TELEMEDICINE: Managing the Risks of Virtual Healthcare

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Amy Wasdin earned her Associate’s Degree in Nursing at Brunswick College and her Bachelor of Science Degree in Nursing from Armstrong Atlantic State University in Savannah, Georgia. She went on to earn her Master of Business Administration Degree from Brenau University in Gainesville, Georgia. She has over 20 years of experience as a registered nurse, including more than seven in healthcare risk management and claims administration. Ms. Wasdin is a member of the American Society for Healthcare Risk Management and the Georgia Society for Healthcare Risk Management. She has earned multiple designations and certifications over the course of her healthcare career, including Certified Legal Nurse Consultant (CLNC), Critical Care Registered Nurse (CCRN), Certified Professional in Healthcare Risk Management (CPHRM), and Healthcare Management.

Ms. Wasdin’s healthcare risk management experience includes multihospital, long-term care, and physician practice risk management oversight. She has worked in multiple areas in healthcare, including quality assurance, compliance, medical malpractice litigation, medical ethics, policy and procedure development, staff education, and grievance resolution. Ms. Wasdin has provided risk assessments and implemented loss control measures in the operational, clinical, and environmental settings. She is an experienced presenter who frequently speaks to healthcare providers and administrators on a variety of risk management topics.
After completing this program, learners will be able to:

- Discuss three types of telemedicine and how it has evolved.
- Identify risks associated with practicing telemedicine.
- Apply strategies to reduce the risks associated with practicing telemedicine.
TELEMEDICINE DEFINED

- **Earliest examples**
  - Smoke signals
  - Hippocrates made remote diagnoses
  - Early 1900s—two-way radios were used in Australia
  - 1960s—NASA used real-time remote monitoring

- **Advanced telecommunication providing clinical healthcare remotely**
  - Telehealth, eHealth, and mHealth (related but different)
  - Primarily late 20th century technology

Source: Time for a little telehealth trivia. June 12, 2015. Ranya Habash, MD
http://www.mhealthnews.com/blog/time-little-telehealth-trivia
http://www.nasa.gov/content/a-brief-history-of-nasa-s-contributions-to-telemedicine/#.VmCZS63lvcs
American Telemedicine Association
- “The use of medical information exchanged from one site to another via electronic communications to improve a patient’s clinical health status. Telemedicine includes a growing variety of applications and services using two-way video, email, smart phones, wireless tools and other forms of telecommunications technology.”

Centers for Medicare & Medicaid Services
- “Professional services given to a patient through an interactive telecommunications system by a practitioner at a distant site.”

State definition(s)
- Complex and still evolving
MAN, THIS TELEMEDICINE THING IS GREAT -- I DON'T EVEN HAVE TO PUT MY PANTS ON!
ADVANTAGES AND BENEFITS

- Increases direct access to medical care
  - Distance barriers eliminated—travel avoided
  - Decreased delay for specialty referrals and testing
  - Remote areas receive current techniques sooner

- Improves patient safety and outcomes
  - Reduction in morbidity and mortality

- Reduces costs, grows revenue, drives efficiency
  - Permits shared staffing at different locations

- Improves patient convenience
  - Studies demonstrate enhanced patient satisfaction

Source: The Empirical Foundations of Telemedicine Interventions for Chronic Disease Management
TYPES OF TELEMEDICINE

- **Store-and-forward (asynchronous)**
  - Acquires data (e.g., images) and transmits for later review
  - Physician and patient not “present” together
  - Provider relies on history—no physical exam

- **Remote monitoring**
  - Utilizes technology devices (e.g., blood pressure, glucose, heart rate)
  - Manages chronic conditions (e.g., heart disease, diabetes)
  - Usually comparable outcomes to in-person visits
  - May improve patient satisfaction and cost effectiveness

TYPES OF TELEMEDICINE

- Real-time interactive (synchronous)
  - Broad spectrum of platforms and models
  - Includes telephone, video, and online communication
  - Similar advantages to in-office visit
  - More cost and time efficient than in-office visit
  - Peripheral devices can aid in conducting an interactive examination
  - May or may not include a telepresenter (with the patient)

EVOLUTIONARY FORCES

- Massive new private investment since 2007
- Increased numbers of patients with healthcare insurance
- Shortage of physicians and advanced practice providers
- 1.3 billion walk-in visits per year
- Preference for online video visit over office visit

Sources:
- Time for a little telehealth trivia. June 12, 2015. Ranya Habash, MD
  www.mhealthnews.com/blog/time-little-telehealth-trivia
- Designing the Consumer-Telehealth & eVisit Experience. White Paper prepared for ONC/HIT USDHHS
EVOLUTIONARY FORCES

- Reimbursement and coverage increasing
- $27B industry in 2015 and growing
- Direct to consumer model
- Grooming of consumer expectations
STANDARDS AND GUIDELINES

- Centers for Medicare and Medicaid Services
- The Joint Commission
- DNV Healthcare Inc.
- American Medical Association
- American Telemedicine Association
- Federation of State Medical Boards
- State Medical Boards
- Medical societies
HOW IS YOUR FACILITY UTILIZING TELEMEDICINE?

- Radiology
- Cardiology
- Behavioral Health
- Pediatrics
- Neurology
- Pathology

- Dermatology
- Chronic disease monitoring/management
- Emergency care/intervention
- Other – home health, dentistry, schools, prisons, etc.
2005: One of the first in the nation to require reimbursement from private payers for telemedicine visits via the Georgia Telemedicine Act. O.C.G.A. 33-24-56.4

2014: Practice Through Electronic or Other Such Means is found under the Georgia Composite Rules and Regulations, rule 360-3-.07 and established minimum standards of practice while providing treatment and/or consultation recommendations through the use of telemedicine.
“Telemedicine” means the practice, by a duly licensed physician or other health care provider acting within the scope of such provider’s practice, of health care delivery, diagnosis, consultation, treatment, or transfer of medical data by means of audio, video, or data communications which are used during a medical visit with a patient or which are used to transfer medical data obtained during a medical visit with a patient. Standard telephone, facsimile transmissions, unsecured electronic mail, or a combination thereof do not constitute telemedicine services.
PRACTICE THROUGH ELECTRONIC OR OTHER MEANS

- Georgia license required
- In-person examination
- Patient records
- NPs and PAs
- Annual in-person exam
- Clear follow up instructions and provider contact information
- No prescribing of controlled substances
- Standard of Care
WHERE ARE THE RISKS?
MALPRACTICE CASES

- Not many cases to draw from yet.

- With sharp increases in direct to consumer encounters and clinical care of stroke patients, dermatology, and cardiac patients, an increase in malpractice claims is expected.
LICENSING RISKS

• Practice intra-state
  – No licensing issue
  – Professional liability—standard of care met

• What if Georgia license, patient now located outside of state
  – Scope of practice generally determined by location of patient
  – Significant variation among jurisdictions

• Out-of-state physicians practicing telemedicine must know local state law
LICENSING RISKS

- Violations carry many potential adverse consequences
  - Unlawful practice may result in criminal prosecution
  - Medical board action → mandatory National Practitioner Data Bank report
  - Lawsuit filed in other jurisdiction – if tort reform where suit is filed, may be issues if provider not licensed in that state
  - Medical professional liability policy – may specify that claim must arise in covered territory
DO YOU KNOW WHERE YOUR PHYSICIANS ARE?

- Doctor on Demand
- HealthTap
- HelloMD
- LiveHealth Online
- Microsoft HealthVault
- Pillpack
- PingMD
- RevUP by MD Revolution
- Text4Baby
- Vida Health Coach

PRIVACY AND SECURITY RISKS

- Health Insurance Portability and Accountability Act (HIPAA)
  - Privacy Rule regulates use and disclosure of Protected Health Information (PHI)
  - Security Rule sets national standards for security of electronic PHI

American Recovery and Reinvestment Act of 2009–Title XIII, Health Information Technology for Economic and Clinical Health Act (HIPAA/HITECH)

- Breach Notification Rule requires covered entities and business associates to provide notification following a breach of unsecured protected health information
- Office of Civil Rights audits
- Enhanced penalties ($$ billions) for breaches of unsecured PHI and media notification for large scale breaches

Source: Health Information Privacy. www.hhs.gov/ocr/privacy/index.html
PATIENT RELATIONSHIP RISKS

- Telemedicine challenges the traditional physician-patient relationship.

- Is it authentically formed?
  - Can you verify and authenticate the location and identity of the patient?
  - Are the provider’s identity and applicable credential(s) disclosed to the patient?
  - Is appropriate disclosure and consent obtained?

Source: Report of the State Medical Boards’ Appropriate Regulation of Telemedicine (SMART) Workgroup
Federation of State Medical Boards. 2014.
Physical exam challenges

– Increased risk of diagnostic error
– Very dependent on technology, Internet service, and equipment, over which provider has no control

Source: Report of the State Medical Boards’ Appropriate Regulation of Telemedicine (SMART) Workgroup
Federation of State Medical Boards. 2014.
- Treatment delivered online should be held to the same standard of care as treatment delivered in person.
- Treatment, including issuing a prescription based solely on an online questionnaire, does not constitute an acceptable standard of care.

Source: Report of the State Medical Boards’ Appropriate Regulation of Telemedicine (SMART) Workgroup
Federation of State Medical Boards. 2014.
OTHER RISKS

- Continuity of care
  - Integration of data back to the primary health record is needed to avoid fragmenting care and potentially impacting patient safety
  - Lot of healthy people in their 20s, 30s and even 40s have not felt a need to see a doctor and, thus, have never developed a relationship with a primary care provider
  - Access and ability to retrieve personal health information via patient portal or access code for established physician or specialist
  - Protocols for emergency services referrals
OTHER RISKS

- **Telepresenter**
  - Qualifications, license, or certification
  - Scope of practice
  - Vicarious liability
  - Supervisory obligations

- **Fraud and Abuse**
  - Anti-kickback
  - Stark
  - False Claims
In what states will the involved health care providers, patients, and any related technologies be located?

What types of health care practitioners will be participating in the activity at both the provider’s location and the patient’s location?

What types of facilities will be involved in the activity?

What types of reimbursement will be sought for the service?

Does the activity involve any type of remote prescribing or dispensing of pharmaceuticals?

How can malpractice, liability, and fraud and abuse risks be minimized?
WHAT ARE THE STRATEGIES?
**Licensing**

- Physicians and other healthcare professionals must be licensed in state where patient resides
- Be aware of what is allowed and under what circumstances telemedicine is permitted in the state where the patient is located
- Abide by state medical practice act requirements—especially *documentation*
- Communicate practice changes to your insurance agent/broker and carrier
STRATEGIES TO REDUCE RISKS

(continued)

Privacy and security

- Understand how Web-based portals send encryption keys so that hackers can’t access the stream and decrypt the conversation
- Use mechanisms to protect the privacy of individuals who do not want to be seen on camera
- Leverage unique user identities, including user names and passwords
- Establish authenticated and role-based access at both the physical and information technology level
STRATEGIES TO REDUCE RISKS

(continued)

- Multiple physicians
  - Develop processes to assist in clarifying who actually has control over the care of the patient.

- Patient abandonment
  - Establish clear communication among providers and with patient

- Physician-patient relationship
  - Develop a method to ensure that the patient is who he/she claims to be

STRATEGIES TO REDUCE RISKS

(continued)

- **Physician-patient relationship (continued)**
  - Documented informed consent should include:
    - Identity of the patient, the healthcare professional, and his/her credentials
    - Patient acknowledgement and expressed “understanding that the online interaction is problem specific and may carry risks, particularly for omission of care involving other health problems”
    - Types of transmissions permitted using telemedicine technologies (e.g., prescription, appointment scheduling, patient education)

Source: Report of the State Medical Boards’ Appropriate Regulation of Telemedicine (SMART) Workgroup
STRATEGIES TO REDUCE RISKS

(continued)

- Physician-patient relationship (continued)
  - Documented informed consent should include:
    - Agreement that healthcare professional determines whether or not condition being diagnosed and/or treated is appropriate for a telemedicine encounter
    - Security measures such as encryption, password protection, and other technology authentication techniques
    - Hold harmless clause for technical failures
    - Permission to forward patient information to a third party

Source: Report of the State Medical Boards’ Appropriate Regulation of Telemedicine (SMART) Workgroup
Federation of State Medical Boards. 2014.
STRATEGIES TO REDUCE RISKS

(continued)

- Prescribing
  - Follow state requirements and standard of care
  - Prescribing is at the professional discretion of the physician

Source: Report of the State Medical Boards’ Appropriate Regulation of Telemedicine (SMART) Workgroup
Federation of State Medical Boards. 2014.
STRAIGHTS
TO REDUCE RISKS
(continued)

- **Continuity of care**
  - Make arrangements for access to follow-up care
  - Make record available to patient and your designee in your absence

- **Use of telepresenter and/or advanced practice provider**
  - Address qualifications and scope of practice
  - Fulfill any supervisory obligations

Source: Report of the State Medical Boards' Appropriate Regulation of Telemedicine (SMART) Workgroup
Federation of State Medical Boards. 2014.
FINAL RECOMMENDATIONS

- Ensure that providers and staff are properly trained to use telemedicine equipment, technology, or software.
- Become familiar with the established malpractice issues for traditional medical encounters that are most similar to the telemedicine activity in question.
- Create procedures at the onset of the telemedicine project to ensure proper creation and termination of the physician-patient relationship, continuity of care, coordination of care, and ultimate responsibility over the patient among multiple providers and facilities.
- Keep a list of the relevant state laws or professional standards of care that create heighten requirements for your particular telemedicine activity.
FINAL RECOMMENDATIONS

- Verify that your malpractice carrier covers the telemedicine act in question
- Be critical of any arrangement in which telemedicine equipment, software, or services are provided free of charge
- Do not assume that the federal antikickback and Stark laws are more rigorous than any similar, applicable state laws prohibiting patient solicitation or referral conflicts of interest.
CONCLUSION

- Telemedicine is a tool for delivering healthcare, not a separate form of medicine.

- Remember that **good communication** is the foundation for a successful telemedicine program.

The Medical Board of California
Center for Telemedicine and eHealth Law
RESOURCES

- Medical specialty societies and state medical board(s)
- American Telemedicine Association (http://www.americantelemed.org/home)
  - Practice Guidelines; State Telemedicine Gaps Analysis: Physician Practice Standards and Licensure; Coverage and Reimbursement; FAQs
- Center for Connected Health Policy (http://cchpca.org/)
  - Customizable search of state laws and reimbursement policies
RESOURCES

- Center for Telehealth and e-Health Law (ctel.org/)
  - Research Library

- Federation of State Medical Boards
  - Model Policy for the Appropriate Use of Telemedicine Technologies in the Practice of Medicine

- The Doctors Company Knowledge Center (Patient Safety)
  - Example informed consent forms
  - Electronic Health Record and Telemedicine Resource Center
    www.thedoctors.com/KnowledgeCenter/EHRandTelemedicine/ehr-and-telemedicine
GEORGIA RESOURCES AND REFERENCES

- Georgia Partnership for Telehealth

- Georgia Composite Medical Board
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Additional resources and activities please visit
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