



TELEHEALTH

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TELEHEALTH / TELEMEDICINE

- “Telemedicine” = provision of clinical services to patients by physicians and practitioners from a distance via electronic communications
 - Simultaneous, synchronous, or “real time” (e.g., tele-ICU)
 - Remote monitoring
 - Non-simultaneous, asynchronous, “store-and-forward” (e.g., teleradiology)

TELEHEALTH - GENERALLY

Originating or Spoke
Site:
Where the patient is
located



Distant or Hub
Site:
Where the remote
practitioner is located

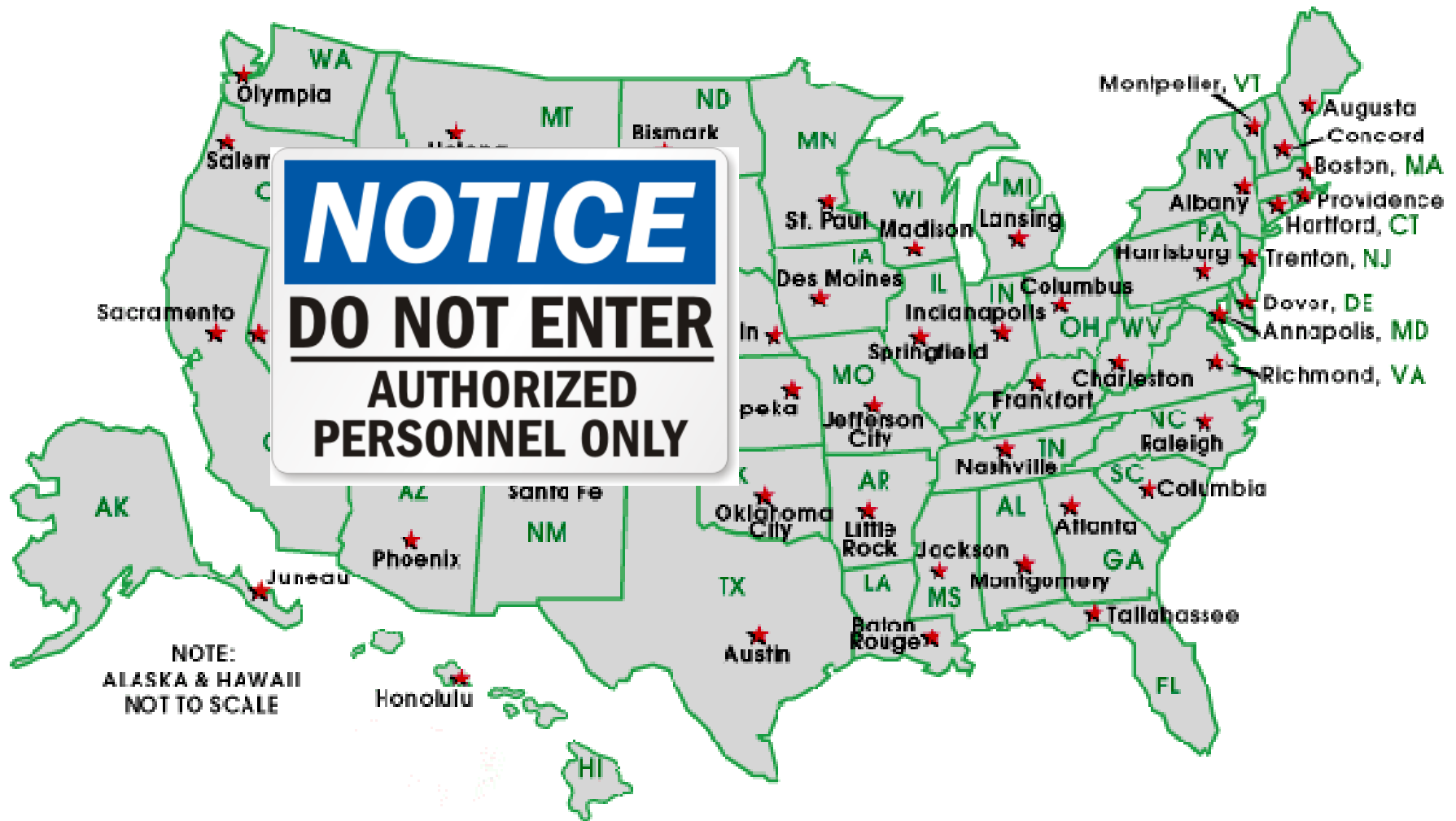


Telehealth

TELEHEALTH: ISSUES FOR DISCUSSION

- Licensure/Credentialing
- Standard of Care
- Informed Consent
- Reimbursement

LICENSURE



LICENSURE

- Telehealth provider
 - Subject to criminal, civil or administrative sanctions if not properly licensed, *i.e.*, practicing without license
 - No liability insurance
 - No reimbursement for services provided
- Originating site
 - No liability insurance for remote practitioner
 - No reimbursement for services provided
 - Facility licensing problems
 - Conditions of Participation problems for hospitals

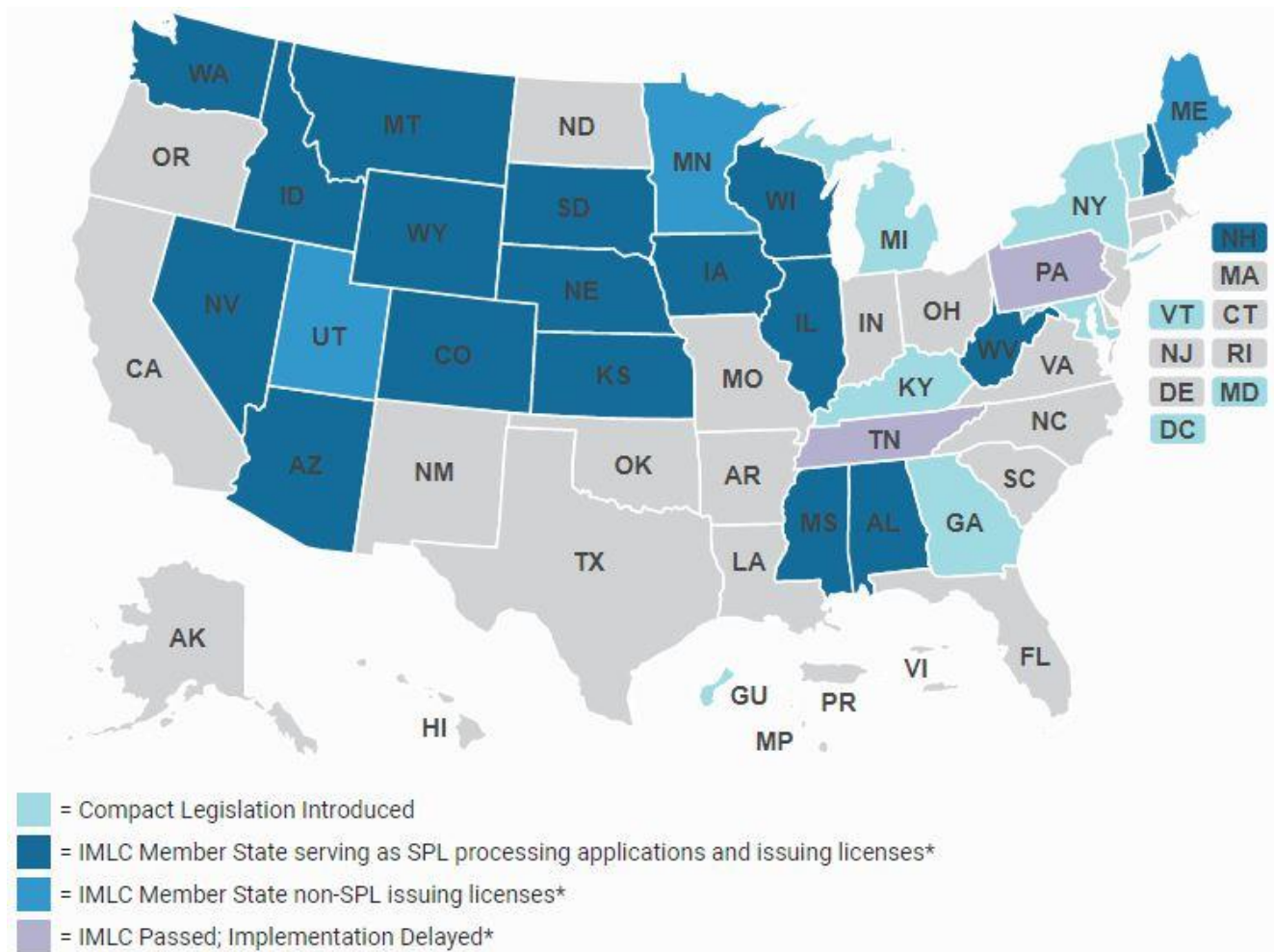
LICENSURE

- The practice of medicine in Wyoming includes telemedicine:
 - “‘Telemedicine’ means the practice of medicine by electronic communication or other means from a physician in a location to a patient in another location, with or without an intervening health care provider.” Wyo. Stat. § 33-26-102(xxix).
- The unauthorized practice of medicine is a misdemeanor crime:
 - A guilty person “shall be punished by a fine of not more than one thousand dollars (\$1,000.00) or by imprisonment in the county jail for not more than one (1) year, or both.” Wyo. Stat. § 33-26-410(a).
- Wyoming does recognize a physician-to-physician consultation exception from licensure with limits on frequency :
 - No more than 12 days every 52 weeks. Wyo. Stat. § 33-26-103(a)(iv); Wyo. Bd. Med. R. ch. 1, § 7(a).

LICENSURE

- Practitioners in military, VA, Public Health Service
 - May practice within their organization across states.
- Nurse Licensure Compact
 - Allows multistate licensure for nurses.
- Interstate Medical Licensure Compact
 - Allows expedited licensure for physicians licensed in another state that is a member of the compact.
 - Several states (including Idaho, Montana, Nevada, Utah, Wyoming, South Dakota, Iowa, West Virginia, and Iowa) have passed laws to participate. (See Wyo. Stat. 33-26-702)

[HTTP://WWW.IMLCC.ORG/](http://www.imlcc.org/)



LICENSURE

Hospital conditions of participation (“COPs”).

- “In all cases, healthcare professional must be legally authorized to practice in the state where the hospital is located.”
- “When Telehealth is used and the practitioner and patient are located in different states, the practitioner providing the patient care service must be licensed and/or meet the other applicable standards that are required by the state or local laws in both the state where the practitioner is located and the state where the patient is located.”

(Interpretive Guidelines for 42 CFR 482.11, .12 and .22)

LICENSURE

- Most state Medicaid laws require that practitioner is licensed within the state as condition for reimbursement.
- “Medicaid guidelines require all providers to practice within the scope of their State Practice Act. Some states have enacted legislation that requires providers using telemedicine technology across state lines to have a valid state license in the state where the patient is located. Any such requirements or restrictions placed by the state are binding under current Medicaid rules”
(<https://www.medicaid.gov/medicaid/benefits/telemed/index.html>)

LICENSURE

- Distant site practitioner and originating site should ensure that distant site practitioner is licensed in or otherwise authorized to provide the telehealth services in the originating site's state.

RESTRICTIONS ON REMOTE PRESCRIBING OR TREATING WITHOUT IN-PERSON EXAM



WYO. BOARD OF PHARMACY REGS

- Unprofessional conduct for any pharmacist to dispense prescription drugs on basis of a prescription generated solely through an “internet practitioner consultation questionnaire.”
- Pharmacies prohibited from linking to a site, business or practitioner that provides prescriptions on that basis
- Non-resident pharmacy must obtain a WY non-resident pharmacy license, comply with WY law, and counsel WY patients verbally or in writing

FSMB MODEL POLICY FOR APPROPRIATE USE OF TELEMEDICINE (4/14)

- Physician must be licensed in state where patient located.
- Physician-patient relationship may be established using telemedicine technologies.
- Documented medical evaluation and collection of relevant history and other information.
- Same standard of care as in-person treatment.
- Informed consent addressing telemedicine issues.
- Provide for continuity of care.
- Plan for referral for emergency services.
- Maintain appropriate medical records.
- Maintain privacy and security of communications.

(https://www.fsmb.org/globalassets/advocacy/policies/fsmb_telemedicine_policy.pdf)

AMA GUIDANCE FOR ETHICAL PRACTICE IN TELEMEDICINE (6/16)

Physicians engaging telemedicine should:

- Be proficient in relevant with technologies.
- Recognize and address limitations of relevant technologies.
- Ensure they have info for clinical recommendations when they cannot conduct physical exam, e.g., have another professional on-site conduct the exam.
- Obtain proper informed consent about telemedicine.
- Take steps to provide continuity of care.

(AMA Code of Medical Ethics Opinion 1.2.12)

CREDENTIALING: COPS

- Hospital governing board must determine whether to grant privileges to distant providers or rely on distant hospital credentialing
 - Credentialing by proxy
- Written agreement required specifying who provides the COP credentialing requirements
- Bylaws amended to reflect credentialing process and requirements for distant-site providers

LIABILITY ISSUES



DIFFERENT LAWS

- If crossing state boundaries, other state's laws may differ:
 - Licensure requirements
 - Professional standards and standard of care
 - Informed consent
 - Statute of limitations
 - Caps on damages
 - Pre-litigation screening
 - Immunities and defenses
 - Reimbursement rules
 - Confidentiality requirements

DIFFERENT PROCEDURES

- Subject to suit in other state's courts under different procedures and standards:
 - Pre-litigation screening panel
 - Notice of tort claims
 - Pleading punitive damages
 - Physician-patient privilege
 - Peer review privilege
 - Evidentiary rules re experts or others

PRACTITIONER-PATIENT RELATIONSHIP

- Practitioner-patient relationship may exist even though there is no direct contact
- Test: Would a reasonable patient believe that practitioner-patient relationship exists?
 - Direct contact or communication with patient
 - Contract or agreement to provide care
 - Bills for services
- Some states may have an exception for “consultations” if certain standards are satisfied, *e.g.*,
 - No direct contact with patient
 - No bill for services

MALPRACTICE LIABILITY

- Applicable standard of care
 - Different community standards may apply
 - Presumably, a remote practitioner must comply with the same standard of care as a practitioner at the originating site
- Beware:
 - Is use of telehealth appropriate for patient's care?
 - Sufficiency of telehealth equipment or technology
 - Training and qualifications of users
 - Effect of other laws
 - Vicarious liability for others, including remote practitioner and originating site personnel

INFORMED CONSENT

- Informed consent from patient or representative is critical
 - Informed consent should include:
 - Discussion of risks, benefits, and limitations of telehealth services, including availability of services and provider, technical limitations, etc.
 - Identify persons involved in providing care
 - Whether you will record telehealth sessions
 - Privacy or security of data communications system, especially if use open network
 - Disclaim responsibility for entities that are not your agents

LIABILITY INSURANCE COVERAGE

- Liability insurance may require proper license for coverage
- Liability insurance policies may exclude:
 - Injuries from unauthorized practice of medicine
 - Legal actions due to unauthorized practice of medicine
 - Administrative or licensure actions
 - Criminal actions
 - Practice medicine in another state
 - Regulatory violations resulting from telehealth, e.g., HIPAA violation, FDA violation
- **Check your malpractice insurance coverage**

REIMBURSEMENT



REIMBURSEMENT

- Reimbursement for telehealth is expanding ...
 - Medicare expanded coverage for FY2018, but still limited
 - Medicare Advantage will provide some coverage beginning 2020
 - ACO coverage expanding in 2020
 - Medicaid programs generally provide some coverage, but depends on states
 - Private payers
 - Some payers expanding services to reduce other costs
 - Most states have some form of telehealth parity laws

REIMBURSEMENT: MEDICARE

- Part A: CMS pays for telehealth if satisfy conditions of payment.
- Part B: CMS pays for “telehealth” if—
 - Use interactive audio and video telecommunications permitting real-time communication practitioner at distant site and beneficiary at originating site
 - NOT asynchronous, store-and-forward technology except under demonstration project in Hawaii and Alaska
 - Patient must be present and participating in telehealth
 - Another physician or “telepresenter” is not required at originating site unless it is medically necessary as determined by distant physician

(45 USC 1395m(m); 42 CFR 410.78 and 414.65;
Medicare Claims Processing Manual, Ch. 12, Sect. 190)

REIMBURSEMENT: MEDICARE

- Originating site must be:
 - In rural HPSA or county outside a MSA county, and
 - Proper type of facility
 - Physician or practitioner office
 - Hospital
 - Critical Access Hospital (“CAH”)
 - Rural Health Clinic (“RHC”)
 - Federally Qualified Health Center (“FQHC”)
 - Skilled Nursing Facility (“SNF”)
 - Hospital- or CAH-based Renal Dialysis Center
 - Community Mental Health Center
 - Participating in demonstration project
 - Patient’s home

(42 USC 1395m(m); 42 CFR 410.78)

REIMBURSEMENT: MEDICARE

- Distant site practitioner must be—
 - Licensed under state law to provide the telehealth service (i.e., within scope of practice), and
 - One of following:
 - Physician
 - Nurse practitioner (“NP”)
 - Physician assistant (“PA”)
 - Nurse midwife
 - Clinical nurse specialist (“CNS”)
 - Certified registered nurse anesthetist (“CRNA”)
 - Clinical psychologist and clinical social worker, but may not bill for certain codes
 - Registered dietician or nutrition professional

REIMBURSEMENT: MEDICARE

- Covered services include:
 - Consultations, emergency department or initial inpatient
 - Follow-up inpatient telehealth consultations furnished in hospital or SNFs
 - Office or other outpatient visits
 - Subsequent hospital care services limited to 1 telehealth visit every 3 days
 - Individual and group kidney disease education and diabetes self-management training
 - Individual and group health and behavior assessment and intervention
 - Individual psychotherapy
 - Telehealth pharmacologic management
 - Psychiatric diagnostic interview exams
 - ESRD services
 - Individual and group medical nutrition therapy
 - Neurobehavioral status exams
 - Smoking cessation services
 - Certain types of alcohol and substance abuse treatment

<https://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNProducts/downloads/telehealthsrvcfsht.pdf>

REIMBURSEMENT: MEDICARE

- Covered services (cont.):
 - Annual depression screening
 - Face-to-face behavioral therapy for cardiovascular disease
 - Face-to-face behavioral therapy counseling for obesity
 - Certain transitional care management services
 - Certain advance care planning
 - Psychoanalysis
 - Family psychotherapy
 - Prolonged service in office or other outpatient setting requiring direct patient contact beyond usual service
 - Prolonged service in inpatient or observation setting beyond usual service
 - Annual wellness visits
 - Critical care services
 - Others

<https://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNProducts/downloads/telehealthsrvcsfctsh.pdf>

- Check specific requirements

REIMBURSEMENT: MEDICARE

- Facility fee to originating site:
 - No facility fee to distant site.
- Payment to provider at distant site:
 - Must use appropriate code + telehealth modifier.
 - No payment to practitioner or “telepresenter” at originating site.
 - Physician/practitioner at distant site may not share payments with referring physician or telepresenter.

(42 USC 1395m(m); 42 CFR 414.65)

REIMBURSEMENT: WY MEDICAID

- Provider must comply with WY licensing rules and rules where provider is located and/or services are provided
- Telehealth – real time interactive audio and video permitting patient to see and interact at time services provided and of sufficient quality, in compliance with HIPAA
- Each site bills for their own services:
 - Originating site – location of patient; no requirement for provider to be with patient; can be patient's home
 - Hub site – location of provider

REIMBURSEMENT: WY MEDICAID

- Patient must complete telehealth consent form if originating site is patient's home
- Patient can revoke consent to telehealth
- All other requirements for reimbursement must be met
- No transmission charges; attendant costs; technology costs are reimbursable

ADDITIONAL RESOURCES



ADDITIONAL RESOURCES

- Federation of State Medical Boards
 - Summaries of state laws governing telehealth.
 - Legislative update.
- Center for Telehealth & e-Health Law (“CTel”)
 - Publications and guides.
 - News and information.
- American Telehealth Ass’n,
 - Practice standards and guides.
 - News and information.
- Center for Connected Health Policy
 - 50-state survey of telehealth laws and policies



QUESTIONS?



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