



Doing telehealth from home? If you're zoned out, take steps to fix it

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Effective Jun 8, 2023
Published Jun 12, 2023
Last Reviewed Jun 8, 2023

Compliance

Because of an expected new enrollment requirement, providers doing "telehealth from home" (TFH) may want to check their local zoning ordinances before setting up shop.

As mentioned in a recent CMS call, the agency "expect[s] practitioners to update their enrollment information to reflect where they are performing their services" if they continue to provide telehealth services under the originating/distant site flexibilities instituted for the COVID emergency and extended until the end of 2023 (*PBN 6/5/23*).

This would include the TFH mode of work to which many providers became accustomed during the public health emergency (PHE). "I have physician friends who have opted to essentially practice 90% out of their home," says Khoren Bandazian, a partner in the real estate, zoning and land use practice and health services groups at the Rivkin Radler law firm in Hackensack, N.J.

But enrollment of one's home with a federal agency as a place of business is essentially a declaration that you're running a business there — not just working as a 1099 employee out of your home — and it's not impossible that your local zoning laws will prohibit that if you're in a residential rather than an industrial, commercial, mixed-use or other such zone.

The requirements vary from jurisdiction to jurisdiction. "We have 566 municipalities in New Jersey," Bandazian says, "and every one's got its own zoning code."

Winn Jackson, a partner at Shackelford, Bowen, McKinley & Norton LLP in Dallas, notes that in his area "a person can use their home as a place of business so long as they comply with a list of 'do-nots,'" which include:

- Do not post a business sign on the house or in the yard.
- Do not use the street address of the home on an advertisement.
- Do not employ more than one non-resident at the home who works more than four hours a week.
- Do not conduct activities on the exterior of the home that indicate a business is being run out of the home.
- Do not make loud noises or generate unreasonably disruptive traffic or parking congestion.

All of this is pretty much a cinch for a telehealth provider — and very similar to other residential-district requirements. (Others Bandazian mentions include that you have to be an actual resident of the home, and that you can't sell physical goods out of the home to customers.)

Note, though, that in Dallas your business "can only take up the lesser of 25% or 400 square feet of space" in your home, Jackson says. Be sure to check your local zoning ordinances.

4 more tips to avoid trouble

- **See if you need a permit.** In Washington, D.C., the Department of Consumer and Regulatory Affairs (DCRA) "requires residents to apply for a Home Occupation Permit for any full or part-time business, professional or economic activity occurring at a residence." Other jurisdictions may have similar requirements.
- **Cover yourself.** It can be as important to be able to show you're within your rights and it is to be within them. "It may be worthwhile to talk to the local building department and see if there's any type of zoning certificate of use," Bandazian says, just so you can head off a challenge.
- **See about a workaround.** If the address you're enrolling is in a residential zone and you're definitely not supposed to have a home business there, apply to the zoning or building authorities for a use variance, Bandazian suggests.
- **Check with your insurers.** Is your malpractice policy still good from your new workplace? Don't forget to double check to make sure you're covered.

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