

Telemedicine: The New Frontier in Healthcare?

We live in a digital age and what we have always seen and done in healthcare is changing. Telemedicine is an evolving field here to stay. As technology grows, physicians, nurses, as well as attorneys and the legal system must grow with it and face the challenges associated with this relatively new field of practice. A 2015 research2guidance report stated 80% of physicians use smartphones or medical apps in their practices. An article in the Washington Post reported 15 million Americans annually are already receiving remote care. Kaiser Permanente one of the nation's largest healthcare systems reported it provides more virtual visits annually than it does in person. Are you ready to meet the changing face of healthcare?

The AMA definition of telemedicine is “the practice of medicine using electronic communications and information technology between a licensed health care professional in one location and a patient in another location.” Modern day telemedicine was first reported in the 1950s with transmission of radiology images over the phone for interpretation by a specialist. Telehealth programs originated out of a necessity to meet the needs of underserved populations and have grown to include follow-up visits, remote management of chronic disease, remote post hospital care, preventive care support, school-based telehealth, and assisted living support. Advantages cited for use of telemedicine include improved patient access, cost savings, and more engaged patients with improved outcomes.

Forbes magazine reported that global telemedicine will be a \$66 billion industry by the end of 2021.

With change, always comes challenges. Telemedicine regulations and laws vary from state to state and patient location decides the applicable

patient care law. This can cause providers to go awry either accidentally or intentionally. Common issues found within telemedicine cases involve:

Licensure of Providers: Physicians are usually required to be licensed in the state in which they treat a patient. Some large telemedicine companies employ physicians all over the country and connect patients with a doctor already in that state. The Interstate Medical Licensure Compact has 24 state participants and allows for treatment of patients within those states by doctors with compact licensure. Some states require a telemedicine license to practice that discipline within the state.

Medical Malpractice Coverage: Providers need to confirm that their malpractice insurance covers telemedicine, and what limitations there are. Telemedicine visits have been associated with reduced liability, reported due to performance of low risk services, such as routine follow up visits and improved documentation requirements by providers. Standard of care for the provider is often the same for telemedicine visits, as for in person services.

Physician Patient Relationship: Many states prohibit telemedicine services prior to establishment of such a relationship with a face-to-face visit. Exception to this can be consultation by a physician in another state, for a patient under direct care of a physician in the patient's home state.

Reimbursement: May vary widely depending on state and providers. Medicare covers live services via audiovisual communication, for patients at a qualified site (e.g. physician practice or hospital, in a rural setting), with an authorized provider of telemedicine services (e.g. physician or physician's assistant), and the service must be approved by CMS. In January 2018, Remote Patient Monitoring was

approved by Medicare for reimbursement (e.g. ECG, blood pressure or glucose monitoring), when reviewed by a qualified practitioner, and requiring at least 30 minutes.

Online Prescribing: Follows state guidelines with notable exceptions. Passage of the Haight Act in 2008 prohibits prescribing of controlled substances without an in-person exam. This can be altered by the setting in which the consultation occurred, for example in a hospital or clinic with an onsite prescriber ordering the medications.

Informed Consent: Some states require documentation of informed consent for telemedicine services, and this is supported by the American Telemedicine Association.

Fraud and Abuse: False claims, anti-kick-back statutes and self-referral laws. A recent example of high dollar fraud involved medical supply companies hiring physicians to prescribe devices such as back braces and diabetic supplies not needed by the patients. A second case involved a group of pharmaceutical companies which used a Telehealth company to provide insurance information and unnecessary prescriptions for pain creams and medications to the tune of \$931 million.

Privacy and Confidentiality: Telemedicine has higher risk of HIPAA breach. There can be pitfalls related to encryption and use of non-compliant video protocols such as FaceTime and Skype.

Telemedicine is the wave of the future, with state and federal laws falling behind usage and technology. Familiarity with the telehealth system and the possible issues are essential to effectively evaluate telemedicine cases.



Patty Mitchell, RN, BSN, CLNC is the president of Central Florida Legal Nurse Consultants. Her nursing career has spanned over 24 years, in the hospital acute care setting. She is a graduate of the Medical Legal Consulting Institute and maintains her certification. Patty is the president elect of the Greater Orlando Chapter of the American Association of Legal Nurse Consultants. She has provided consulting services since 2014, to both plaintiff and defense attorneys on a wide variety of cases. She is a member of the National Association of Certified Legal Nurse Consultants, and Sigma Theta Tau, nursing honor society.