

Telemedicine and COVID-19: Managing the Risk

By Judy L. Klein, PA, CPHRM, FASHRM

Over the past month, the COVID-19 pandemic has imperiled our country and the world. As more U.S. patients are diagnosed with coronavirus, the Centers for Disease Control and Prevention (CDC), public health agencies, and a number of industry associations have recognized telemedicine – the practice of using technology to deliver healthcare remotely – as a means to prevent a surge, allow patients access to care, and minimize exposure.

Congress responded by passing the [Coronavirus Preparedness and Response Supplemental Appropriations Act of 2020](#), (CPRSAA). The CPRSAA is an emergency aid package that, among other things, expands access to telemedicine for Medicare beneficiaries during the current coronavirus public health emergency. The law permits the U.S. Department of Health & Human Services (HHS) Secretary to take action broadening the circumstances under which Medicare will reimburse health care services provided via telemedicine. However, practitioners should bear in mind that changes in Medicare reimbursement are just one of multiple considerations when implementing telehealth.

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access a
Sample
Telemedicine
Self-Assessment

In the midst of a pandemic, telemedicine can be a compelling option for triaging, screening, and assessing symptomatic at-risk patients. It can also be an efficient way to manage a patient following a confirmed diagnosis. While telemedicine offers many benefits, the nontraditional mode of delivery can expose the practitioner and the organization to liability. Healthcare practitioners and organizations must be careful to develop and implement a telemedicine program that not only provides quality care, but also minimizes risk to patient and practitioner.

Consider the following key issues when planning, developing, and implementing a telemedicine program:

State Laws and Licensure – In a traditional office visit, the patient and the practitioner are in the same state. In a virtual environment, this is not necessarily true. This means that the licensure requirements of multiple states may be relevant. The [Interstate Medical Licensure Compact \(IMLC\)](#) is a voluntary expedited pathway to licensure for qualified physicians who wish to practice in multiple states. Under this agreement, licensed physicians can qualify to practice medicine across state lines within the compact if they meet the agreed upon eligibility requirements.

State law may also dictate whether physician assistants and nurse practitioners can practice telemedicine across state lines. In addition to state licensing requirements, practitioners must also comply with state and federal laws regarding telemedicine. Consultation with an attorney is essential as state and federal telemedicine laws and licensing requirements vary and continue to evolve.

Technology and Equipment – Whether patients receive care in a hospital, a doctor's office, or a home environment, liability risks will always exist with technology and equipment. Telemedicine involves the transmission of medical data by electronic signal from one site to another. As a result, the potential exists for problems with audio and video transmission and/or with computer screen resolution and system incompatibility.

It is important to set up suitable resources to manage networks, hardware, and software. These resources should include installation and maintenance, as well as protocols for troubleshooting and replacement.

Security management must also be ensured. Additionally, an equipment malfunction or failure can distort an image or information and lead to inappropriate patient care, exposing a physician and facility to liability. Whenever possible, have a back-up plan that allows patient care in the event of an equipment malfunction.

Privacy and Security – Guard against privacy and security risks. Virtual telemedicine can make practitioners vulnerable to malware and hacks. Password-protected screensavers, encryption, and other safety measures can help keep information safe, while unsecured devices and systems, such as cellphones, laptops, and email, can result in security weaknesses. Practitioners should adhere to the HIPAA Security Rule as required.

Documentation – Good documentation is essential in healthcare, and this holds true when delivering virtual telemedicine services. Document all verbal, audiovisual, and written communication in the patient's medical record. Document a virtual encounter at least as thoroughly as any other encounter, and observe all medical and legal standards of care.

In addition to documenting the encounter, it's important to document any linked sites, the mode of service delivery or technology used, any technical difficulties, and all patient-related electronic communications, such as lab/test results. The American Telemedicine Association offers [standardized forms](#) that can help practitioners comply with documentation requirements.

Informed consent – When providing remote care, obtain informed consent. The informed consent discussion should include disclosure of information about the telemedicine system, the potential risks and benefits of telemedicine, and equipment and technology limitations. The physician who is ultimately responsible for care should obtain the patient's oral and written informed consent prior to the telemedicine encounter. Both the patient and the practitioner should agree that telemedicine is appropriate and understand that they have the ability to stop treatment at any time.

Many states require physicians to obtain informed consent from patients before a virtual visit begins. This is commonly done by having the patient read and acknowledge their agreement on an electronic document similar to that often required before installing new software on a personal computer. The document should define for the patient what telemedicine is, including its benefits and limitations, and outline both the physician's and the patient's responsibilities as part of a virtual visit. The American Telemedicine Association offers [sample telemedicine consent forms](#).

Guidelines for Remote Patient Monitoring – Currently, practitioners are remotely screening patients for COVID-19 using CDC guidelines, which include asking about a patient's travel history and exposure to the virus as well as their symptoms. While telemedicine offers a viable medium during this outbreak, it does have limitations. As an example, clinicians may not be able to listen to a patient's lungs without specialized equipment. Having a plan already in place regarding which conditions practitioners are comfortable treating remotely and which require in-person visits is key. Practitioners should implement a process and plan for when and how to escalate treatment to a face-to-face visit.

Telemedicine Training – Training on technology use, equipment, and webside manner is essential. Clinicians should have a comfort level with using a telemedicine platform and operating the equipment before communicating with patients. Practitioners agree that virtual visits require a different skillset than in-person visits, and patience is necessary. To that end, providers who deliver virtual care should take advantage of certification and/or training programs addressing technology use and equipment and emphasizing webside manner and camera/visual presence. To meet patient demand during the COVID-19 crisis, the Cleveland Clinic created a training video for clinicians which is updated on an ongoing basis with instructions for dealing with suspected coronavirus cases.¹ Some institutions that offer training in virtual telemedicine services include

the American Telemedicine Association, the American Medical Association, the Arizona Telemedicine Program, and Thomas Jefferson University.

Although there is little debate about the value of virtual telemedicine visits to healthcare organizations, practitioners, and the patient community during this unprecedented crisis, taking a step back to consider key areas of potential exposure is essential to mitigate risk.

Supplemental resources:

- [Center for Connected Health Policy](#)
- [The American Telemedicine Association](#)
- [The American Medical Association](#)
- [The American Hospital Association](#)
- [Center for Telehealth and e-Health Law](#)
- [American Psychiatric Association](#)
- [American Academy of Family Physicians](#)
- Coverys Risk Management Healthcare Facility Manual "[Telemedicine](#)"

We hope you found this RisKey helpful. If you have questions or would like further resources on this topic, please contact your Coverys Risk Management Consultant.

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References:

1. Brodwin E, Ross C. Surge in patients overwhelms telehealth services amid coronavirus pandemic. Stat News. <https://www.statnews.com/2020/03/17/telehealth-services-overwhelmed-amid-coronavirus-pandemic/> Published March 17, 2020. Accessed March 20, 2020.

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