

# The first hospital in China to provide telemedicine services

Guangdong No. 2 Provincial People's Hospital launched telemedicine in October, the first hospital in China to be approved to do so by the provincial Health and Family Planning Commission. Nicolas Zhu of CMS China provides a closer look at the development of telemedicine in China and the legal uncertainties to be addressed before it can really take off.

On 25 October 2014, Guangdong No. 2 Provincial People's Hospital launched telemedicine to patients. This is the first hospital to carry out telemedicine in China upon approval by the provincial Health and Family Planning Commission ('Commission') following its Circular 'Opinion on Pushing Forward Telemedicine Services of Medical Institutes' (the 'Circular') issued on 29 August 2014.

The telemedicine of Guangdong No.2 Provincial People's Hospital is carried out in the following way:

- The hospital provides consultation through an internet platform set up by a third party company;
- A network of consultation places has been set up in community medical centres, rural medical offices and pharmacies;
- Patients can receive consultation and diagnosis at one of these consultation places through video conference;
- Doctors issue prescriptions through the internet platform and patients can obtain printed prescriptions directly at the consultation place; and
- Patients can go to pharmacies or community medical centres to get prescribed drugs.

The aim of telemedicine is to facilitate consultations with hospitals so that patients can receive medical treatment easily.

More than 30 consultation places have now been set up locally. In the short term, the hospital aims to extend to 10,000 places, and in the long term, to 50,000<sup>1</sup>.

## Background information

The Circular expands the scope of permitted telemedicine services. However, the question of how the guidelines contained in the Circular will be implemented remains unclear.

The concept of telemedicine was first introduced in China in 1999 in a Ministry of Health circular, which limited the scope of telemedicine to consultation between two medical institutes. Since this circular's publication, the field of telemedicine has expanded considerably. However, as telemedicine expanded far beyond the scope of the 1999 circular, a new circular to clarify the scope of telemedicine permitted in China and to promote new service models was required.

According to the new Circular, telemedicine is defined as a medical activity where technical support is provided to patients by a medical institute other than the medical institute in which they are treated, on the invitation of the treating institute. Medical institutes are allowed to provide consultation and diagnostic services directly to patients outside hospitals through technical support. The technical support may be provided in the form of telecommunication, computer or web technology. More specifically, in addition to remote consultation services permitted by the 1999 circular, the new Circular extends the scope of permitted services to remote pathological diagnosis, remote medical image diagnosis, remote monitoring, remote outpatient consultation, remote case discussion and other services which may be stipulated by provincial health and family

planning commissions. The Circular also expressly acknowledges that direct examination, diagnosis, treatment, surgery and monitoring of patients through the control of remote medical devices is not governed by the Circular and that the Commission will provide specific regulations and standards for this specific means of treatment.

## Legal uncertainties

Although Guangdong province has become the first province in China to test the water, the means by which telemedicine can be implemented in practice still remains unclear in the absence of relevant regulations. The following legal aspects should be carefully studied and elaborated so as to formalise telemedicine in China:

### Online sale of prescribed drugs

The People's Republic of China ('PRC') Law currently prohibits the online sale of prescribed drugs. Only over-the-counter drugs can be sold on the internet by a company which has obtained the necessary qualifications. A draft of the 'Administrative Measures on the Sale of Food and Drugs on the Internet' was published for public comment on 28 May 2014. Once enacted, the Measures will provide a legal basis for the online sale of prescription drugs<sup>2</sup>.

### Prescriptions via the internet

Article 28 of the Prescription Administrative Measures provides that if a doctor uses a computer system to issue or transmit prescriptions, a printed prescription must be signed and stamped by the doctor. Therefore, a patient is not allowed to use the prescription he/she obtains in an electronic form to purchase prescribed drugs on the internet.

The current practice of Guangdong No. 2 Provincial

People's Hospital, which allows patients to get prescriptions without the actual signature of a doctor does not seem in full compliance with the above rules, although an electronic signature is expected to appear on the prescription. Further, the absence of innovative measures here will significantly affect the development of the sale of prescription drugs online.

#### Absence of nationwide reimbursement policy

The PRC has not yet established a nationwide reimbursement policy for pharmaceuticals and medical treatments.

The 'Opinion relating to Medical Settlement Services between different regions of Basic Medical Insurance' issued by the Ministry of Human Resources and Social Security (Ren She Bu Fa (2009) No.190) on 31 December 2009 provides three steps to achieve settlement:

- upgrade the level of reimbursement gradually to cities at the regional level in one province;
- implement settlement between different regions within one province; and
- implement settlement between different provinces.

Article 64 of the Social Security Law only requires governments to gradually reach province wide reimbursement, whereas currently the reimbursement system is usually limited to cities at the regional level within one province. Until now, 27 provinces have established their own medical settlement system, amongst which 15 provinces have successfully achieved the settlement system for all regions within their respective province<sup>3</sup>.

In the absence of a nationwide reimbursement system or a nationwide cross province medical

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settlement system, it will not be possible for a patient located in one province to seek telemedical help in another province or municipality located far away.

#### Off-label use

For the time being, there is no regulation governing off-label use under PRC Law. Only the Guangzhou Pharmaceutical Association has issued a local rule regarding off-label medicine, but it is not a regulation and can only be used for reference purposes.

The risks of medical malpractice due to the off-label use of drugs appear to be much higher in telemedicine.

#### Patient confidentiality and data protection

Doctors may be reluctant to provide full diagnosis online given the potential medical malpractice risks that may arise and the related evidence that can easily be found on the internet. Video recording will make it much easier to evaluate the liability of doctors, however it will be harder for doctors to ascertain the health situation of their patients via telemedicine. As to patients, except for general principles of civil law, no relative regulation exists for the time being to protect the information that may be found through telemedicine. Although the Practicing Doctors Law requires doctors to protect the privacy of patients, no specific regulation provides details on how to protect the privacy of patients during telemedicine.

#### Reconciliation of the contradictory provisions governing the ability of foreign medical institutes to offer telemedicine

The Circular also provides that medical institutes may carry out telemedicine services in

cooperation with foreign medical institutes in accordance with the Circular. However, it should be noted that this provision violates the 'Tentative Measures on the Administration of Sino-Foreign Equity and Contractual Medical Institutes' regulation, effective since 1 July 2000. According to Article 33 of this regulation, if any party contracts with a foreign medical institute in order to carry out diagnostic projects in any form whatsoever without the approval of the authorities, this will be considered illegal and the parties will be subject to the sanctions prescribed in the Medical Institutes Administration Regulations. Without modification of these regulations, it would be difficult for foreign institutes to be actively involved in telemedicine in China.

In the absence of a more complete legislative environment, it will be hard to implement the telemedicine system in China. The current practice of Guangdong No.2 Provincial People's Hospital is a good trial run, but the current model of diagnosis does not meet the requirements of e-commerce expected by the big market players who would like to carry out mobile medical services, remote monitoring, big data collection and processing, and the online sale of prescription drugs. Further, foreign hospitals may also face difficulties in getting actively involved due to the contradictory legal provisions.

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1. [http://www.gd2h.com/news/yydt/a\\_101354.html](http://www.gd2h.com/news/yydt/a_101354.html)
2. The sale of anesthetic drugs, psychotic drugs, medical toxic drugs, radioactive drugs, drugs for detoxification and the preparation made by medical institutions will probably remain prohibited online.
3. <http://www.huaxia.com/zk/sszk/wz/2014/10/4124464.html>