

Pharma & Healthcare Update

December 31, 2020

REGULATORY YEARLY WRAP 2020: DIGITAL HEALTH IN INDIA

INTRODUCTION

Digital health is the inevitable next step in the healthcare space. Since the release of the National Health Policy, 2017 which identified the attainment of universal healthcare through the setting up of a digital health ecosystem, the Government has steadily been releasing policy documents on what India's national health system should look like. This year has seen even more progress in the adoption of digital health technologies due to the COVID-19 pandemic, as people were hesitant to venture outside of their homes.

In this update, we captured the key developments in the digital health space.

GUIDELINES ISSUED TO REGULATE THE PRACTICE OF TELEMEDICINE IN INDIA

The Board of Governors instituted by the Central Government for regulating medical education and the medical profession in India (in supersession of the Medical Council of India), issued the Telemedicine Practice Guidelines ("TPG") in partnership with the NITI Aayog.¹ The TPG were issued as part of the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 ("MCI Code") – which lays down professional and ethical standards to be followed by doctors in their interaction with patients, pharmaceutical companies and within the profession – and is therefore binding on registered medical practitioners.

Subsequently, the parent legislation under which the MCI Code was enacted i.e. the Indian Medical Council Act, 1956 was repealed and the National Medical Commission Act, 2019 ("NMC Act") was brought in force as the primary legislation regulating the medical profession in India. Nonetheless, the TPG remains binding on medical practitioners (in accordance with the transitional provisions under the NMC Act) and is deemed to have been issued under the NMC Act until a new set of rules on this subject is issued under the NMC Act.²

The TPG provide legal recognition to the practice of telemedicine, enables medical practitioners to practice telemedicine in any part of the country, provides guidance on the nature of care that may be provided and the manner of providing such care. For instance, it provides guidance on which mode of communication (audio/video/text) to use for which types of consultation (emergency/non-emergency/medical practitioner to medical practitioner). The TPG also categorize medicines in List O, List A, List B and Prohibited List (based on the risk for drug abuse) and specify which medicines can be prescribed in which situations.

The release of the TPG was expedited in light of the COVID-19 pandemic as both patients and medical practitioners were unwilling to enter hospitals and clinics unless absolutely required to do so. The TPG provides much needed clarity and guidance on how to provide medical advice remotely and was welcomed by medical practitioners nationwide.

INDIAN GOVERNMENT ANNOUNCES THE LAUNCH OF THE NATIONAL DIGITAL HEALTH MISSION

On August 15, 2020, the Indian Government announced the launch of the National Digital Health Mission ("NDHM") – a major digital health initiative which aims to digitize India's healthcare ecosystem and provide a Health ID to every person in the country. Pursuant to this Ministry of Health and Family Welfare has also recently finalized the Health Data Management Policy ("HDM Policy") under the NDHM for comments from the public.³

The HDM Policy provides the framework for the creation of three separate Health IDs for patients (Health ID), medical practitioners (Health Practitioner ID) and clinical establishments (Health Facility ID). Each ID comes with its sets of data access rights and privileges. The HDM Policy also gives the patient complete ownership over the health data and lays down a framework for how this data may be utilized.

Once fully operational, the NDHM will link all patient data with a single Health ID making it easier for both patients and healthcare practitioners to access their medical history when making clinical decisions. The data may also be utilized in an anonymized form to better understand trends in public health and assist the government in making data-driven policy decisions in the healthcare space.

The HDM Policy, while a welcome step on part of the Government does not provide sufficient guidance on some essential privacy-related areas such as government access to the data, maintaining logs of access (so that patients are aware if any entity has unauthorized access to the data) or how health data may be accessed in emergency situations if the patient is unconscious and family members cannot be reached.

CONCLUSION

The release of the TPG is a watershed moment for the practice of telemedicine in India while the HDM Policy is significant in being the first major policy document dealing with health data privacy and security.

One of the biggest obstacles to the adoption of digital health tools (such as artificial intelligence or cloud storage) is the lack of specific regulation for these technologies, and the TPG and HDM Policy are significant steps in

Research Papers

Structuring Platform Investments in India For Foreign Investors

March 31, 2025

India's Oil & Gas Sector – at a Glance?

March 27, 2025

Artificial Intelligence in Healthcare

March 27, 2025

Research Articles

2025 Watchlist: Life Sciences Sector India

April 04, 2025

Re-Evaluating Press Note 3 Of 2020: Should India's Land Borders Still Define Foreign Investment Boundaries?

February 04, 2025

INDIA 2025: The Emerging Powerhouse for Private Equity and M&A Deals

January 15, 2025

Audio

CCI's Deal Value Test

February 22, 2025

Securities Market Regulator's Continued Quest Against "Unfiltered" Financial Advice

December 18, 2024

Digital Lending - Part 1 - What's New with NBFC P2Ps

November 19, 2024

NDA Connect

Connect with us at events, conferences and seminars.

NDA Hotline

Click here to view Hotline archives.

Video

Vyapak Desai speaking on the danger of deepfakes | Legally Speaking with Tarun Nangia | NewsX

addressing these regulatory gaps. It also appears that these are only the first of many steps the Indian Government plans to take to make digital health a reality in India.

For 2021, one thing is clear – the future is digital.

– **Shreya Shenolikar, Darren Punnen & Dr.Milind Antani**
You can direct your queries or comments to the authors

¹ TPG, available at: <https://www.mohfw.gov.in/pdf/Telemedicine.pdf>

² Section 62 of the NMC Act.

³ HDM Policy, available at: <https://ndhm.gov.in/assets/uploads/NDHM%20Health%20Data%20anagement%20Policy.pdf>

DISCLAIMER

The contents of this hotline should not be construed as legal opinion. View detailed disclaimer.

This Hotline provides general information existing at the time of preparation. The Hotline is intended as a news update and Nishith Desai Associates neither assumes nor accepts any responsibility for any loss arising to any person acting or refraining from acting as a result of any material contained in this Hotline. It is recommended that professional advice be taken based on the specific facts and circumstances. This Hotline does not substitute the need to refer to the original pronouncements.

This is not a Spam mail. You have received this mail because you have either requested for it or someone must have suggested your name. Since India has no anti-spamming law, we refer to the US directive, which states that a mail cannot be considered Spam if it contains the sender's contact information, which this mail does. In case this mail doesn't concern you, please unsubscribe from mailing list.

April 01, 2025

Vaibhav Parikh, Partner, Nishith Desai Associate on Tech, M&A, and Ease of Doing Business

March 19, 2025

SIAC 2025 Rules: Key changes & Implications

February 18, 2025