Untapped Innovation: Using Telehealth to Improve Resident Care and Gain the Edge Over the Competition

Part I: Introduction to the Use of Telehealth in the Long-Term Care Setting

Jane Bello Burke, Esq.
Joshua Feinstein, Esq.
Hodgson Russ LLP

Agenda

- Part I: May 27, 2020

  Telehealth 101: An Introduction to the Use of Telehealth in the Long-Term Care Setting

Email questions to Scott Jackson (sjackson@nyshfa.org).

- Part II: June 19, 2020

  Explore the Answers and do a Deeper Dive

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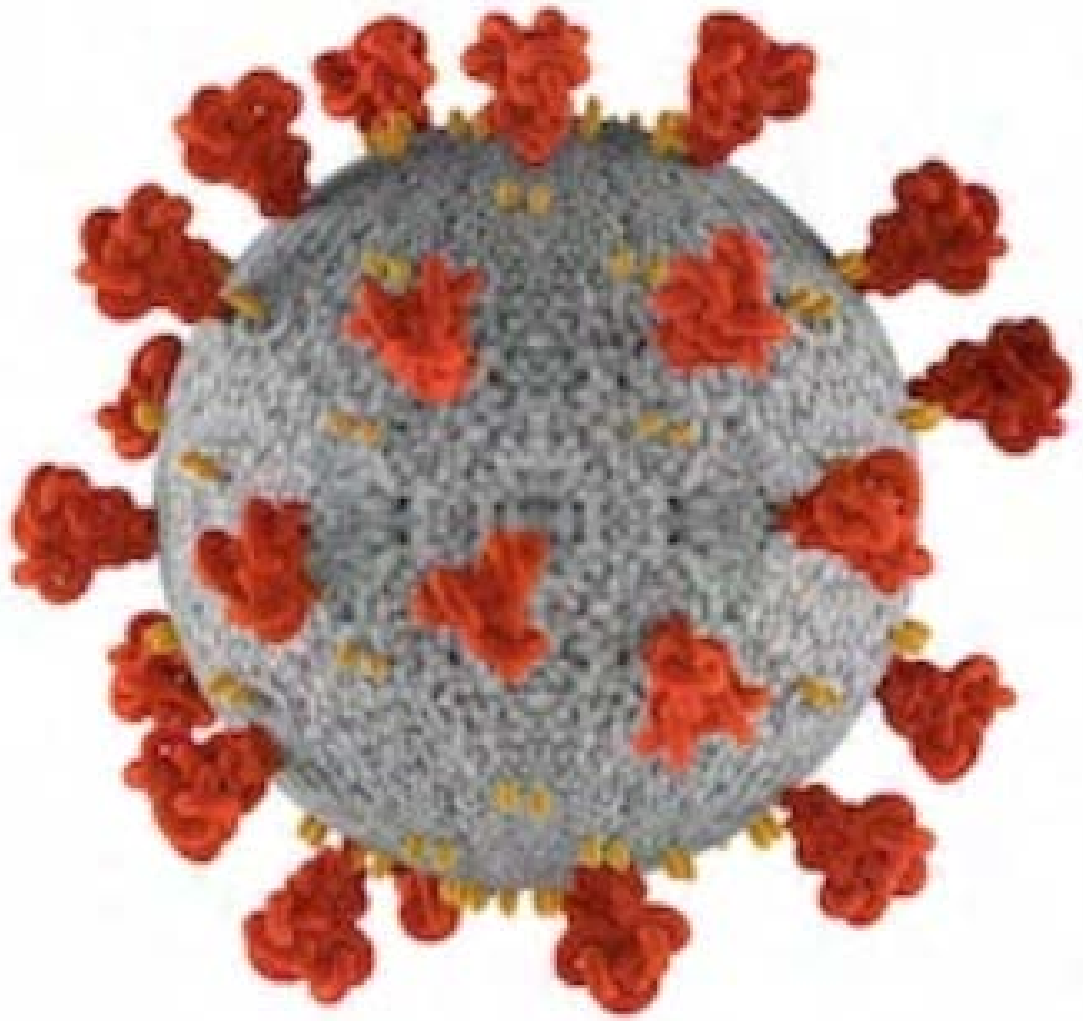
“Disruption is the new normal.”

houzz

WARBY PARKER

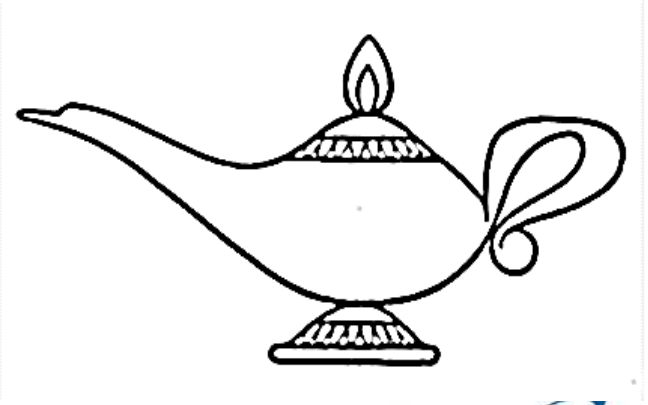
amazon

COVID Changes Everything



Terminology

- Before COVID (BC)
- COVID Era (CE)
- After COVID (AC)

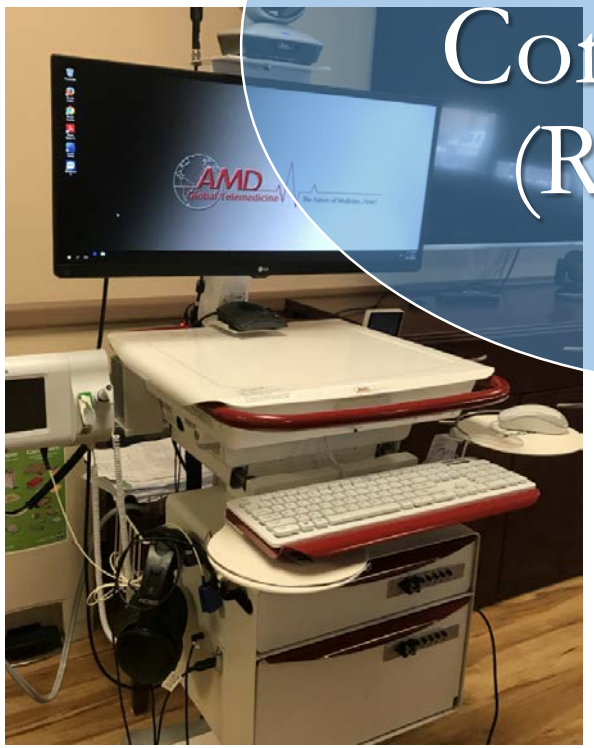


What is Telehealth?

In general, the use of electronic information and communications technologies to deliver health care (including assessment, diagnosis, consultation, treatment, education, care management and/or self-management) to an individual located at a different site from the health care provider.

Modalities of Telehealth

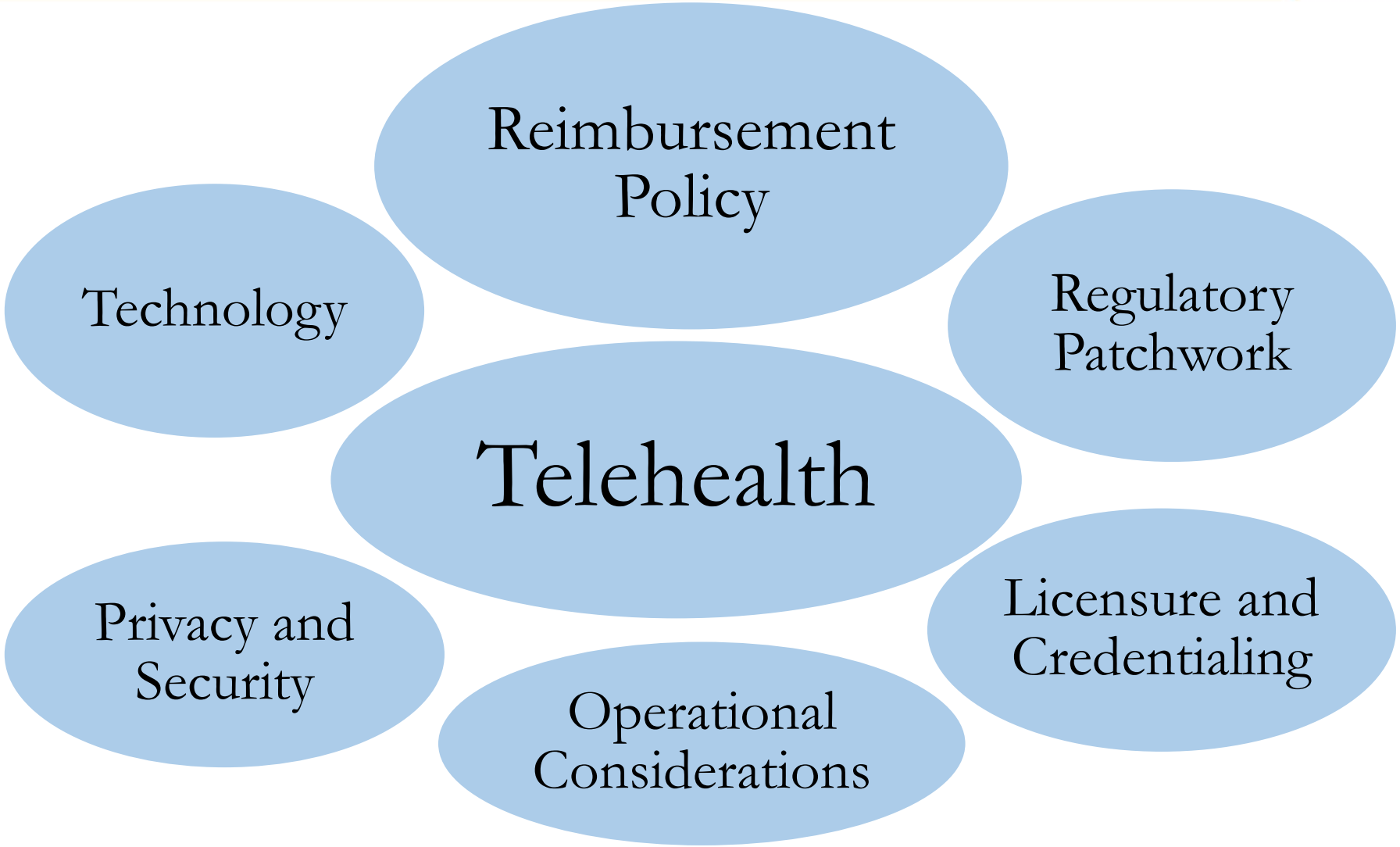
Video Conferencing (Real Time)



Remote Patient Monitoring

Store-and-Forward

Challenges of Telehealth



Medicare Telehealth Reimbursement

BC Medicare Fee-for-Service Telehealth Reimbursement

- Beneficiary Location:
  - in a rural area (outside an MSA)
  - at an authorized originating site
- Service Delivery:
  - By an eligible distant site practitioner
  - Using an eligible interactive (real-time) audio and video telecommunications system
  - For an eligible service on the list of Medicare-covered codes

Rural Location: Medicare Telehealth Payment Eligibility Analyzer

https://data.hrsa.gov/tools/medicare/telehealth

Authorized originating sites which meet the following criteria shall be designated as eligible for Medicare telehealth payment:

- Analysis indicates that the address does not fall in a metropolitan statistical area **OR**
- If address falls in a metropolitan statistical area, then the address must be in a rural area and be in a Primary Care or Mental Health geographic Health Professional Shortage Area (HPSA).

BC Medicare Telecommunications System

- Medicare required:
  - **an interactive, real-time, "synchronous" audio and video telecommunications system**
  - **that permits real-time communication**
  - **between the physician or practitioner (at the distant site) and the beneficiary (at the originating site).**
- (Asynchronous "store and forward" technology in Alaska or Hawaii.)

BC Medicare Originating Sites

- Offices of a Physician or Practitioner
- Hospitals
- Critical Access Hospitals
- Community Mental Health Centers
- **Skilled Nursing Facilities**
- Rural Health Clinics
- Federally Qualified Health Centers
- Hospital-Based or Critical Access Hospital-Based Renal Dialysis Centers (including satellites)

BC Medicare Eligible Practitioners

- Physicians (including doctor of medicine/osteopathy, dental surgery, podiatric medicine, optometry, and chiropr (subject to limits in 42 C.F.R. § 410.22))
- Nurse practitioners
- Physician assistants
- Nurse-midwives
- Clinical nurse specialists
- Certified registered nurse anesthetists
- Clinical psychologists and clinical social workers (CPs and CSWs cannot bill for psychiatric diagnostic int examinations with medical services or medical evaluatio management services; may not bill CPT codes 90792, 90833, 90836, and 90838)
- Registered dietitians or nutrition professionals

BC Medicare Eligible Services

TELEHEALTH SERVICES

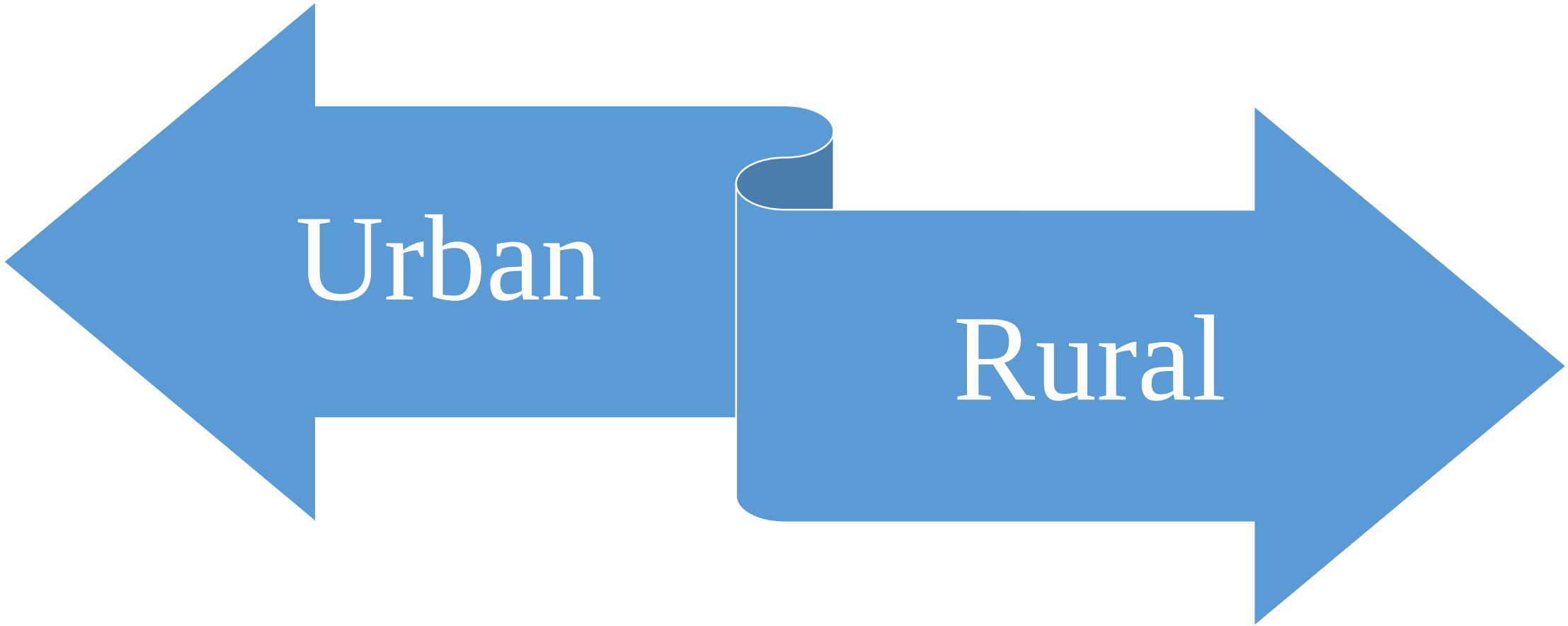
You must use an interactive audio and video telecommunications system that permits real-time communication between you at the distant site, and the beneficiary at the originating site.

Transmitting medical information to a physician or practitioner who reviews it later is permitted only in Alaska or Hawaii Federal telemedicine demonstration programs.

CY 2019 Medicare Telehealth Services

Service	HCPCS/CPT Code
Telehealth consultations, emergency department or initial inpatient	G0425–G0427
Follow-up inpatient telehealth consultations furnished to beneficiaries in hospitals or SNFs	G0406–G0408
Office or other outpatient visits	99201–99215
Subsequent hospital care services, with the limitation of 1 telehealth visit every 3 days	99231–99233
Subsequent nursing facility care services, with the limitation of 1 telehealth visit every 30 days	99307–99310
Individual and group kidney disease education services	G0420–G0421
Individual and group diabetes self-management training services, with a minimum of 1 hour of in-person instruction furnished in the initial year training period to ensure effective injection training	G0108–G0109
Individual and group health and behavior assessment and intervention	96150–96154
Individual psychotherapy	90832–90838
Telehealth Pharmacologic Management	G0459
Psychiatric diagnostic interview examination	90791–90792
End-Stage Renal Disease (ESRD)-related services included in the monthly capitation payment	90951, 90952, 90954, 90955, 90957, 90958, 90960, 90961
End-Stage Renal Disease (ESRD)-related services for home dialysis per full month, for patients younger than 2 years of age to include monitoring for the adequacy of nutrition, assessment of growth and development, and counseling of parents	90963

BC Telehealth Models



BC Return on Investment

ROI represents the ratio of the benefit to the cost of the investment over a period of time

Benefits

- Incentives from Strategic Partners for Avoiding Costly Care Settings, Procedures, Events or Penalties
- Potential FFS Payments Due to Increased Referrals
- Facility Fee (where applicable)
- Cost Avoidance
  - Reduced ED Utilization, Readmissions
  - Savings on Transportation Costs
- Increased Staff Satisfaction and Efficiencies
- Potential for Enhanced Star Ratings

Costs

- Investment in Technology Equipment
- Cost of Delivering Services
- Training Costs
- Oversight Costs

BC ROI for SNFs

$$ROI = \frac{\text{Incentives from Strategic Partners} + \text{Increased Referrals due to Improved Quality} + \text{Originating Facility Fee (Where Applicable)} + \text{Cost Avoidance}}{\text{Investments in Information and Communications Technology and Equipment} + \text{Cost of Delivering Services} + \text{Training Costs} + \text{Oversight Costs}}$$

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BC: Telehealth Expansion

- Acute Stroke
- Substance Abuse Disorders
- ESRD
- Medicare Advantage
- Accountable Care Organizations

Virtual Check-Ins and Evisits

- **Virtual Check-Ins** – short patient-initiated communications with a provider
  - established or existing patient relationship;
  - communication is:
    - not related to a medical visit within the previous seven days; and
    - does not lead to a medical visit within the next 24 hours
  - ***not*** limited to rural settings.
  - several communication technologies, including telephone (G2012).
- **E-Visits** – patients communicate through online patient portals
  - Not limited to rural settings or specific geographic locations
  - Requires established relationship between billing practice and patient
  - Patients initiate services, practitioners may educate on service availability

Timeline of Key Medicare Telehealth Events

- 01/31: HHS Secretary declares COVID-19 PHE
- **03/06: Coronavirus Preparedness and Response Supplemental Appropriations Act**
- 03/13: President declares PHE under Stafford Act and National Emergencies Act
- **03/17: CMS § 1135 Waiver Expanding Medicare Telehealth Benefits**
- **03/27: Coronavirus Aid, Relief, and Economic Security (CARES) Act**
- CMS Interim Final Rules (CMS-1744-IFC/CMS-5531-IFC)

Coronavirus Preparedness and Response Supplemental Appropriations Act (03/06/2020)

- Division B: Telehealth Services During Certain Emergency Periods
  - **Rural**. Allows for the waiver of the rural originating site requirement to allow Medicare fee-for-service payments to qualified providers for telehealth services; also allows for Medicare reimbursement for telehealth services to beneficiaries at home.
  - **Prior Existing Relationship**. Defines a "qualified" provider, for these purposes, is a physician or practitioner, or one in the same practice, who furnished an item or service to the patient for which Medicare paid during the prior three-year period.
  - **Telephones (Smartphones)**. Lifts a regulatory restriction on the use of a telephone to deliver telehealth services, but only if the telephone has audio and video capabilities that are used for two-way, real-time interactive communication.

CMS Waiver Expanding Medicare Telehealth (03/17/2020)

- Effective for services starting 03/01/2020:
  - **Rural**. During PHE, expands Medicare telehealth benefits to rural originating sites, and to services delivered in patient homes.
  - **Telephones (Smartphones)**. During PHE, allows use of telephones with audio-video capabilities for Medicare telehealth
  - **Prior Existing Relationship**. Announces enforcement flexibility (no HHS audits) on prior existing relationship requirement.
- "These changes allow seniors to communicate with their doctors without having to travel to a healthcare facility so that they can limit risk of exposure and spread of this virus."

CARES Act (03/19/2020)

- CARES Act
  - expands Secretary's authority to waive statutory requirements (i.e., prior existing relationship requirement)
  - expands the list of licensed practitioners who can review, certify and recertify a plan of care for Medicare home health services (to include nurse practitioners, clinical nurse specialists, and physician assistants)
- CMS Interim Final Rules

Summary: COVID-Era Medicare Telehealth

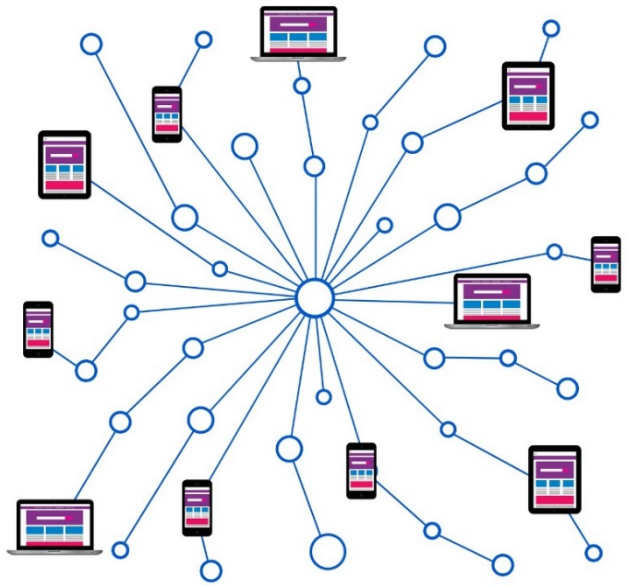
- Effective for services starting March 6, 2020, through the PHE:
  - **Originating Site**. Medicare will make payment for professional services furnished to beneficiaries in all areas of the country in all settings, including in any healthcare facility, and in their homes
  - **Payment Rates**. These visits are considered the same as in-person visits and are paid at the same rate as regular, in-person visits
  - **Coinsurance and Deductible**. Medicare coinsurance and deductibles generally apply, but the HHS OIG is providing flexibility for healthcare providers to ***reduce or waive cost-sharing for telehealth visits*** paid by federal healthcare programs
  - **Prior Relationship**. HHS will not conduct audits to ensure a prior established relationship existed between the patient and practitioner

Medicare Telehealth Practitioner and Facility Fees

- **Practitioner Fee**
  - During the PHE, if a Medicare beneficiary is in a healthcare facility – even if the facility is not in a rural area or not in a health professional shortage area – and receives a service via telehealth, Medicare makes payment to the distant site practitioner for the professional services.
- **Facility Fee**
  - For services furnished via telehealth, the healthcare facility would be eligible to bill for the originating site facility fee only, which is reported under HCPCs Code Q3014.

Other Legal and Practical Challenges

BC: Privacy and Security

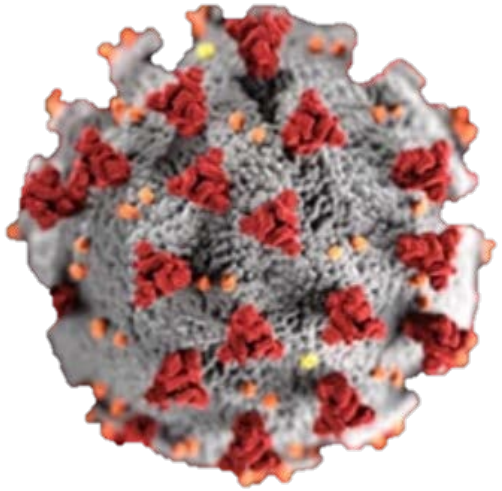


Same privacy and security requirements as written clinical records:

- HIPAA Privacy and Security regulations, 45 C.F.R. Parts 160 and 164, including HITECH breach notification procedures
- State law requirements

Site-appropriate privacy at both ends

COVID-Era: OCR Notification of Discretion for Telehealth



HHS Office for Civil Rights during PHE will:

- exercise enforcement discretion and
- waive HIPAA violation penalties for HIPAA covered entities:
  - ***serving patients in good faith*** though common (non-public facing) technologies,
  - using telehealth for any reason, regardless of whether it relates to COVID-19 conditions

OCR Enforcement Discretion

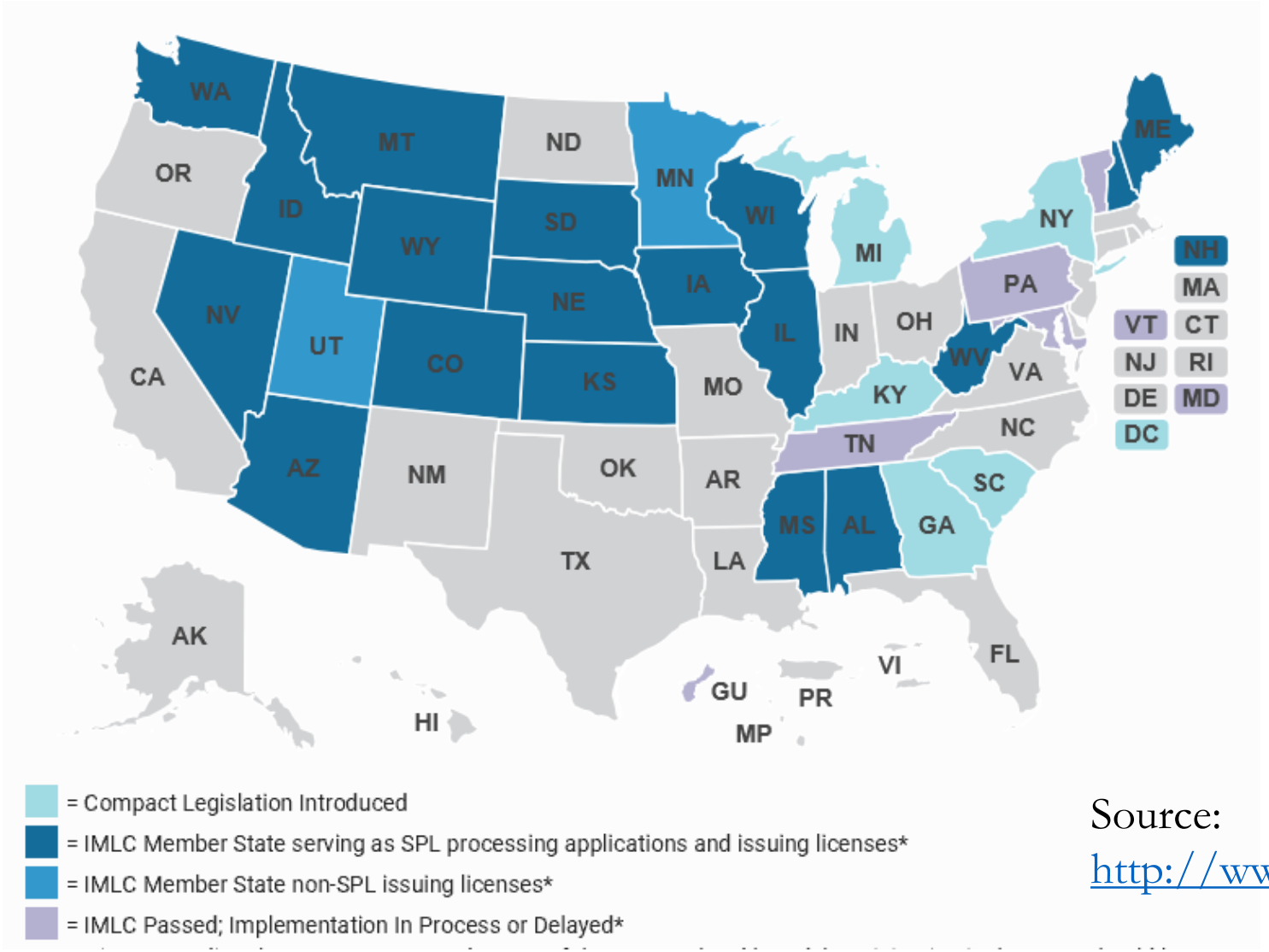
- OCR enforcement discretion applies to good faith use of non-public facing apps, such as:
  - Apple FaceTime
  - Facebook Messenger video chat
  - Google Hangouts video
  - Zoom or Skype
- ***Providers should not use public-facing apps,*** such as:
  - Facebook Live
  - Twitch
  - TikTok, and
  - similar public-facing video communication apps

"***Providers are encouraged to notify patients that these third-party applications potentially introduce privacy risks, and providers should enable all available encryption and privacy modes when using such applications.***"

Licensing

- General Rule. The practitioner must be licensed in the state where the patient is located
- Exceptions for
  - Bordering state exception
  - Peer-to-peer consultation (Educ. Law § 6526(3))
  - Follow-up care
  - Other states impose varying requirements
- COVID-Era

Interstate Licensing Compacts



Source:
http://www.imlcc.org/

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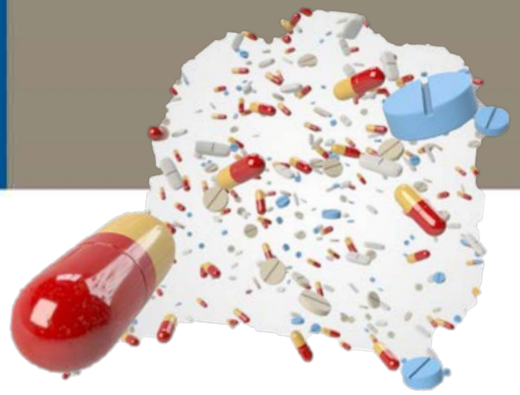
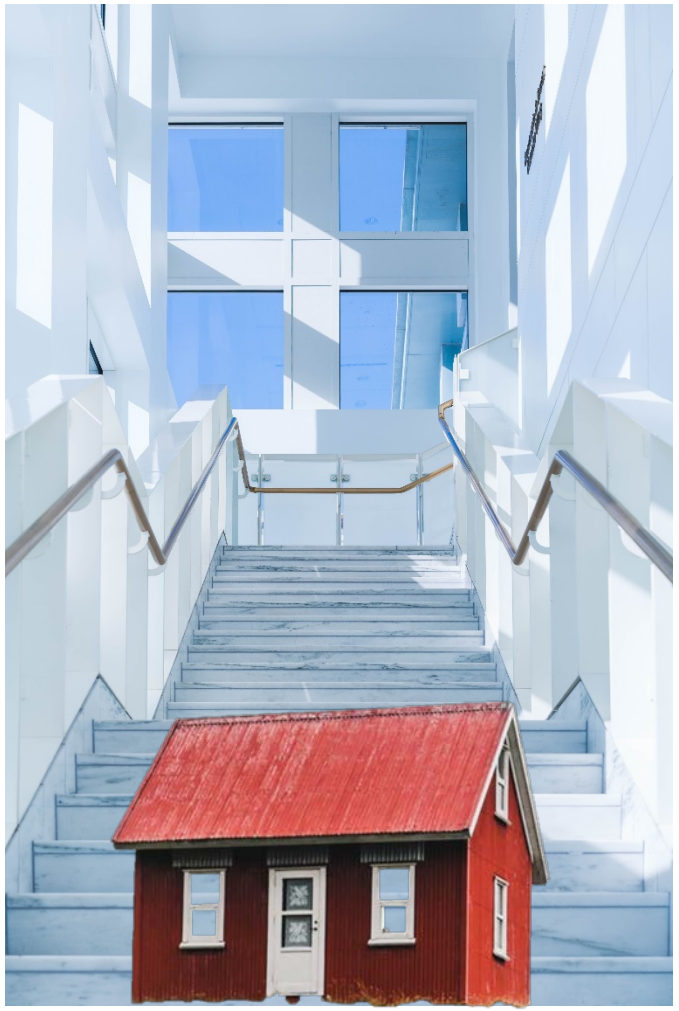
ePrescribing



- Federal Law: Ryan Haight Act
  - Requires a valid prescription by a practitioner who has conducted at least one in-person exam, or a covering physician, to issue a controlled substance
  - During the PHE, DEA practitioners may prescribe Schedule II-V substances without in-person medical evaluation, if:
    - issued for a legitimate medical purpose by a practitioner acting in the usual course of professional practice;
    - Telemedicine communication is conducted using an audio-visual, real-time two way interactive communication system,
    - practitioner acts in accordance with applicable state law.
- But 10 NYCRR § 80.63(d) generally requires practitioner to conduct an examination of the patient before prescribing a controlled substance

Medicaid Telehealth Reimbursement

BC: NY Medicaid "Originating Sites" (eff. 7/11/2018)



- facilities licensed under Public Health Law **Article 28** and 40;
- facilities defined in Mental Hygiene Law § 1.03(6)
- certified and non-certified day and residential programs funded or operated by the office for people with developmental disabilities;
- private physician's or dentist's offices located within the state of New York;
- any type of adult care facility;
- public, private and charter elementary and secondary schools, school age child care programs, and child day care centers in New York;
- the patient's place of residence in New York or other temporary location located within or outside New York

BC: NY Medicaid-Eligible Telehealth Practitioners

- **physician**
- physician assistant
- dentist
- **nurse practitioner**
- registered professional nurse (when receiving patient-specific information by RPM)
- podiatrist
- optometrist
- psychologist
- social worker
- speech language pathologist or audiologist
- midwife
- physical therapist
  occupational therapist
- certified diabetes educator
- certified asthma educator
- certified genetic counselor
- hospital, including (eff. July 11, 2018) a residential health care facility serving special needs populations
- home care services agency
- hospice
- any other provider as determined by DOH

Also, effective July 11, 2018,

- credentialed alcoholism and substance abuse counselor
- early intervention program services/coordination provider
- clinics licensed or certified under MHL Article 16 and OPWDD-funded or -operated certified and non-certified day and residential programs
- any other provider as determined by DOH, OMH, OASAS, or OPWDD

BC: February 2019 NY Medicaid Update

NEW YORK STATE | Department of Health

Medicaid Update

The Official Newsletter of the New York State Medicaid Program

February 2019
Volume 35 | Number 2

Special Edition

Expansion of Telehealth

A. General Information

Pursuant to New York State (NYS) Public Health Law (PHL) Article 29-G, as recently amended, and Social Services Law (SSL) Section 367-u, NYS Medicaid has expanded coverage of telehealth services to include:

1. additional originating and distant sites;
2. additional telehealth applications (store-and-forward technology, and remote patient monitoring); and
3. additional practitioner types.

This article outlines NYS Medicaid's updated telehealth coverage and reimbursement policy. The following information applies to Article 28 facilities and private practitioners. The Office of Mental Health (OMH), the Office for People with Developmental Disabilities (OPWDD), and the Office of Alcoholism and Substance Abuse Services (OASAS) are publishing separate guidance on telehealth and regulations that will align with state law and Medicaid payment policy for Medicaid enrollees being served under their authority. Additional guidance on specialty consultations for OMH, OPWDD, and OASAS members will be forthcoming. This policy is effective January 1, 2019 for Medicaid Fee-for-Service (FFS) and March 1, 2019 for Medicaid Managed Care (MMC) plans. Nothing precludes implementation by the MMC Plans prior to January 1, 2019.

Definition of Telehealth

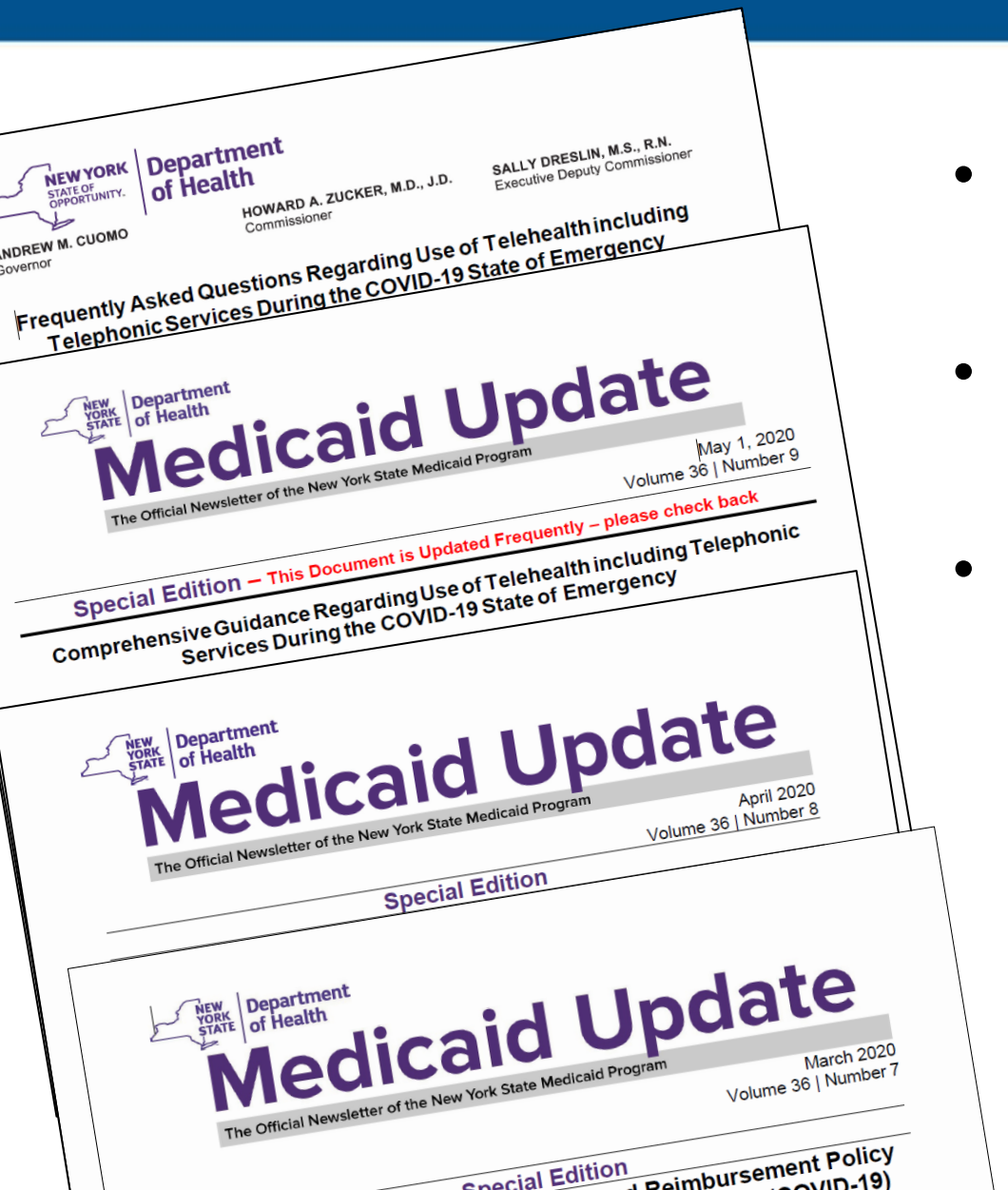
Telehealth is defined as the use of electronic information and communication technologies to deliver health care to patients at a distance. Medicaid covered services provided via telehealth include assessment, diagnosis, consultation, treatment, education, care management and/or self-management of a Medicaid member. Telephone conversations, e-mail or text messages, and facsimile transmissions between a practitioner and a Medicaid member or between two practitioners are not considered telehealth services and are not covered by Medicaid when provided as standalone services. Remote consultations between practitioners, without a Medicaid member present, including for the purposes of teaching or skill building, are not considered telehealth and are not reimbursable. The acquisition, installation and maintenance of telecommunication devices or systems is not reimbursable.

Continued on Page 3

https://www.health.ny.gov/health_care/medicaid/program/update/2019/feb19_mu_speced.pdf

- Suspends the NY telehealth statute and related DOH, OMH, OASAS and OPWDD regulations, to the extent necessary:
  - to allow additional telehealth provider categories and modalities;
  - to permit other types of practitioners to deliver services within their scopes of practice; and
  - to authorize the use of certain technologies for the delivery of health care services to established patients, as the Commissioners may deem appropriate

COVID-Era: NY Medicaid Telehealth Guidance



- NYS Medicaid Coverage and Reimbursement Policy for Services Related to Coronavirus Disease 2019 (COVID-19), Vol. 36, No. 7
- NYS Medicaid Program Launches Online Medicaid Provider Enrollment during COVID-19 Public Health Emergency, Vol. 36, No. 8
- Comprehensive Guidance Regarding Use of Telehealth including Telephonic Services during the COVID-19 State of Emergency, Vol. 36, No. 9 with Frequently Asked Questions Regarding Use of Telehealth including Telephonic Services during the COVID-19 State of Emergency (FAQs).

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NY Medicaid Telehealth: Coordination w/ Medicaid Requirements

February 2019 Medicaid Update

- "For individuals with Medicare and Medicaid, if Medicare covers the telehealth encounter, Medicaid will reimburse the Part B coinsurance and deductible to the extent permitted by state law. ***If a service is within Medicare's scope of benefits (e.g., physician), but Medicare does not cover the service when provided via telehealth, Medicaid will defer to Medicare's decision and will not cover the telehealth encounter at this time.***"

- Impact for dual eligibles
  - Before COVID
  - COVID Era
  - After COVID?

NY Medicaid Telehealth: Modality

Pre-COVID

- Telemedicine (synchronous, two-way audio visual communications)
- Store and forward (asynchronous, electronic transmission of health information)
- Remote patient monitory (synchronous or asynchronous collection and transmission of data

COVID

- Telephonic assessment and monitoring
  - Where face-to-face visits may not be recommended
  - If service is appropriate for delivery by telemedicine or telephone and
  - Service is required to care for patient
  - ➔ recognizes that not all providers and patients ready for telemedicine

NY Medicaid Telehealth: Telephonic Services

- DOH guidance supports a "policy that members needing care should be treated through telehealth provided by all Medicaid qualified practitioners and service providers, including telephonically, wherever possible to avoid member congregation with potentially infected patients."
- DOH announced that Medicaid will reimburse providers for two broad categories of telephonic services:
  - (i) evaluation and management; and
  - (ii) assessment and management
- Services must be clinically appropriate, within the scope of the provider's practice and appropriately documented in the clinical record

NY Medicaid Telehealth: Enrollment

- Before COVID
  - Enrolled to bill fee-for-service
  - Under contract with a Medicaid managed care plan
- COVID Era
  - Expedited COVID-19 provisional temporary enrollment process for practitioners, including out-of-state practitioners, to enroll quickly in NY Medicaid
  - Applies to licensed practical nurses, registered nurses, physicians, nurse practitioners, and registered physician assistants

NY Medicaid Telehealth: Location

- Medicaid generally reimburses for telehealth in a broad range of originating and distant sites, as appropriate to patient care
- During the emergency:
  - originating site – where the patient is located – can be any location
  - distant site – where provider is located – can be any location within U.S. or its territories, including FQHC or provider's home

NY Medicaid Telehealth: Informed Consent

- Patient must give informed consent to receiving telehealth services.
- Telehealth sessions may not be recorded without patient consent
- Culturally competent translation and/or interpretation services must be provided when the member and distant practitioner do not speak the same language

NY Medicaid Telehealth: Informed Consent (2)

Documentation in the medical record must reflect that the member was made aware of patient rights policies that include:

1. The right to refuse to participate in services delivered via telehealth, and to be informed of potential drawbacks of telehealth versus a face-to-face visit;
2. The role of the practitioner at the distant site, as well as of qualified professional staff at the originating site responsible for follow-up or ongoing care;
3. Receiving information about the location of the distant site and to have any questions regarding the equipment, the technology, etc., addressed; …

NY Medicaid Telehealth: Informed Consent (3)

. . .

4. The right to have appropriately trained staff immediately available while receiving the telehealth service to attend to emergencies or other needs;
5. The right to be informed of all parties who will be present at each end of the telehealth transmission; and
6. The right to select another provider and to notification that by selecting another provider, there could be a delay and potential need to travel for a face-to-face visit.

NY Medicaid Telehealth: Technology

- During the Emergency, providers can use commonly available audio-visual technology, such as smart phones and tablets, or audio-only telephones.
- The updated guidance allows providers "to bill for telephonic services if they cannot provide the audiovisual technology traditionally referred to as 'telemedicine.'"
- ➔ Providers should consider documenting access issues, such as technological barriers, impeding the use of other forms of telehealth

NY Medicaid Telehealth: Confidentiality

Question 23: Do confidentiality and HIPAA requirements apply when providing medical services via telehealth during the state of emergency?

DOH: **Providers should be utilizing HIPAA- and 42 CFR-compliant technologies, or other video-conferencing solutions to which the client has agreed.** During the COVID-19 nationwide public health emergency, [OCR] has issued a Notification of Enforcement Discretion for telehealth remote communications. OCR will exercise its enforcement discretion and will not impose penalties for noncompliance with the regulatory requirements under the HIPAA Rules against covered health care providers in connection with the good faith provision of telehealth during the emergency.

NY Medicaid Telehealth: Confidentiality

- Resident/Patient/Client consent
- Notification that third-party applications introduce privacy risks
- Enable available encryption and privacy modes
- ➔ consider development of policies and procedures to notify patients of potential privacy risk and obtain patient consent to use of third party applications

Looking Ahead

- Emergency situation likely to continue to some degree for an unknown time
- DOH likely to revise and refine requirements as it gains experience with broader use of telehealth
- ➔ Need to monitor developing guidance closely
- Open question of how much guidance will continue as the pandemic wanes
- No question that COVID emergency is leading to growing appreciation of telehealth's benefits
- Not too early to think about how to use telehealth in post-COVID operations


Thank you
health care heroes!

For More Information:

Jane Bello Burke, Esq.
Hodgson Russ LLP
518.433.2404 • jbburke@hodgsonruss.com

Joshua Feinstein, Esq.
Hodgson Russ LLP
716-848-1318 • jfeinste@hodgsonruss.com

Email questions for Part II to Scott Jackson (sjackson@nyshfa.org).