

Telehealth Contracting for Compliance Officers

Core Concepts, Best Practices and Tips

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Overview

- Telehealth Terminology
- Telehealth and Providers: Scope of Practice Issues
- Medicare Reimbursement of Telehealth
- Telehealth Contracting and Fraud and Abuse Issues
- Why Compliance Matters: Increased Enforcement Actions
- Lessons from the Field

Telehealth Terminology

Telehealth Modalities and Terminology

- Synchronous Audio-Video Communication
- Store-and-Forward
- Remote Patient Monitoring
- Originating Site
- Distant Site
- Smart questionnaires?
- Artificial intelligence?



Telehealth vs. Telemedicine

- Telehealth
- Telemedicine

Originating Site vs. Distant Site, “Hub” and “Spoke”

- **Originating Site vs. Distant Site: patient-oriented.**
 - Originating Site: Where the patient is located
 - Distant Site: where the practitioner is located.
- **Hub and Spoke Model: facility/provider-oriented.**
 - Hub Facility: where the practitioner is located.
 - Spoke Facility: where the patient is located.

Telehealth and Providers Scope of Practice Issues

Telehealth Requirements for Providers

- Telehealth Modalities
- E-Prescribing
- Practitioner Licensure
- Documentation
- Informed Consent
- Patient Identification



Scope of Practice Issues to Consider

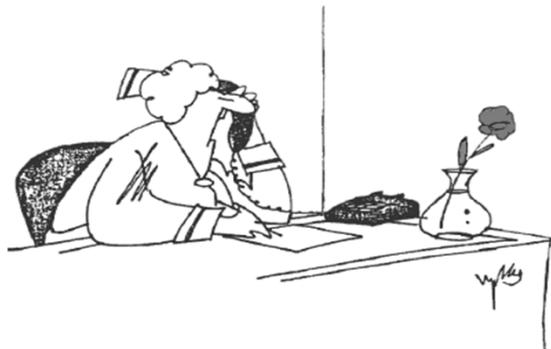
- What modalities does the state allow?
- What services can be provided via telehealth?
- Who can provide services via telehealth?
- Where can patients receive treatment via telehealth?
- How can a practitioner-patient relationship be established?

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9

Establishing a Physician-Patient Relationship

- Anything short of synchronous audio-video, e.g., email, fax, telephone, instant message or text, requires caution.



"The doctor isn't in right now. When you hear the beep, please leave your name, number and a short diagnosis."

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10

Telehealth Requirements: Non-Video Modalities

- Artificial intelligence (“AI”) and “smart questionnaires”
 - Some start up telehealth vendors are using these technologies to provide services, but that doesn’t mean they are legal.



"You can't list your iPhone as your primary-care physician."

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Licensure

- Generally, the clinician should be licensed where the practitioner and the patient are located.
 - *Note: There are exceptions, e.g., Maine, Minnesota.*
- What about the Interstate Medical Licensure Compact?

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12

Documentation

- Like any other medical visit, telemedicine encounters must be documented in accordance with state law, and recorded at times. Ensure that telehealth practices comply with applicable state law, including storage of records.

Informed Consent and Identification

- Some states require a practitioner to obtain a patient's informed consent before providing treatment via telehealth, e.g., California and Texas.
- Some states require a practitioner to confirm a patient's identity before providing treatment via telehealth.

State Privacy and Security Laws

- HIPAA provides a floor of privacy protection, but states are free to enact stronger privacy laws.
- HIPAA prohibits *contrary* security laws but allows for additional security provisions, including additional breach notification laws.
- Consider:
 - *Do your clinicians understand their privacy and security obligations when providing services via telemedicine?*
 - *Is the telehealth platform you are using satisfying applicable privacy and security laws?*

E-Prescribing

- Clinicians can only prescribe medication pursuant to a valid practitioner-patient relationship.
- Controlled substances require analysis of state and federal law.
- Non-controlled substances only involve state law.
- *Recent Developments: The SUPPORT Patients and Communities Act and the Ryan Haight Act*

Proxy Credentialing

- Credentialing every clinician who provides services at an originating site so that they are a member of the originating site's medical staff is incredibly time-intensive.
- Both the Joint Commission and CMS allow proxy credentialing.
- Questions to ask:
 - *Is proxy credentialing permitted by applicable state law?*
 - *Does the originating site hospital's bylaws permit credentialing by proxy?*

Medicare Reimbursement of Telehealth

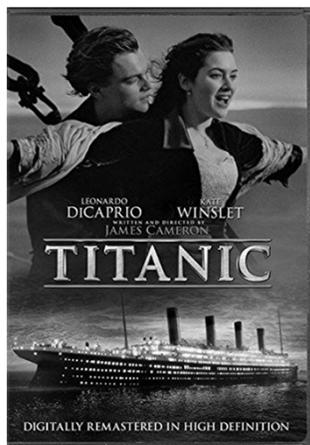
In the beginning ...

- CMS has paid for telehealth services since 1997.
- Intended to benefit rural beneficiaries, combat access issues.

Ask yourself ...

1. How has healthcare technology changed in 20 years?
2. How has the practice of medicine changed in 20 years?

Remembering 1997



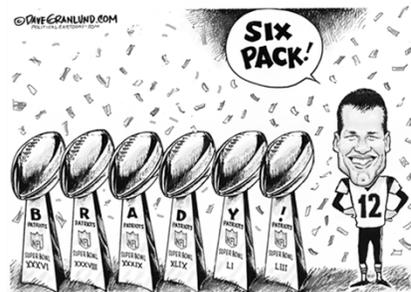
Remembering 1997



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21

Remembering 1997

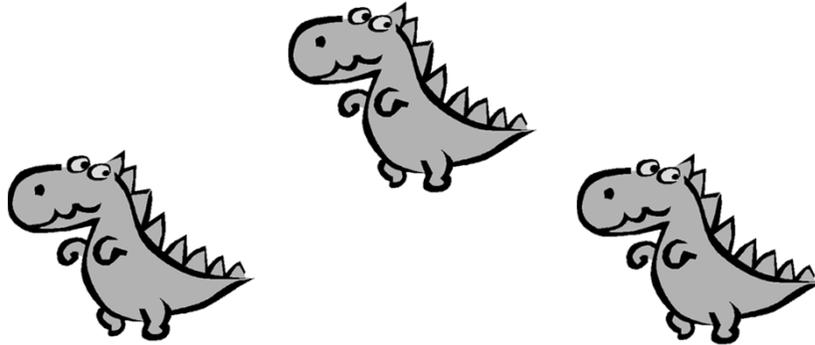


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Medicare Telehealth Services, 42 CFR 410.78

- Are the services provided in a way that satisfies the restrictions on “Medicare telehealth services”?



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Medicare Geographic Restrictions

- Medicare reimbursement of telemedicine is historically very restrictive.
- “Medicare telehealth services” are only paid if the patient is in a health professional shortage area (“HPSA”) or a county that is not a metropolitan statistical area (“MSA”) (unless an exception applies).



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Medicare Originating Site Restrictions

- The patient must be located at an approved originating site to be eligible for Medicare reimbursement.
 - Hospitals
 - Community Access Hospitals
 - Hospital-based or CAH-based renal dialysis centers
 - Skilled Nursing Facilities (SNFs)
 - Community Mental Health Centers
 - Physician or practitioner offices
 - Rural health clinics
 - Federally qualified health centers (FQHCs)
 - *New originating sites added starting in July 1, 2019...*

Medicare Telehealth Services

- CMS publishes a list of services that may be reimbursed via telehealth annually. Examples include:
 - ESRD services
 - Individual and group kidney disease education
 - Individual psychotherapy
 - Psychiatric diagnostic interview examination
 - Stroke services
 - Depression Screening
 - Smoking Cessation

Changes to Medicare Reimbursement

- 2019 Physician Fee Schedule Final Rule provides for reimbursement for services that are not included in the restrictive Medicare definition of telehealth services, including for virtual check-ins, store and forward, and remote patient monitoring.
- Expressly acknowledges technology evolution in the past 20 years.
- “For CY 2019, we aimed to increase access for Medicare beneficiaries to physicians’ services that are routinely furnished via communication technology ... we do not consider them to be Medicare telehealth services”

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27

Virtual Check-ins

- Virtual Check-ins, HCPCS Code G2012
 - Synchronous audio-video or audio-only
 - Not related to service provided within previous 7 days or next 24 hours or soonest available appointment
 - Consent is required. Cost-sharing applies.
 - Only available for established patients.



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2019 Medicare Physician Fee Schedule: Store-and-Forward Communication

- Remote Evaluation of Pre-Recorded Patient Information (HCPCS G2010)
 - Provider uses recorded video and/or images captured by patient to evaluate condition
 - Not related to service provided within previous 7 days or next 24 hours or soonest available appointment
 - Consent is required. Cost-sharing applies.
 - Only available for established patients.
 - Includes follow-up, which can be via text, video, secure text, email, patient portal
 - Must include video and/or image – *i.e.*, questionnaire is not sufficient



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2019 Medicare Physician Fee Schedule: Interprofessional Consults

- CPT Codes 99451, 99452, 99447, 99448
 - Patient's treating physician or other qualified health care professional requests opinion/advice of a consulting professional with specific specialty expertise
 - Currently, specialist input is often sought through scheduling a separate visit with the patient when a consult between professionals would be sufficient
 - Aligns with shift towards patient-centered "medical home" model, where primary care is involved in care management, team-based approach
 - Cost-sharing applies.
 - Requires verbal or written consent



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2019 Medicare Physician Fee Schedule: Remote Patient Monitoring

- CMS has introduced new CPT codes for Chronic Care Remote Physiological Monitoring.
 - 99453: Pays for initial equipment set-up and patient education.
 - 99454: Pays for interpretation/monitoring of information from devices that communicate clinical information on a daily basis. Only available for established patients.
 - 99457: Remote physiological treatment management services. To bill using this code, the patient must receive at least 20 minutes of interactive treatment each month.



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Changes to Medicare Reimbursement: Bipartisan Budget Act of 2018

- Authorizes Medicare Advantage plans to reimburse for additional telehealth services as “basic benefits” starting in 2020
- Removes geographic restrictions and expands permissible originating sites to:
 - Homes and renal dialysis facilities for monthly clinical assessments for home dialysis ESRD patients (as of Jan. 1, 2019)
 - Mobile stroke units for acute stroke services (as of Jan. 1, 2019)
 - Homes for beneficiaries aligned with ACOs that operate under a two-sided model

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Telehealth Contracting and Fraud and Abuse Issues

Corporate Practice of Medicine Doctrine

- In “Corporate Practice” states, non-clinical entities cannot engage or contract with physicians to provide clinical services.
- Every state is different. When entering a new state, be sure you understand that state’s corporate practice rules.

Coverage and Reimbursement Parity

- Coverage parity laws require payers to cover services delivered via telehealth when the service at issue would be covered if provided in person.
- Payment parity laws require payers to pay for services delivered via telehealth at the same level as when the service is delivered in-person.

State Fraud and Abuse Laws

- State self-referral prohibitions, i.e., “mini-Stark laws”
- State anti-kickback laws
- State fee-splitting laws
- State anti-markup laws

Malpractice Insurance

- Does each provider's malpractice insurance apply in every state where a patient they are treating is located?
- Does each provider's malpractice insurance cover services that are provided via telehealth?



Why Compliance Matters: Increased Enforcement Actions

Medicare and Medicaid Enforcement

- 2018 HHS-OIG Report: 31% of claims were flawed
- Medicare spending on telehealth is increasing
 - Communication-Based Technology Services
 - Remote Patient Monitoring
 - Medicare Advantage, ACO Waivers
- Medicaid spending outpaces Medicare spending, and state Medicaid Fraud Control Units are taking notice.

Department of Justice Enforcement Actions

- **October 2018**
 - DOJ indicts 4 individuals and 7 companies in telehealth fraud scheme through which they allegedly defraud payors of \$1 billion in healthcare claims for services not rendered.
- **November 2018**
 - DOJ indicts physician charged with prescribing \$20 million worth of compounded medications to patients who did not need them via telehealth.

State Medical Board Enforcement

- CDC: 1,027 lawsuits filed
 - Telehealth Modalities
 - E-Prescribing
 - Practitioner Licensure
 - Documentation
 - Informed Consent
 - Patient Identification



Lessons from the Field

Telehealth in Rural Areas

- Maine
 - Large state, population 1.3 million (40% in Greater Portland area)
 - Telehealth offers opportunity to provide access to care for remote locations where there is lack of providers and travel barriers (weather, distance)

Telehealth in Rural Areas

- Examples:
 - Acadia Hospital tele-psychiatry program
 - Pre-surgery prep program
 - Employee Health Plan pilot – tele-urgent care
 - Specialist collaboration – tele-stroke weekends/nights/holidays out of state; in state all other times
 - Tele-anemia management

Telehealth in Rural Areas

- Benefits
 - Reimbursement parity
 - Credentialing by proxy
 - Address access issues
- Challenges
 - Broadband access (impacts plans to deliver care via ground ambulance and areas where broadband is problematic)
 - Aging population and technology access/cost (fraud, waste, and abuse considerations)

Telehealth ACO Waiver

- Next Generation ACO Model and Pathways to Success
 - Allows beneficiaries to receive telehealth services in their homes
 - Certain services can be store and forward (some dermatology, for example)
 - Fraud and abuse waivers (home telehealth monitoring)
 - Community care teams

Thank You Questions?

