiologists have the opportunity to maintain and possibly expand hearing health care provision. With modern technology and techniques, audiologists can conduct hearing assessments of patients who are essentially isolated in their residence. Audiologists should and must make every attempt to provide no-touch services while ensuring high standards of care and maintaining a professional practice that is commonplace in a traditional clinic setting.

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