

INTRIGUING LEGAL QUESTIONS ABOUT HEALTH COACHING

Though currently an unregulated field, health coaching is not without exposure to liability. Given this, The National Society of Health Coaches (NSHC) recently surveyed healthcare providers asking for legal questions that concern them most about health coaching. The following are additional questions not covered in Part I (presentation).

**This document is for general educational purposes only. Information provided here does not replace or supersede the guidance or advice of an attorney or legal counsel.*

Question 1 of 20

“Can I provide health coaching outside of my clinical license?”

The answer is: Yes, unless the respective State Practice Act doesn't allow it. There is also a caveat. A clinician should inform the patient/ client when they are not practicing as such.... unless of course one's license has become inactive, then those credentials wouldn't be used in the scope of services documents, in marketing, or on one's website. Outlining what services are limited to in this case is a must.

Another concern is if the clinician is in a locale where people know the clinician as such, then this separation becomes very hard and maybe impossible for the patient/client. Also, it isn't easy to limit one's “clinical mindset” within the encounter, but there may be reasons why a clinician or practitioner chooses to do so.

Question 2

My state requires a nurse practitioner (NP) to have a collaborative practice agreement with an MD or DO. As a health coach, would I still need this practice agreement, even though I'm not “treating” patients during coaching?

If a state requires this practice agreement because an individual is an NP regardless of what the particular practice consists of, then yes, it would be needed. One's State Practice Act and its Nursing Board's Rules and Regulations state the parameters and requirements of this practice relationship. Consider including coaching in the practice agreement, because coaching can be extremely effective when integrated into the patient visit.

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Question 3

How do I integrate health coaching into clinical practice?

This is exactly what the NSHC's health coach certification program trains clinicians to do. There are evidence-based conversational skills that are used alongside one's clinical interventions that tap into the patient's own motivation to change health behavior. Health teaching alone is not health coaching. However, health teaching can be integrated as a small part of the health coaching encounter for behavior change.

Question 4

What are the legalities concerning a physician practicing as a health coach?

To date, there are currently no specific laws that allow one to set themselves up as a health coach, regardless of background. Evidence-based health coaching is a new skill set that can be integrated into the patient visit, making the visit more holistic and effective for both the physician and the patient/client. Professional Liability or malpractice coverage would apply.

Question 5

What liability insurance do I need if a patient speaks to me regarding his weight and depression and then does self-harm or commit suicide shortly after a coaching session?

Because the timeframe is "shortly after", there could be potential liability depending on what occurred during the session, and if it's established that something during the session caused harm, injury or ultimately the death. Professional liability coverage is appropriate in the clinical setting. Malpractice offers the broadest coverage.

Question 6

What does health coach certification carry with it in terms of liability?

A certification of any type generally offers specialized knowledge and/or skill above what the holder already possesses by way of previous education or credentialing. Certification itself is not an insurance product. If there is a risk of harm, injury or loss caused by something that occurred during health coaching session(s), then there is a risk for liability, and the need for insurance coverage would exist.

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Question 7

How can I protect my business as a Physician's Assistant (PA) who wants to do health and wellness coaching as my own thing?

Professional Liability is a typical insurance product used by health professionals. You may already have one of these policies as a PA. An insurance agent can help determine which policy is best suited based on one's health coaching business model and service offering.

Question 8

I'm a family physician but would like to become a health coach focusing on diabetes prevention using lifestyle medicine. Is this possible as an independent practitioner?

Yes. Health coaching can be integrated into any clinical engagement as long as the patient has the mental capacity to engage in a conversation about personal choices related to health behavior change.

Question 9

Outside of outcomes not being met for the client, what other legalities could occur?

A health outcome cannot nor should not be inferred as guaranteed. (Example Disclaimer: These health coaching sessions disclaim any particular result or outcome for the patient/client.) Any potential risk for harm, loss, or injury that occurs in a health coaching session can result in risk of potential liability. For example, misinformation that is determined to cause harm, loss, or injury related to the client's health condition(s).

Question 10

As an RN starting out in independent practice, can I still enter into an agreement contract? I was recently told this wasn't appropriate for a licensed professional.

Nurses generally can enter into contractual arrangements. A State Nurse Practice Act of a State Board of Nursing that credentials clinicians/practitioners will provide guidance.

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Question 11

Does my clinical license “protect” me for health coaching?

A current clinical license indicates that an individual has met their state’s requirements to practice with that clinical credential. Professional liability insurance covers a certain amount that one would be legally obligated to pay as a result of a claim arising against them due to an incident in one’s line of work.

Question 12. Do I need to be HIPAA compliant? Is using Google hangouts HIPAA compliant?

As required by Congress for HIPAA, the Privacy Rule pertains to what CMS calls “covered entities”. These are: Health plans, Health care clearinghouses, and Health care providers who submit claims for payment or reimbursement. Centers for Medicare /Medicaid Services have a tool you can use to determine if you are a “covered entity”. This tool is located at the link below. If this link becomes inactive, then conduct an online search for “HIPAA Covered Entities”.

<https://www.cms.gov/Regulations-and-Guidance/Administrative-Simplification/HIPAA-ACA/Downloads/CoveredEntitiesChart20160617.pdf>

Question 13

As a physician, do I need to carry malpractice when practicing as a health coach?

Professional Liability insurance coverage is typically used by those engaging a patient/client in formal conversations about their health. If a physician already has malpractice insurance, this should be sufficient.

Question 14

What is in the scope of medical recommendations if practicing as health coach outside of a typical clinical work setting?

Regardless of the setting, giving medical recommendations would be according to one’s clinical license and State Rules and Regulations for that credential. If a clinician chooses to forego their clinical credential, then the scope of health coaching provided in this case would be strictly non-medical or non-clinical.

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Question 15

When I become a certified health coach, can I use these health coaching skills outside of the medical field as an independent business owner?

Yes. However, know that using one's clinical credential while health coaching can provide a more holistic and effective health coaching encounter.

Question 16

If I recommend supplements, is there anything extra I should do for coverage?

State rules and regulations generally include guidance about who can recommend nutritional supplements and under what conditions. Refer to those regulations for guidance. Professional liability insurance is generally used. However, check with an insurance company to determine if another insurance product is more appropriate.

Question 17

What does Health Coach Certification provide regarding any legalities?

Certification of any type signifies training at another level beyond what an individual had prior to certification; it doesn't provide protection per se. Liability Insurance provides coverage in the event a claim is made against a provider.

Question 18

As a health coach, can I make referrals to another provider?

Physicians and other licensed prescribers make referrals through a prescribed order, which is used as the basis for third party payment and to track claims. While a patient/client may ask a health coach for a recommendation during the course of their conversation (for example, it may sound something like: "Who would you recommend that I see?"), this would not be considered a formal referral for third party payment, unless of course you are a physician or other licensed prescriber. If an informal recommendation is made, be sure the patient understands that it's a personal one.

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Question 19

If you're an employee and the employer is paying your malpractice insurance, is there anything you need to disclose or do before coaching on your own "on the side"?

Employers paying for an employee's malpractice assumes that this coverage is for work performed while "on the clock" for the employer, not for work outside of that employment. One's own professional liability insurance is appropriate for independent work performed outside of the employer/employee relationship.

Question 20

As a non-clinician, can I do health coaching?

There are different definitions of health coaching offered by different organizations that provide training and certification. For example, in the interest of public safety, consumer awareness, and the number of people with chronic conditions and moderate to high risk, the National Society of Health Coaches only certifies healthcare clinicians as health coaches. However, there are other organizations that train non-clinicians to be coaches. A non-clinician's exposure to liability could be quite high depending on the patient/client type.

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****An attorney, legal counsel, and/or insurance agent can help clinicians determine the level of liability coverage needed based on one's credentials, target population(s) served, health coaching model used and work setting.***

The National Society of Health Coaches provides health coach certification, training and education to clinical disciplines and offers a Certificate of Completion to non-licensed healthcare providers.

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