Telemedicine Compliance—Maximizing Patient Care & ROI While *Minimizing* Legal Risks

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Live tweet - #telehealth2016
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• Always consult with legal counsel.

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We are an independent, public interest organization that strives to advance state and national telehealth policies that promote better systems of care, improved health outcomes, and provide greater health equity of access to quality, affordable care and services.
TELEHEALTH STATE-BY-STATE POLICIES, LAWS & REGULATIONS

Current Laws, Regulations, Pending Bills State & Federal

State Laws and Reimbursement Policies

Center for Connected Health Policy helps you stay informed about telehealth-related laws, regulations, and Medicaid programs. We cover current and pending rules and regulations for the U.S. and all fifty states.

Law and Policies by State:

Interactive Policy Map
LICENSING

• Must be licensed in the state that patient is located
• Very few exceptions (e.g., infrequent interactions in state, consultation)
• A few states have a “telemedicine license”
• Interstate Licensure Compact
  – Not a multi-state license; it’s an expedited process to get a license
  – State needs to pass legislation to join Compact
  – Still in the process of being formed
  – California not one of the states in the Compact
PREScribING

Controlled Substances

• Federal Laws/DEA
  – Ryan Haight Act – Can prescribe a controlled substance using telehealth if certain conditions are met:
    • EX: Patient is at a health facility with another provider

State Prescribing Laws

• Provider/Patient Relationship
• Some states allow telehealth to establish the relationship and allow prescribing
• Most require an in-person examination
• California requires an “appropriate” examination take place
HIPAA/PRIVACY

- Still held to the same standards
- Equipment alone cannot be HIPAA compliant
- HIPAA compliancy is a combination of physical, administrative & technical safeguards
- Using telehealth may require you to think differently to be compliant
California Informed Consent

• Written or verbal informed consent required

Malpractice Coverage

• Does your malpractice insurance cover telehealth?
• Does your malpractice insurance cross state lines?

Malpractice Suits

• Very few cases involving telehealth
  – Most are concerning radiology
  – Most are about provider’s actions, not technology
  – Most have been settled out of court
REIMBURSEMENT

- MEDICARE
- MEDI-CAL/MEDICAID
- PRIVATE INSURERS
- PRIVATE PAY
REIMBURSEMENT - MEDICARE

MEDICARE

- Location (geographic & site) limitations
  - Rural HPSA location or non-MSA county
  - HRSA payment eligibility analyzer – [HRSA Payment Eligibility Analyzer](http://datawarehouse.hrsa.gov/tools/analyzers/geo/Telehealth.aspx)
- Limited list of providers eligible for reimbursement
- Limited set of codes reimbursed (new codes may be added every year)
- Only reimburses for live video (unless in HI & AK then also store-and-forward)
- Chronic care management codes
  - Not regarded as telehealth, restrictions will not apply
  - However, certain conditions must be met
## REIMBURSEMENT - MEDICARE

### MEDICARE

<table>
<thead>
<tr>
<th>ELIGIBLE PROVIDERS</th>
<th>ELIGIBLE ORIGINIATING SITES</th>
<th>ELIGIBLE CPT/HCPCS CODES (examples)</th>
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<tbody>
<tr>
<td>Physicians</td>
<td>Offices of physician or practitioner</td>
<td>HCPCS</td>
</tr>
<tr>
<td>Nurse practitioners</td>
<td>Hospitals</td>
<td>• G0425-G0427</td>
</tr>
<tr>
<td>Physician assistants</td>
<td>Critical Access Hospitals</td>
<td>• G0406-G0408</td>
</tr>
<tr>
<td>Nurse midwives</td>
<td>Rural Health Clinics</td>
<td>• G0420-G0421</td>
</tr>
<tr>
<td>Clinical nurse specialists</td>
<td>Federally Qualified Health Centers</td>
<td>• G0108-G0109</td>
</tr>
<tr>
<td>Certified registered nurse anesthetists</td>
<td>Hospital-based or CAH-based Renal Dialysis Centers (including satellites)</td>
<td>• G0459</td>
</tr>
<tr>
<td>Clinical psychologists &amp; clinical social workers</td>
<td>Skilled Nursing Facilities</td>
<td>• G0270</td>
</tr>
<tr>
<td>Registered dietitians or nutrition professionals</td>
<td>Community Mental Health Centers</td>
<td>• G0436-G0437</td>
</tr>
</tbody>
</table>

### CPT
- 99201-99215
- 99231-99233
- 99307-99310
- 96150-96154
- 90832-90834
NO TWO STATES ARE ALIKE!

42 states have a definition for telemedicine

32 states (and DC) have a definition for telehealth

3 states Alabama, New Jersey and Rhode Island have no definition for either

As of March 2016
MEDICAID REIMBURSEMENT BY SERVICE MODALITY

Live Video
47 states and DC

Store and Forward
Only in 9 states

Remote Patient Monitoring
16 states

As of March 2016
PARITY IN PAYMENT WITH IN-PERSON

33 states and DC have telehealth private payer laws. Some go into effect at a later date.
This is the most common policy change at the state level!

Parity is difficult to determine:
- Parity in services covered vs. parity in payment
- Many states make their telehealth private payer laws "subject to the terms and conditions of the contract"

As of March 2016
REIMBURSEMENT: MEDI-CAL/MEDICAID

MEDI-CAL

- No geographical restrictions, but DHCS does limit the location facility wise, though they are not statutorily required to
- Larger list of eligible providers, not statutorily limited, but DHCS does
- Limited list of services they will reimburse for
  - DHCS looking to expand, but has been very slow to do so
- Informed consent required (can be verbal or written)
- Will reimburse for store-and-forward for dermatology, ophthalmology, narrow set of optometry services & dental
- Medi-Cal requires provider to be in CA to be an eligible provider

As of March 2016
REIMBURSEMENT: PRIVATE PAYER/PRIVATE PAY

PRIVATE Payers

- In CA, private payers are not required to reimburse for telehealth delivered services: just have a policy on it: “subject to the terms and conditions of the contract”
- However, many private payers do reimburse, some following Medi-Cal’s policies
- Some private payers are becoming more forward thinking in their policies, especially those with Medi-Cal Managed Care contracts

PRIVATE PAY

- Consumers may pay out-of-pocket for telehealth delivered services, but providers must still keep in mind existing laws

As of March 2016
RESOURCES

- CCHP Website – [http://cchpca.org](http://cchpca.org)
- CA Telehealth Resource Center – [http://caltrc.org](http://caltrc.org)
- CA Medi-Cal - [http://www.dhcs.ca.gov/provgovpart/Pages/Telehealth.aspx](http://www.dhcs.ca.gov/provgovpart/Pages/Telehealth.aspx)
Thank you!

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