

## Telemedicine

### What Are the Risk Exposures?

According to the American Telemedicine Association (ATA), “Telemedicine is the natural evolution of healthcare in the digital world.”<sup>1</sup> The use of telemedicine – using various telecommunications technologies to “see” and treat patients – began approximately 40 years ago as hospitals attempted to improve access for patients in remote areas.<sup>2</sup> Today, programs utilizing telemedicine exist in every state, providing care to patients through several modes and through subspecialties, such as home telehealth, teleradiology, teledermatology, and telemental health, as well as telepharmacy. It is important to note that the terms *telemedicine* and *telehealth* are occasionally used interchangeably. However, while telehealth refers to the use of technology to support healthcare from a distance, telemedicine is the actual practice of that healthcare.

Telemedicine has numerous benefits, including a reduction in emergency room visits, fewer hospital readmissions, cost savings to patients, and improved healthcare access for patients in remote locations. However, there are also risks. While knowledge continues to grow about the liability risks that may be inherent in virtual healthcare, thus far, the incidence of claims remains low. There are several probable reasons for this. One is that in-person visits still outnumber remote visits. Additionally, most of the medical professional liability suits involving telemedicine have been settled, and hence are not reported as much as the cases that go to trial are reported.<sup>3</sup> Finally, many of the settlements have included conditions of confidentiality, so details that may help others avoid such claims are unavailable.<sup>4</sup>

To recover in a medical professional liability case, the claimant must establish that: (1) a duty of care was owed by the physician to the patient; (2) the physician violated the applicable standard of care; (3) the standard of care violation proximately caused an injury; and (4) compensable damages were suffered. When applying these principles to telemedicine, the following questions arise:

- Has a relationship been established between the telemedicine physician and the patient?
- If there is a patient-physician relationship, who is responsible if medical professional negligence occurs during a telemedicine event - the consulting physician/provider or the primary care physician?
- With the patient and physician in two different locations, which jurisdiction is applicable?
- Does medical professional liability insurance cover physicians during telemedicine events?

### When Is This a Risk Issue?

The advent and advancement of telemedicine technology has brought with it countless benefits to both patients and providers. However, it is unsurprising that risks are associated with medical care provided from a distance.

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### Provider-Patient Relationship

The collaboration that occurs when a physician and a patient form a relationship is ultimately meant to foster the overall health and wellness of the patient. Understanding when the relationship begins is a crucial step in avoiding charges of medical professional liability if a patient feels the provider did not properly deliver healthcare services.

Medical professional liability case law from consultation cases may be applied to determine when a relationship is formed. Case law regarding telephone consultations suggests that the existence of a primary care physician does not prevent the counseling physician from forming a relationship with the patient. With telemedicine consults, the safest approach is to consider all events significant enough to patient care to establish a physician-patient relationship.

### Informed Consent

Standard informed consent principles mandate that a physician should provide adequate information to the patient so that patient may evaluate the options for treatment, taking into consideration the benefits and risks of each treatment option. If remote counseling is being provided, it may be necessary to disclose information about the telemedicine systems, the potential risks and benefits of telemedicine, and the limitations of the equipment and technology. The physician who has the ultimate responsibility for care and primary diagnosis should obtain the patient's oral and written informed consent prior to the telemedicine encounter. Providers who fail to take this step correctly can face legal consequences.

Any discussion about consent or forms used to document consent should always include approval from the patient to go further with a surgery or treatment procedure if medically warranted. Medical professional liability suits have been filed when physicians have not obtained consent for more serious procedures.

Providers need to include, as part of the informed consent process, any potential health ramifications if the patient refuses treatment. Any refusal of treatment by the patient must be documented by the provider and should include a form signed by the patient stating that the risks were detailed by the provider.

### Licensing

Traditionally, state medical boards have faced the challenge of protecting the public during face-to-face provisions of healthcare. However, as healthcare delivery models arise that involve telemedicine technology, new regulatory challenges must be addressed.

#### *Practitioners*

Although many telemedicine interactions are crossing state boundaries, legal precedents for remote professional licensure traditionally have not been well-established. In 2014, however, the Federation of State Medical Boards finalized the Interstate Medical Licensure Compact, which is meant to ease the burden on physicians providing care for clients in other states. The compact aims to increase access in traditionally underserved communities and rural locales, as well as help facilitate the use of telemedicine.<sup>5</sup> Currently, 18 states have enacted the compact, and another eight states are considering legislation.<sup>6</sup> Critics of the compact suggest that it

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merely helps expedite the licensure process rather than truly address the burden of multi-state licensure.<sup>7</sup>

Minimizing risk exposures entails knowing licensure laws. Providers who are looking to care for patients across state boundaries need to know what is required of them.

### *Nurses*

The Boards of Nursing and Nurse Examiners have worked with the National Council of State Boards of Nursing (NCSBN) to identify models for regulation of nursing practice across state lines and have focused on a “mutual recognition” or reciprocity model. The NCSBN has adopted the Nurse Licensure Compact to establish uniform standards for nursing licenses in all states that adopt the compact.<sup>8</sup> The mutual recognition model allows a nurse to have one license (in their state of residency) and to practice in other states (including electronically), subject to the practice laws and regulations of that other state. Licensure in any one of the states that has adopted the compact automatically allows the nurse to practice in all states that have adopted the compact.

While the state issuing the license maintains primary authority over privileges granted, the nurse is subject to disciplinary proceedings in any jurisdiction of practice. In order to achieve mutual recognition, each state must enact legislation authorizing the Nurse Licensure Compact. The APRN Compact gives advance practice registered nurses the same compact rights.<sup>9</sup>

### **Credentialing**

The issue of credentialing becomes important in the context of a medical professional liability claim in which the plaintiff may claim that the hospital’s credentialing of a telemedicine physician was negligent. It is imperative that healthcare providers who offer telemedicine services are credentialed and privileged to provide those services. Any facility or organization at which patients receive telemedicine care must ensure that the credentialing and privileging process is appropriate.<sup>10</sup>

### *Hospitals*

Governing bodies may choose to fully credential telemedicine providers, using its medical staff to independently review the credentials of each telemedicine physicians and subsequently make privileging recommendations. Governing bodies also have the option of relying upon a distant site hospital or telemedicine entity’s credentialing and privileging decisions.<sup>11</sup> Credentialing and privileging by proxy is allowed by CMS when specific requirements are met. A written agreement is required to ensure that the distant site hospital meets the credentialing and privileging standards necessitated by the governing bodies at the originating site.<sup>12</sup>

### *Telemedicine Entities*

Some organizations and companies, such as Night Hawk Radiology, provide telemedicine services while not participating in Medicare. Additionally, a telemedicine entity would also include a non-Medicare participating distant-site hospital that is providing telemedicine services to a hospital that participates in Medicare. As with hospitals, a written agreement must be in place with these telemedicine entities.

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### *Physician Performance*

Under CMS's Telemedicine Rule, hospitals are obliged to monitor their distant-site practitioners. This includes having evidence that the distant-site practitioners undergo an internal review of privileging, including having the proper information sent to the distant-site hospital so the practitioner can be appropriately appraised.<sup>13</sup>

## **Confidentiality, Privacy, and Security**

### *Confidentiality and Privacy*

The Health Insurance Portability and Accountability Act (HIPAA) privacy standards do not define the specific administrative, physical, and technical safeguards that are appropriate for telemedicine transmissions. However, a patient's right to the confidentiality of personal health information (PHI) obtained during a telemedicine event is protected by statute to the same degree as medical information obtained by an in-person encounter.<sup>14</sup> HIPAA establishes federal standards for providers who transmit patient information electronically. Providers should be aware of the limitations of and security for the systems in use, and must act in accordance with the requirements outlined by HIPAA and other applicable laws that afford patients privacy and confidentiality.

### *Security*

In addition to the HIPAA privacy standard, the HIPAA security standards, which became effective in 2005, apply to electronic transmissions of patient information, including telemedicine transmissions. The security standards include specific requirements for administrative procedures, physical safeguards, and technical security services to guard data integrity, confidentiality, and availability, as well as technical security mechanisms to guard against unauthorized access to data transmitted over a communications network.

The PHI of telemedicine clients is of primary concern. Security vulnerabilities in the databases of telemedicine providers and contractors can put PHI at risk. The Health Information Technology for Economic and Clinical Health (HITECH) Act of 2009, among other directives, dictates the responsibilities of telemedicine providers who bill for services. Such providers must comply with HIPAA and any state-specific rules governing privacy and confidentiality for PHI. Providers must also ensure that the prevention of breaches in privacy leading to an exposure of PHI are addressed by policies and procedures on technological safety and security.

## **Documentation**

It is imperative that providers create and maintain medical records for patients for whom they provide remote care. All verbal, audiovisual, and written communication should be documented in the patient's individual medical record. Documentation of a telemedicine encounter should be at least as thorough as documentation of any other encounter, while observing all medical and legal standards of care.<sup>15</sup>

For future reference and continuity of care, the patient's local care provider maintains the primary medical records. However, it is best if consultants at the distant site also create and preserve a written record of their medical interventions for each referred identified patient. A safe approach is for both sides to maintain a record of the telemedicine event, with each

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provider documenting their participation.

Providers should ensure that the patient's clinical record is available during and prior to a visit whenever possible.<sup>16</sup> Sufficient time should be allotted so that the patient's history can be updated accordingly.<sup>17</sup>

### Continuity of Care

As with in-person provider visits, both follow-up and continuity of care are crucial aspects of the total patient healthcare experience. As patients make the transition back to home after a hospital discharge, telehealth technology can help ensure that former healthcare gaps are successfully bridged, thereby increasing patient safety and reducing hospital readmissions.<sup>18</sup> Failure to appropriately follow-up with patients may compromise this safety and may expose providers to litigation risks.

### Quality Assurance

Telemedicine programs and specialists should be monitored and evaluated as part of a facility's overall quality improvement program. Reviewing incidents involving complications and adverse events help identify opportunities to improve patient care.

Telemedicine providers must be evaluated. Agreements between the originating hospital and providers at the distant site should address the sharing of information pertaining to both peer and internal review.<sup>19</sup> Such policies and procedures are required to safeguard the privacy of both patient information and the physician peer review process, while ensuring that information pertinent to privileging and credentialing is able to be shared.<sup>20</sup>

### Technology and Equipment

Liability risks will always exist with technology and equipment, whether patients are being cared for in a hospital, a doctor's office, or in a home environment with remote monitoring.

Telemedicine providers should be as cognizant as possible of the trends in equipment, data, and remote monitoring.<sup>21</sup> As the practice of telemedicine obviously involves the transmission of medical data by electronic signal from one site to another, the potential exists for transmission problems in audio, video, and/or computer screen resolution, as well as system incompatibility.

#### *Technology*

Suitable resources should be in place for the management of networks, hardware, and software. These resources should include installation and maintenance, as well as protocols for troubleshooting and replacement. Provider organizations must also ensure security management.

#### *Equipment*

An equipment malfunction or failure can distort the image or information and lead to inappropriate patient care, exposing the physician and facility to liability. Whenever possible, a back-up plan should be in place that allows caring for the patient in the case of an equipment malfunction.

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If equipment malfunction results in an injury to a patient, consideration must be given to whether or not the equipment is a “medical device” under the Safe Medical Devices Act. Given the broad definition of a medical device under this Act, it is likely that the Food and Drug Administration (FDA) will take the position that devices used in telemedicine practice are indeed medical devices.

### Telepharmacy

Telepharmacy is another method of using telemedicine technology in the practice of primary and urgent care, or to reduce health disparities that may befall people in rural areas that do not have access to 24/7 pharmacy services. One can imagine the problems that could arise with prescribing, authenticating and dispensing medications from a distance. Telepharmacy presents the very real challenge for practitioners, pharmacists, and patients, all of whom potentially reside in different states.

Physician prescribing for patients during telemedicine encounters may or may not be appropriate. If a telemedicine encounter can provide the type of patient information generally received during an in-person visit, prescribing may be appropriate. An established relationship between a provider and patient can also offer an appropriate reason to prescribe during encounters that are not in-person.<sup>22</sup>

### *Controlled Substances*

The Controlled Substances Act (CSA) was amended in 2008 to legally define what activities are permissible for physicians who prescribe controlled substances over the internet. The new amendment, titled the Ryan Haight Online Pharmacy Consumer Protection Act, is now law and provides guidance to practitioners while seeking to protect patients. Given the current problems with rising addictions to opioids, practitioners would be well advised to address the problems of pain management and rising dependency and addiction rates, along with being certain to follow the laws regarding such substances.

### Telemedicine Service Contracting

When drafting a contract for telemedicine services, there are pertinent items that should be addressed. These items are covered in the **How Can I Reduce Risk?** section below.

### Telemedicine Service Reimbursement

There are liability risks associated with reimbursement. Reimbursement from private health insurance carriers varies from state to state and for different carriers. CMS reimburses for some telemedicine applications, which may vary based upon the originating and distant sites. Providers should be familiar with federal requirements that must be in place before Medicaid and Medicare will provide reimbursement for services. Additionally, providers should know that states which provide coverage for telemedicine currently have the option to determine which types of telemedicine to cover and where in the state it can be covered.<sup>23</sup>

## How Can I Reduce Risk?

Healthcare providers must understand that there are certain limitations to telemedicine

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encounters and also realize that telemedicine is not always suitable to provide the level of care that may be needed for particular patients and conditions. Some patients may require in-person evaluation and treatment.

With the prevalence of ever-evolving and complex technologies being used in the delivery of healthcare, certain risks to patients, providers, and healthcare organizations may be of concern. Although there is little remaining debate about the value of telemedicine technology to healthcare practitioners and the patient community, specific items must be addressed to mitigate risk.

### Ensure Physician-Patient Relationship is Established

#### Establish a relationship

- Ensure that the patient is identified and their location is verified.
- Ensure that the physician discloses their identity and appropriate credentials.
- Be certain that models and methods of treatment are disclosed, along with any applicable limitations.
- Be sure that informed consent is obtained.<sup>24</sup>
- Be aware that there does not need to be an in-person visit between the practitioner and the patient for a relationship to be established.
- Where appropriate, allow patients to choose a telemedicine provider rather than being randomly assigned a physician.<sup>25</sup>

#### Understand the relationship

- Ensure that healthcare practitioners are aware of their requirements and responsibilities, as well as the rights of patients, associated with establishing and maintaining the physician-patient relationship.
- Understand the physician-patient relationship begins when the practitioner consents to provide diagnosis and a treatment protocol for the patient and the patient consents to that treatment.

#### Understand limitations

- Understand that telemedicine may not be appropriate for all patients. Examples of this include:
  - The patient's presenting symptoms are severe enough to warrant in-person or emergent care;
  - The patient is cognitively impaired; and / or
  - The patient is intoxicated.

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### Ensure Physician-Patient Relationship is Established

- A language barrier is present and interpretive services are not available.<sup>26</sup>

### Obtain Informed Consent

#### Obtain consent

- Ensure that providers inform patients of the following:
  - How telemedicine technology will be used;
  - Confidentiality and privacy provisions;
  - Emergency procedures;
  - Technological limitations;
  - The physician's right to discontinue the event if there is a quality concern;
  - The patient's right to discontinue the event; and
  - The patient's right to receive a face-to-face consult.
- Health ramifications if the patient refuses treatment.
- If the telemedicine visit is recorded, obtain a separate consent to record the visit.

#### Consider specific telemedicine forms

- Utilize informed consent forms specific to telemedicine (for example, telemedicine informed consent forms may be found online through organizations such as the American Telemedicine Association). See the sample [Permission for a Telemedicine Consult](#).
- Understand that informed consent is just as important in telemedicine encounters as it is in face-to-face encounters.

### Be Aware of Licensing Regulations for Telemedicine Encounters

#### Understand provider requirements

- Understand that providers must be licensed by the state in which the patient is located.<sup>27</sup>
- Understand that treating or prescribing through online services is the practice of medicine, and proper licensure is required in all jurisdictions.<sup>28</sup>
- Determine whether state licensure boards allow the participation of advance practice professionals, such as nurse practitioners and physician assistants, in telemedicine services.<sup>29</sup>

#### Understand nurse

- Be aware that many states recognize the Interstate

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### Be Aware of Licensing Regulations for Telemedicine Encounters

#### requirements

Nurse Licensure Compact and that licensure in a compact state allows the nurse to practice in all states that have adopted the compact.

- Understand that while the state issuing the license maintains primary authority over privileges granted, the nurse is subject to disciplinary proceedings in any jurisdiction of practice.

### Ensure Appropriate Credentialing and Privileging

#### Ensure hospitals meet standards

- Understand that a written agreement is required to ensure that the distant site hospital meets the credentialing and privileging standards necessitated by the governing bodies of facilities at the originating site.
- Ensure that the distant-site hospital participates in Medicare and meets all Medicare Conditions of Participation (CoPs).
- Ensure that the distant-site physician providing telemedicine services is credentialed at that hospital.
- Ensure that a current list of the individual privileges of the distant-site physician is provided.
- Make sure that the hospital where the distant-site physician is credentialed and privileged shares information pertaining to that physician's performance review.
- Be certain the medical license held by the distant-site physician is either issued or recognized by the state in which the patients who are receiving the telemedicine care are located.<sup>30</sup>

#### Ensure telemedicine entities meet standards

- Develop a written agreement with the telemedicine entity that addresses the following:
  - The entity is contracting telemedicine services to the hospital;
  - The contracted telemedicine services will be provided in a manner that allows the originating hospital to comply with CMS CoPs; and
  - The hospital's governing body must grant privileges to each telemedicine physician or practitioner

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### Ensure Appropriate Credentialing and Privileging

providing services from the non-hospital entity under this written agreement before any telemedicine services are furnished.<sup>31</sup>

#### Monitor distant-site physicians

- Ensure that distant-site practitioners undergo review of privileging.
- Be certain that shared information includes all adverse effects that result from telemedicine services provided by the practitioner to patients.
- Ensure that any complaints received about the practitioners are also monitored and shared.<sup>32</sup>

#### Avoid negligence claims

- Follow all requirements necessitated by state and federal laws detailing licensure, board eligibility, and/or certification as required for in-person visits.<sup>33</sup>
- Ensure that the scope of care provided is consistent with the practitioner's level of training.<sup>34</sup>
- Be aware that some telehealth laws may either require or permit a different type of credentialing.<sup>35</sup>
- Access the standards for credentialing of the facility providing the telemedicine practitioners to confirm that the CMS CoPs are met and appropriately integrated into the hospital bylaws.<sup>36</sup>
- Understand that the existence of a written agreement with a distant-site hospital or facility may not release the originating site from an allegation of negligent credentialing if the telemedicine provider is not compliant with the credentialing standards set forth by CMS.<sup>37</sup>
- Ensure that non-physicians who are involved in the practice of telemedicine do not exceed their professional scope, be it by licensure or certification.<sup>38</sup>

#### Sample Tools

- [Telemedicine Credentialing Form – SAMPLE](#) and
- [Telemedicine Self-Assessment Questionnaire – SAMPLE](#) are available in the Healthcare Facility Tool Chest on the Risk Management Policyholder Resources Portal.

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### Maintain Patient Privacy and Confidentiality

#### Protect patient comfort

- Ensure that rooms are set up to provide maximum privacy for both audio and visual observation. Block windows and/or provide privacy screens as necessary.
- Provide off-camera changing areas for exams that require patients to disrobe.
- Introduce all observers at both sites, including technical personnel, and include staff member titles and job functions in the introduction.
- Pan both sites with the camera so that the physician and patient have a visual image of both locations.
- Appoint rooms to resemble a physician's office.
- Do not allow disturbances.
  - If a new observer enters either site, introduce them immediately.
- Train physicians and personnel on proper bedside manner for telemedicine events.
- Inform patients during the informed consent process that they have the right to discontinue the consultation at any time.

#### Comply with HIPAA

- Utilize the appropriate means of disclosure to patients when it is necessary to share their protected health information (PHI).
- Comply with current laws governing the storage of medical records.
- Follow standard HIPAA privacy provisions when accessing patient information.
- Understand that HIPAA requires entering into a business associate agreement (BAA) when using a third-party entity for the collecting, storing, transmitting, or processing PHI.
- Obtain the consent of the patient prior to recording any healthcare encounter.
- Allow patients to access the recording, if requested.
- Obtain patient authorization for the release of a

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### Maintain Patient Privacy and Confidentiality

recorded encounter.<sup>39</sup>

### Document All Telemedicine Encounters

#### Document appropriately

- Include the following in all documentation:
  - Patient name, age, and sex;
  - Name of attending/referring physician;
  - Date and time of consultation;
  - Names and titles of those in attendance; and
  - Informed consent.
- Clinical subject matter, patient assessment and monitoring, patient education, diagnostic conclusions, treatment or medication prescribed, etc.

#### Document emergent encounters

- Establish a protocol for documenting emergent encounters.
- Document all referrals to emergency services, including the medical indication for the referral.
- Document the patient's location at the beginning of the encounter.
- Ensure that adverse or extenuating circumstances that occurred during the encounter, regardless of their nature, are thoroughly documented.<sup>40</sup>

### Provide Appropriate Follow-up and Continuity of Care

#### Provide continuity of care

- Formulate a working knowledge of each patient's healthcare network, to the extent possible, to help mitigate potential delays in accessing appropriate referrals or the consultations of needed specialists.
- Ensure that providers make all relevant clinical information available to the appropriate primary care provider and/or referred-to specialist or institution, barring a patient's request to withhold that specific information.
- Ensure that providers discuss with patients how their home monitoring data will be stored and used.

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### Provide Appropriate Follow-up and Continuity of Care

- Forward data from home monitoring equipment to the proper facility or specialist.
- Ensure that providers educate patients regarding the noteworthy clinical signs that would warrant a sudden escalation in care.
- Provide timely follow-up to the patient and any other appropriate healthcare providers regarding results of diagnostic and laboratory tests.<sup>41</sup>

### Perform Quality Assurance and Peer Review

#### Monitor the telemedicine program

- Ensure that the telemedicine program is systematically monitored and evaluated as part of the facility's overall quality improvement program, including the following:
  - Appropriateness of use;
  - Compliance with institutional policies and procedures;
  - Evidence of informed consent;
  - Appropriate documentation;
  - Patient satisfaction;
  - Credentialing/privileging of providers according to the applicable policies;
  - Cancellations/rescheduling;
  - Over-reading of teleradiology interpretations;
  - Number of attempted and completed visits; and
  - Equipment or connectivity failures.<sup>42</sup>
- Collect quality assurance data in a manner that complies with statutory and regulatory professional review procedures to protect confidentiality.

#### Perform peer review

- Ensure that the performance of telemedicine specialists is evaluated.
- Utilize the peer review process to monitor whether providers meet performance and compliance standards.
- Develop an agreement between originating and distant-site hospital that addresses information sharing for both

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### Perform Quality Assurance and Peer Review

peer and internal reviews.

### Be Aware of Trends in Equipment, Data, and Remote Monitoring

#### Manage technology

- Use professional grade or high-quality cameras and other equipment at both original and distant-sites, when possible.
- Ensure that all devices have current antivirus software and/or firewalls, as appropriate.
- Ensure that bandwidth, resolution, and speed are adequate and that the internet connection is reliable.
- Be certain that software specific to videoconferencing has the ability to adapt to bandwidth changes to minimize chances of lost or dropped connections.
- Ensure that consults are discontinued by the physicians if transmission quality is ever questioned during a telemedicine consult.
- Install the latest security patches and updates to the operating systems and third-party applications of all personal computers or mobile devices used in patient care.

#### Manage equipment

- Be sure that equipment is calibrated and maintained according to the manufacturer's recommendations and/or security standards.
- Include telemedicine equipment in the organization's equipment management plan for ongoing maintenance.
- Ensure that maintenance and repairs are performed by qualified service personnel.
- Make certain that all records of repair and preventive maintenance are readily available.
- Be certain that remote-site equipment meets technical standards and is operating correctly.
- Develop a back-plan for patient care to be followed by providers in case equipment malfunctions (for example, a teleradiology service has a local radiologist on-call to provide interpretations if equipment problems arise).
- Communicate this back-up plan to patients before the

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### Be Aware of Trends in Equipment, Data, and Remote Monitoring

visit begins.<sup>43</sup>

#### Consider liability questions

- Ensure that facilities and providers are able to ask, and to the best of their ability, answer the questions that follow:
  - Who is responsible for the equipment (the patient, doctor, nurses, accountable care organization [ACO], virtual network, device manufacturer)?
  - Is the device accurate? How can one be sure?
  - Is the patient able to use the device in the appropriate manner?
  - What if a situation arises whereby incorrect data are sent?
  - What happens when a clinician misses a critical data point indicative of an adverse event requiring immediate assistance?

### Understand Issues Related to Telepharmacy

#### Understand pertinent safety issues

- Employ measures that maintain patient safety in the absence of a physical examination.
- Establish measures to guarantee the identity of the patient.
- Maintain detailed clinical documentation of both the evaluation and the medication that is prescribed as a result of the evaluation.
- Employ current measures to prevent prescribing errors.<sup>44</sup>

#### Be certain pharmacists follow laws

- Ensure that pharmacists are licensed in their state of practice.
- Follow licensing laws if pharmacists are dispensing across state lines.
- See state-specific requirements regarding using electronic technology (e.g., using remote vending models or audio/video technology) to dispense to patients out of state.

#### Understand Controlled Substances Act and

- Understand that some states require at least one in-person medical evaluation of the patient before a

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### Understand Issues Related to Telepharmacy

#### amendments

controlled substance is prescribed and dispensed by way of the internet.

- Understand that providers who practice telemedicine may be exempt from the in-person evaluation requirement (see the Ryan Haight Online Pharmacy Consumer Protection Act for specific elements granting exceptions).
- Understand that most states do not allow controlled substances to be filled and dispensed based upon the patient's completion of an online questionnaire.
- Be certain that providers are aware that violations of the CSA now include penalties for the unlawful activities regarding the prescribing, dispensing, and distributing of controlled substances through the internet, and the aiding and abetting of those activities.

### Know How to Draft a Telemedicine Service Contract

#### Understand questions to ask

- Consider the following questions when drafting a telemedicine services contract, while understanding that circumstances may vary for each setting:
  - Are all applicable provider licensure requirements met?
  - Is the medical provider qualified and authorized to provide contracted services, according to medical staff credentialing and privileging bylaws and other rules?
  - Does the provider carry documented medical professional liability insurance, and does the "originating" facility carry insurance coverage for this service?
  - Are there possible immigration issues related to contracted provider(s) located overseas and their citizenship status?
  - Is informed consent obtained for telemedicine service and for sending the patient's medical records electronically to another state or foreign country?
  - Has a business associate agreement been formulated to comply with all HIPAA requirements of privacy and confidentiality?

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### Know How to Draft a Telemedicine Service Contract

- Does the contract comply with applicable federal anti-kickback and Stark Rules?
- Does the contract sufficiently describe the technology to be used in transmitting health information, available security provisions, and methods to resolve technological issues that may arise?
- Does the contract consider issues such as dispute resolution, non-disclosure, and application of law?
- Will contracted services meet reimbursement policies of third-party payers?

### Understand Risks Associated with Telemedicine Reimbursement

#### Reduce risks

- Only submit compliant claims, to avoid charges of fraud, abuse, and false claims.
- Be knowledgeable about reimbursement laws and restrictions at both the state and federal levels, as those laws may affect billing practices.
- Be aware of which telemedicine services are eligible for reimbursement and which are not.
- Understand how to bill for telemedicine services.

### Utilize Further Guidance and Recommendations

#### Seek guidance

- Maintain knowledge of clinical practice guidelines pertaining to the telemedicine field and subspecialties, such as those offered by the American Telemedicine Association.
- Understand that the field of telemedicine/telehealth has many distinct definitions that help explain how data are collected and shared, and that guidance may be found at the American Telemedicine Association website, among other places.
- Ensure that practitioners check with their insurance providers to see whether coverage extends to telemedicine services.
- Inform the insurance provider if practitioners have been/are seeing patients in person, but are planning to

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## Telemedicine

offer some sort of telemedicine practice and they are new to it.<sup>45</sup>

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