Telemedicine:
Increase Your
Risk Management Bandwidth
in a
Changing Healthcare Environment

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Risk Management & Analytics

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Disclosures

Judy Klein, PA, CPHRM, FASHRM - Speaker
Ann Carter, HRM, CPHRM, CMPE - Speaker

We do not have any relevant financial relationships.

Objectives

- Identify potential risks and liability exposures in telemedicine.

- Offer risk mitigation strategies and best practices to minimize and/or eliminate the risks/liability.

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- COVID19
- Customer demand/expectations
- Improved/user friendly technology
- Safety (no chance for infection)
- Access to (specialty) care
- Meet provider shortages
- Fewer barriers for multi-state licenses
- Efficient care delivery for certain types of visits
- Improved outcomes
  - Incentivize patients (Remote monitoring/Wearables)
  - Decrease readmissions
- Cost savings for patients
- Improved reimbursement

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Definition
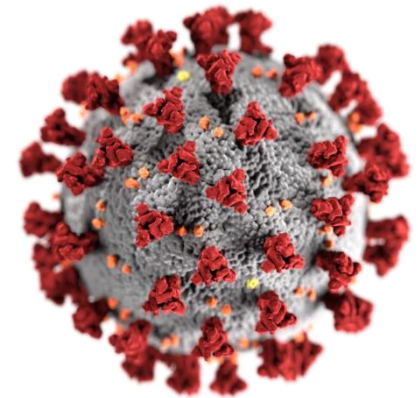
American Telemedicine Association:

"the remote delivery of health care services and clinical information using telecommunications technology. This includes a wide array of clinical services using internet, wireless, satellite and telephone media."

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Where Used?
What Specialties Are Using?

- Radiology (Telerad)
- Intensive/Critical Care (Tele Stroke/Tele Burn)
- Behavioral Health
- Dermatology
- Home Health Care
- Out patient virtual visits
- Prison Health
- Long Term Care
- Emergency Medicine
- Primary Care

- Note: Some specialties may not use until after one initial in person visit
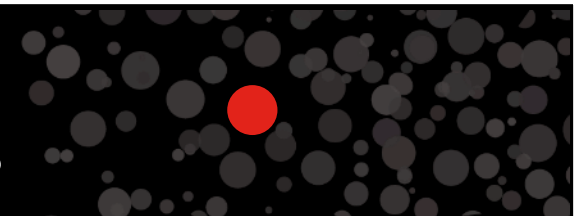   - Behavioral Health
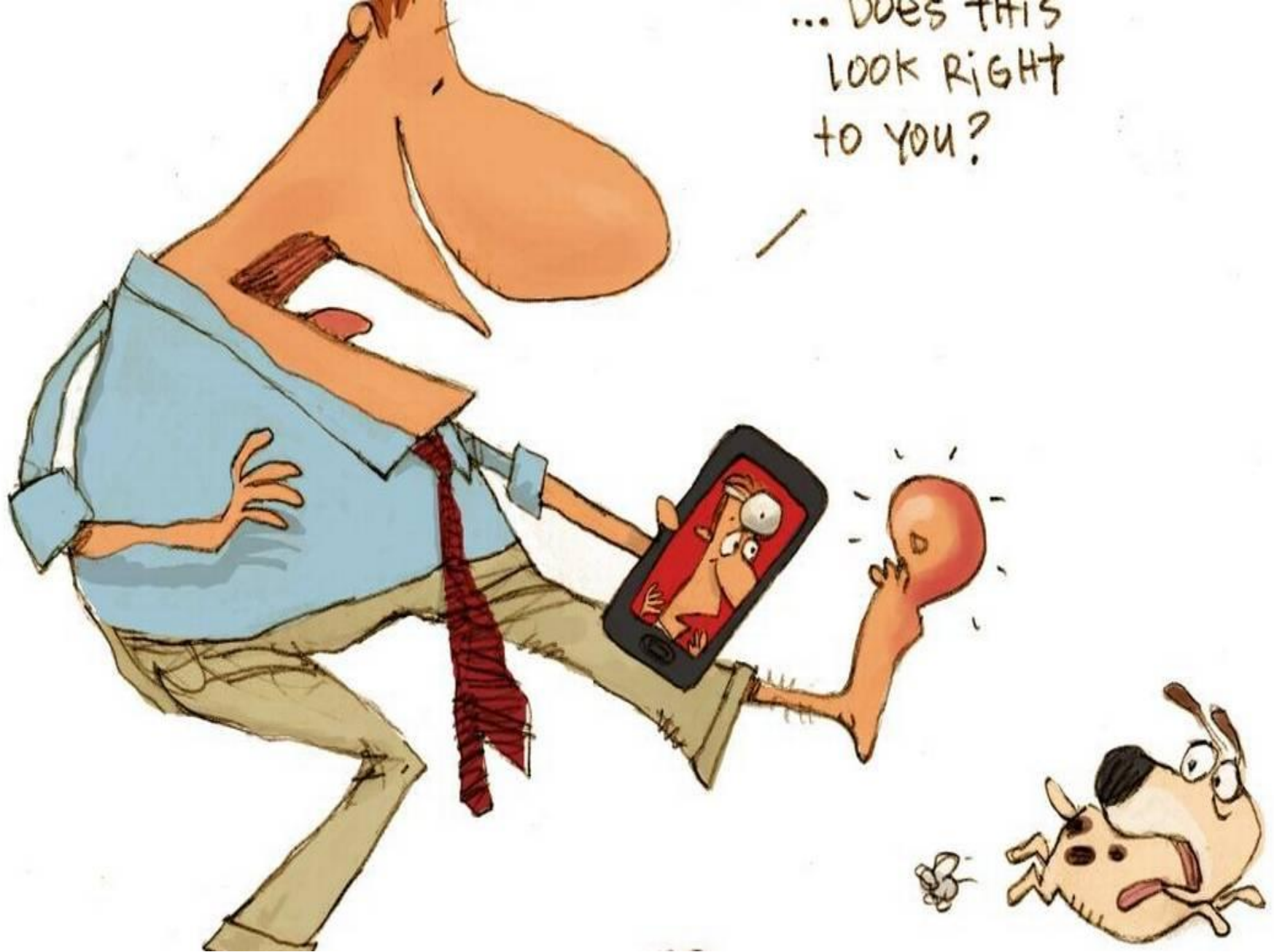
Potential Liability – Claims

- Types of claims expected to be similar to what we see for in person visits:
  - Missed/delayed diagnosis.
  - Inadequate assessments, testing, and procedures.
  - Communication breakdowns: lack of informed consent, lack of follow up on test results/consults.
  - Medication/Prescribing errors.
- Additional types of claims/allegations:
  - Failure to convert telemedicine visit to in person visit.
  - Deviation from same standard of care as in person visit.
  - Failed telemedicine visit due to practitioner inexperience.
- Other contributing factors:
  - Technology/poor connection-inadequate exam.
  - Lack of provider attention-poor webcam etiquette.
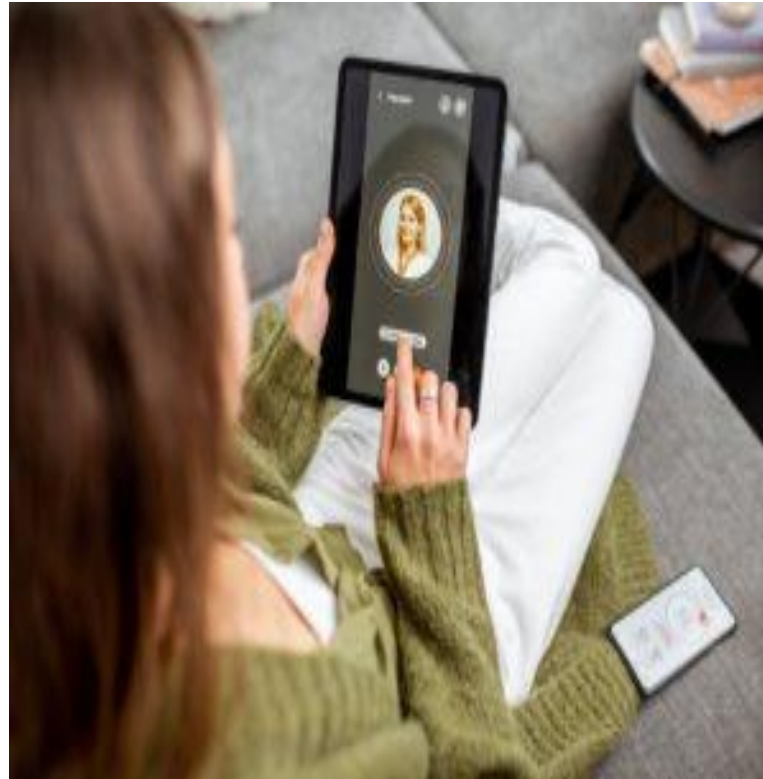 - Communication/language barriers.
  - Documentation issues.

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Case Scenario 1
Failure to Diagnose/Treat – Vision Loss

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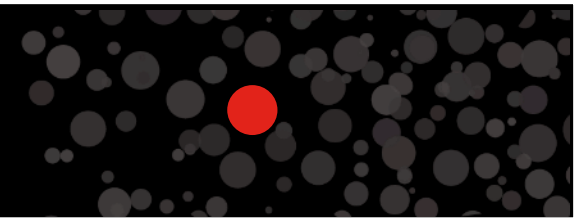
Risk Management Considerations

- Compliance with Laws and Regulations
- Licensure
- Credentialing
- Policies and Procedures
- Informed Consent
- Standard of Care
- Workflows

- Patient Selection
- Confidentiality/Privacy/Security
- Documentation
- Technology/Equipment
- Education/Training
- Quality Program
- Access to EHR/Patient data

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Laws and Regulations

HIPPA Privacy   HIPAA Security   State Privacy Laws

Telehealthresourcecenter.com
HIPAA Stepwise Guide To
Compliance

NATIONAL CONSORTIUM OF
TELEHEALTH
RESOURCE CENTERS

Other regulations need to be aware of:

- DEA requirements pertaining to prescribing high risk meds
- State laws requiring informed consent
- State laws pertaining to licensure
  - Center for Connected Health Policy - up to date state actions
    https://www.cchpca.org/covid-19-related-state-actions

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Licensure

- Must be licensed in the state practicing in, and the state where the patient is located.
- Stay current with state regulations.
- To help reduce licensure issues:

    Interstate Medical Licensure Compact Commission

    https://www.imlcc.org/
    https://www.imlcc.org/information-for-physicians/#WhatDoesItCostToParticipate

- Some states also have an expedited process for telemedicine licensure.
- Consult with an attorney to ensure compliance.
- Consult with your professional liability insurance carrier.

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IMLC Participating States
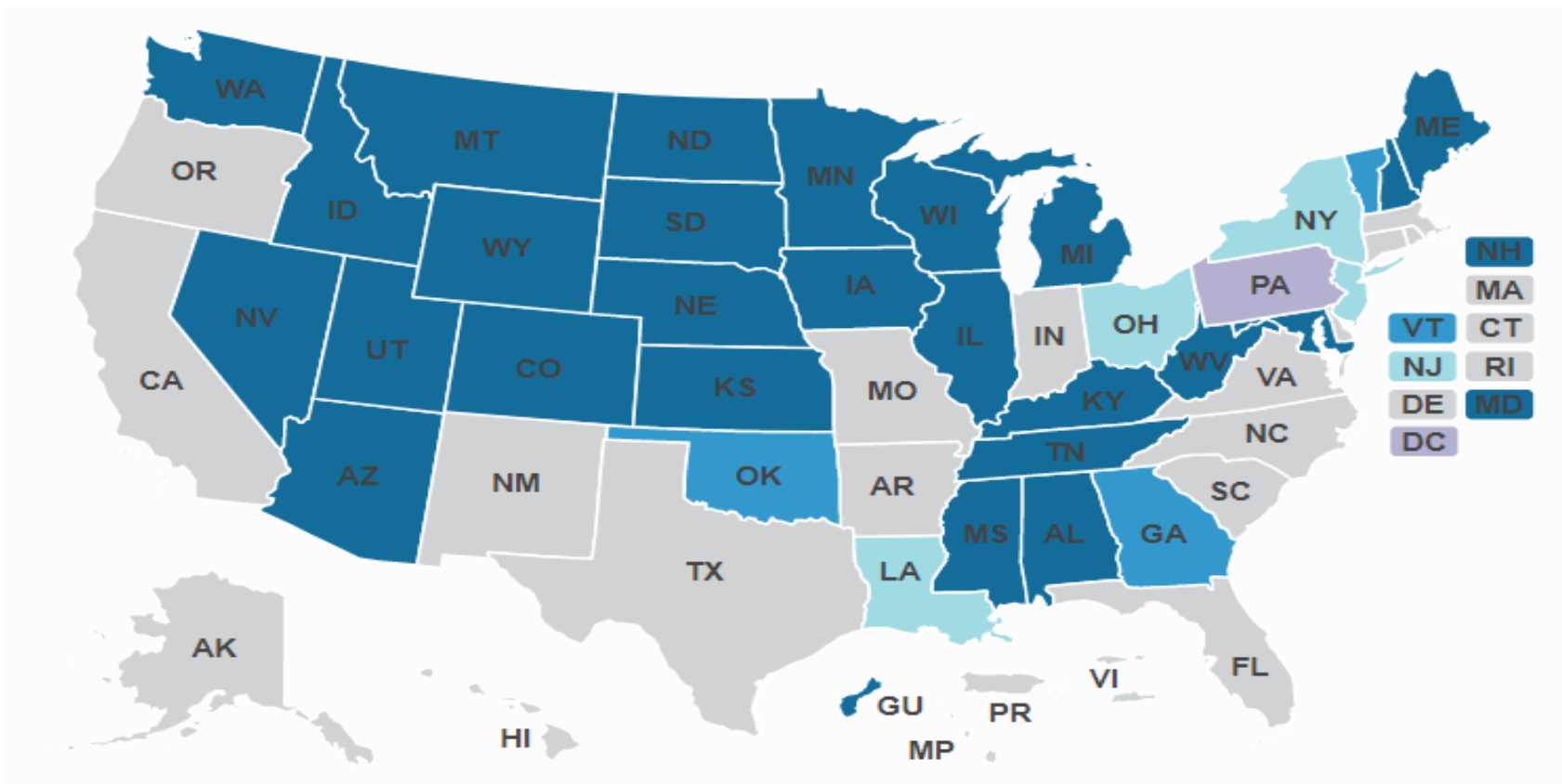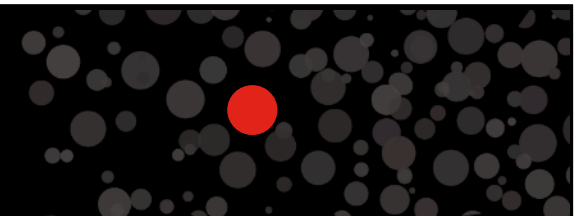
= Compact Legislation Introduced
= IMLC Member State serving as SPL processing applications and issuing licenses*
= IMLC Member State non-SPL issuing licenses*
= IMLC Passed; Implementation In Process or Delayed*

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Telemedicine - Policies and Procedures

- Administrative: fiscal management, ownership of data, network/data transmission, storage, access, security, use of equipment, devices, and hardware/software.

- Clinical/Operational:
  - Informed Consent process and documentation.
  - Verification of patient identification and location.
  - Screening criteria for telemedicine visit.
  - Visit expectations, standards of conduct, and etiquette.
  - Handling medical emergencies.
  - Prescribing.
  - Threshold for ending encounters.
  - Quality monitoring program.
  - Training, competency, and workflows.

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Standard of Care

- Same as a traditional in person encounter.

- Patient suitability for participating in telemedicine visit.

- Follow state requirements for an in person visit when establishing care with a new patient.

- Availability of past medical records, proper history, patient data to review prior to, or during the visit.

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Informed Consent

Informed consent for telemedicine visits should include:

- How the technology will be used.
- Confidentiality and privacy provisions.
- Emergency procedures.
- Technological limitations.
- Physician right to discontinue visit.
- Patient right to discontinue visit.
- Patient right to receive a face to face consult.
- Health ramifications if patient refuses treatment.
- Documentation of the discussion.
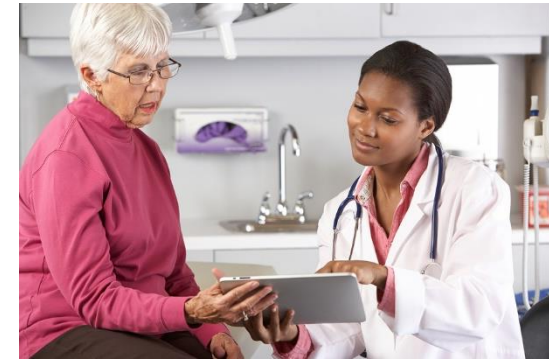
Obtain a separate consent to record the visit if the telemedicine visit is to be recorded.

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Verifying IDs and Locations

- Develop a means of verifying a new patient's ID to include:
    - Full name, DOB, and demographics.
    - Government issued photo ID.

- Provide verification of practitioner name, qualifications, and location (town/state).

- Document verification process for all IDs and locations in the medical record.

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Screening Criteria for Telemedicine Visit

- Patient eligibility for a telemedicine visit should be assessed prior to scheduling.
- Consider the following when determining if a virtual or in person visit is appropriate:
  - First time appointments.
  - Anytime a physical exam is needed, and when a chaperone is needed.
  - Patients experiencing symptoms outside the bounds of clinical protocols for telemedicine visits.

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Screening Criteria for Telemedicine Visit

- Include a list of common treatments for telemedicine visits.
  - Most minor or urgent care issues where a physical exam is not necessary.
  - Review of tests, labs, or imaging results.
  - Counseling services.
  - Specialist referrals.
  - Medication questions, adjustments, or refills.
  - Treatment plan.
  - Chronic disease management.
- Share this information with patients.
- Include clinical factors and patient factors in considering whether a TM visit would be successful.

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Standards of Conduct - Patients

Visit expectations, Standard of Conduct, and telemedicine etiquette.

Patient:

- Develop a process to establish expectations prior to a telemedicine visit
  - Pre-visit prep call (first visit)
  - When educating patient, use a plain language document that addresses expectations for the telemedicine visit.
- Include instructions on how to dress for the visit.
- Address the importance of the patient having a private, safe, and uninterrupted space for the encounter.
- Share contact information if the patient experiences technical difficulties with the telemedicine visit.

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Standard of Conduct – Healthcare Providers

Visit expectations, Standard of Conduct, and telemedicine etiquette.

Healthcare Providers:

- Train practitioners in webcam etiquette.
- Ensure webcam is at eye level; maintain eye contact.
- Maintain private, professional, quiet, culturally sensitive, clean, free from clutter/distraction, and ensure privacy of non-clients.
- Dressing and presenting oneself professionally.
- Maintain professional hours and timing of sessions.
- Being punctual so patients do not wait too long.

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Case Study – Boundary Issues

Recognize when telemedicine visits should be discontinued:

- Technology failures or impediments impacting communication and assessment.
- Boundary violations (inappropriate dress, language, behavior, and inappropriate patient setting)
- Need for in person physical exam.
- Barriers impacting ability to assess, evaluate, and treat.
- Inability to determine diagnosis.
- Potential deviation from the standard of care.

Ensure appropriate follow up with patient when TM visit is discontinued.

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Medical Emergency Plan

Develop protocols for handling medical emergencies during a telemedicine visit.

- Know the address of the patient.

- How to contact emergency services in the patient's location.

- Know the patient's preferred healthcare system/hospital.

- Know the resources and travel requirements when making referrals and additional health services.

Plan should include formal, written protocols appropriate for the services being rendered.

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Documentation in Telemedicine = Documentation in Person

Document:

- Patient's consent.

- Location of Doctor/Patient.

- Other Participants.

- Technology/Equipment Used.

- Technical difficulties.

- Interpreter services if applicable.

- If visit had to be discontinued, reason why, action taken to reschedule, and any follow up communications.

- Any verbal, audiovisual and written communication.

- Document any e-communication, such as, lab/test results.

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Telemedicine – Workflows

Pre-Visit:

Scheduling

Prescreening Criteria

Patient preferences

IT capabilities

Standards

Need for interpreters

If another member will be participating

During the Visit:

Checking patient in

Confirm private area

Confirm patient ID, and location

Determine expectations

Informed consent

Inform patient of back up plans

Ensure patient can hear/see

Explain if documenting during the visit

Post Visit:

Ensure patient knows next steps, follow up

Patient understands instructions

Conduct checkout

If summary to be sent

Check if telemedicine met patient needs

Document visit

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Education and Training

Provider and staff training is essential:

- Know the technology being used, how to operate equipment, and limitations.

- Include training on how to troubleshoot problems, how to obtain technical assistance, and back-up plan.

- Ensure smooth transitions for telemedicine workflow, staff check-in, and handoff to practitioners.

- Include role specific training.

- Include webcam etiquette.

- Include training on each type of telemedicine modality.

- Include competency testing specific to staff roles, and responsibilities.

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Quality Program for Telemedicine
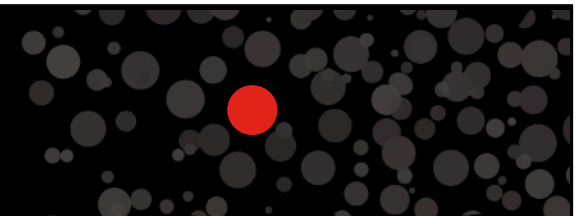
- Develop and track measurable key quality measures.
- Measures may include:
  - Monitoring number of telemedicine visits requiring in person visits.
  - Tracking number of technology failures requiring rescheduling or delays.
  - Access to care.
  - Clinical outcomes.
  - Medical record documentation for telemedicine visits.
  - Patient and practitioner satisfaction.
  - Reimbursement.
- National Quality Forum recommends measuring:
  - Access.
  - Financial impact.
  - Experience.
  - Effectiveness.

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Telemedicine Resources

- Agency for Healthcare Research and Quality: https://www.ahrq.gov.

- American Telemedicine Association: Offers a wide range of discipline specific telemedicine practice guidelines as well as core standards, assessment, and outcome measures. www.americantelemed.org.

- Federation of State Medical Boards: Model policy for guidance to medical boards for regulation of the appropriate use of telemedicine technologies in the practice of medicine. www.fsmb.org.

- Interstate Medical Licensure Compact: Provides information about state license reciprocity and expedited licensure for qualified providers wishing to practice in multiple states. www.imlcc.org.

- Center for Connected Health Policy: Resource for telehealth-related laws and regulations. https://www.cchpca.org/.

- Center for Telehealth and e-Health Law (CteL): Information on credentialing, sample agreements between originating and distant sites and checklists. https://www.telehealthlawcenter.org/.

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Telemedicine Resources

- American Medical Association: National organization that provides resources to providers relating to the delivery of medicine, educational resources and practice management. Specifically related to telemedicine; they offer AMA Quick Guide to Telemedicine/Playbook. https://www.ama-assn.org/system/files/2020-04/ama-telehealth-playbook.pdf .

- American Hospital Association: National organization that provides resources to hospitals, health care networks, their patients, and communities. Specifically related to telemedicine; they offer a Telehealth Resource Site with sample telemedicine related forms. www.aha.org/telehealth.

- American Society for Healthcare Risk Management. www.ashrm.org.

- National Consortium of Telehealth Resource Centers: Provides resources to assist providers in developing a telehealth program.

Telemedicine Resources

- Centers for Medicare and Medicaid Services (CMS): CMS oversees many federal healthcare programs. Specifically related to telemedicine; CMS offers providers a telehealth and a telemedicine toolkit. CMS Telemedicine Toolkit. www.cms.gov.
- Accrediting Bodies
  - The Joint Commission (DNV and HFAP also have resources). www.jointcommission.org.
- Various Medical Specialty Associations offer Telemedicine Resources such as:
  - American College of Physicians.
  - American Academy of Family Physicians.
  - American Psychiatric Association.
  - American College of Radiology.
  - American College of Emergency Physicians.
  - American Academy of Pediatrics.

Concluding Thoughts…

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