Telemedicine and Digital Health: Compliance Hot Topics for 2018 and Beyond

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What is Telehealth?
What are the Modalities?

- Real time Audio-Video
- Interactive Audio w/ Store & Forward
- Asynchronous / Store & Forward
- Phone-only, form-based internet prescribing, AI
Obstacles in Telehealth

- Lack of third party reimbursement for telemedicine services: 59%
- State licensing requirements: 44%
- Securing support from physicians in using the technology: 32%
- Institutional leadership support and funding: 25%
- Monitoring the quality of telemedicine technology: 11%
- Other (Please specify): 19%

Source: Foley & Lardner 2017 Telemedicine & Digital Health Survey (Nov 2017)

Telehealth Law 101
Telemedicine is Growing Even Faster Than Anticipated

Source: Foley & Lardner 2017 Telemedicine & Digital Health Survey (Nov 2017)

Telehealth and Licensing
Telemedicine and Licensing

- Physician offering care via telemedicine is subject to licensure rules of the state in which the patient is physically located at the time of the consult.

- State law expressly or implicitly requires licensure if the patient is located in the state at the time of the consult.

Notable Exceptions for Telemedicine

<table>
<thead>
<tr>
<th>Category</th>
<th>Description</th>
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<tbody>
<tr>
<td>Consultation</td>
<td>Allows unlicensed physician to practice medicine in peer to peer consultation with a physician licensed in the state.</td>
</tr>
<tr>
<td>Bordering State</td>
<td>Allows practice of medicine by out of state physicians who are licensed in a bordering state.</td>
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<tr>
<td>Special License or Registration</td>
<td>Abbreviated license or registration for telemedicine-only care.</td>
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<tr>
<td>Follow-up Care</td>
<td>Allows physician to provide follow-up care to his/her patient (e.g., post-operation).</td>
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Growth of Interstate Licensing Compacts

[Images of various maps showing states' participation in interstate licensing compacts]
### Telehealth Practice Standards

| 1 | New Patient vs. Established |
| 2 | In-Person Exam               |
| 3 | Originating Site Restrictions|
| 4 | Patient-Site Telepresenter  |
| 5 | Modality of Communication Technology |
| 6 | Remote Prescribing (incl. Controlled Substances) |
| 7 | Record-Keeping and Record-Sharing |
| 8 | Informed Consent            |
| 9 | Patient Choice of Provider  |
| 10| Disclosures                 |
| 11| Malpractice & Professional Insurance Considerations |
| 12| Credentialing               |
Telehealth Payment and Reimbursement

Telehealth Sources of Revenue

- Government FFS (Medicare, Medicaid)
- Medicare Advantage, Medicaid MCOs
- Commercial Health Plans
- Employer Self-Funded Plans
- Employer Pay (OOP)
- Institutions, Providers
- Self-Pay / Cash
- Cost Savings and Cost Avoidance
RSE1  Can we find images to replace the text?
Reith, Shannon E, 2/24/2017
Telehealth and Medicare

1. Patient in a qualifying rural area
2. Patient at one of eight qualifying facilities (“originating site”)
3. Service provided by one of ten eligible professionals (“distant site practitioner”)
4. Technology is real-time audio-video (interactive audio and video telecommunications system that permits real-time communication between the beneficiary and the distant site provider)
5. The service is among the list of CPT/HCPCS codes covered by Medicare

Medicare and Telehealth

- In 2001, the Congressional Budget Office estimated it would cost the Medicare program $150 million ($30 million a year) to cover telehealth services from 2001 through 2005.
  - Reality, during those first five years, Medicare paid a total of $3,103,912 for telehealth services.

- CY 2015: Medicare paid a total of $22,449,968 for telehealth services (372,518 claims).

- CY 2016: Medicare paid a total of $28,748,210 for telehealth services (496,396 claims).
Medicare Telehealth Payment Policy Changes for 2019 and Beyond

_Bipartisan Budget Act of 2018_ introduced some of “the most significant changes ever made to Medicare law to use telehealth,” per Senator Brian Schatz, a longtime sponsor and proponent of federal telehealth legislation.

1. Expands stroke telemedicine coverage beyond rural areas (2019)
2. Expands telehealth coverage to homes and independent renal dialysis facilities (2019)
3. Allows providers to give free at-home telehealth technology/equipment to dialysis patients if certain requirements are met (2019)
4. Allows Medicare Advantage plans to include delivery of telehealth services in a plan’s basic benefits (2020)
5. Eliminates rural restrictions and adds patient home as a qualifying originating site for certain Accountable Care Organizations (2020)

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Medicaid Telehealth Payment Policy Changes for 2018

- 48 state Medicaid programs offer some type of coverage for telehealth services (most commonly interactive live video).
- 15 state Medicaid programs offer coverage of asynchronous (store-and-forward) telehealth services.
- 21 state Medicaid programs offer coverage of remote patient monitoring technologies.
- 42 state Medicaid programs offer coverage without geographic restrictions (e.g., rural or urban).
- 23 state Medicaid programs set forth a list of specific sites that can serve as an originating site.

Source: Center for Connected Health Policy State Telehealth Laws and Reimbursement Policies (Fall 2017).
Medicare Advantage and Medicaid Managed Care

MA plans are encouraged to develop and implement innovative services and benefit design. They are free to contract with providers to cover telehealth services.

One reason some MA plans have chosen not to is because CMS has historically taken the position that telemedicine must be a supplemental benefit for MA plans, which means it cannot be categorized as a basic benefit cost when the plans submit their bids.

Under the Bipartisan Budget Act of 2018, beginning in 2020 telehealth services covered by MA plans can be classified as if they were benefits provided to patients at in-person visits.

Most Medicaid MCOs are free to contract with providers to cover telehealth services.

Most Medicaid MCOs may also provide expanded services to its members outside the FFS coverage conditions.

Telehealth Commercial Insurance Laws

[Map of the United States showing states with telehealth coverage laws]
Telemedicine and Prescribing

- Prescribe in connection with a provider-patient relationship
- What constitutes a valid provider-patient relationship?
- What constitutes a valid prescription?
  - Modality (state law)
  - Non-controlled substance? (state law)
  - Controlled substance? (state law)
  - Controlled substance? (federal law)
- Not just professional board rules, but pharmacy board rules also

Controlled Substances
- Ryan Haight Act
- DEA Proposed Rule
- Federal Legislative Fix
- Opioid Crisis
- DEA state registration
- Prescription vs. inpatient order
Real World Telehealth Implementation

Opportunities in Telehealth

- Second opinions or specialty opinions: 63%
- Mental health services: 51%
- Remote patient monitoring: 51%
- Urgent care or after-hours care: 40%
- Outpatient hospital services: 35%
- Emergency department services: 32%
- Store and forward: 32%
- Inpatient hospital services: 31%
- Telestroke: 31%
- Destination medicine services: 23%
- Telepharmacist: 19%
- Other (please specify): 28%

Source: Foley & Lardner 2017 Telemedicine & Digital Health Survey (Nov 2017)
New Uses of Telehealth for Institutions and Other Large Providers

- Strategic partnerships in the community
  - schools, prisons, grocery stores and other new “originating sites”
  - partnerships with ancillary and post-acute providers (pharmacies, labs, imaging, HHA, PT/OT, DME)
- Direct-to-patient offerings, risk-based contracts, and population health
- Destination medicine (e.g., cardiac, cancer, pediatric, orthopedics)
- International telemedicine

Using Telehealth to Build a State-Wide Network
Statewide Telemedicine Network
Using Telehealth to Build a Destination Medicine Program
“Ten years from now, there will emerge just a few medical centers with the reputation for health care excellence and patient-focused outcomes that will attract patients from all over the world.”

John H. Noseworthy, M.D.
President and CEO of Mayo Clinic
Destination Medicine Center

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Thank you