

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

Judy Klein, PA, CPHRM, FASHRM, BD Lead
Manager, Risk Management

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Objectives

- Identify potential risks and liability exposures in telemedicine
- Offer risk mitigation strategies and best practices to minimize and/or eliminate the risks/liability





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.”

Where Used?

What Specialties Are Using?

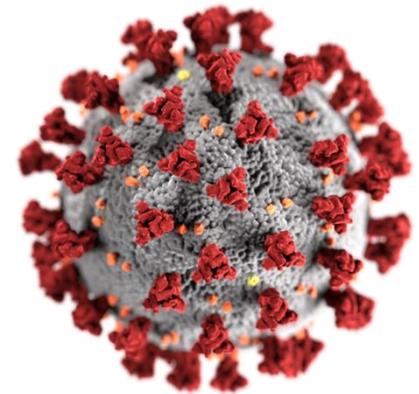
- Radiology (Telerad)
 - Intensive/Critical Care (Tele Stroke/Tele Burn)
 - Behavioral Health
 - Dermatology
 - Home Health Care
 - Out patient virtual visits
 - Prison Health
 - Long Term Care
 - Emergency Medicine
 - Primary Care
- Note: Some specialties may not use until after one initial in person visit
- Behavioral Health



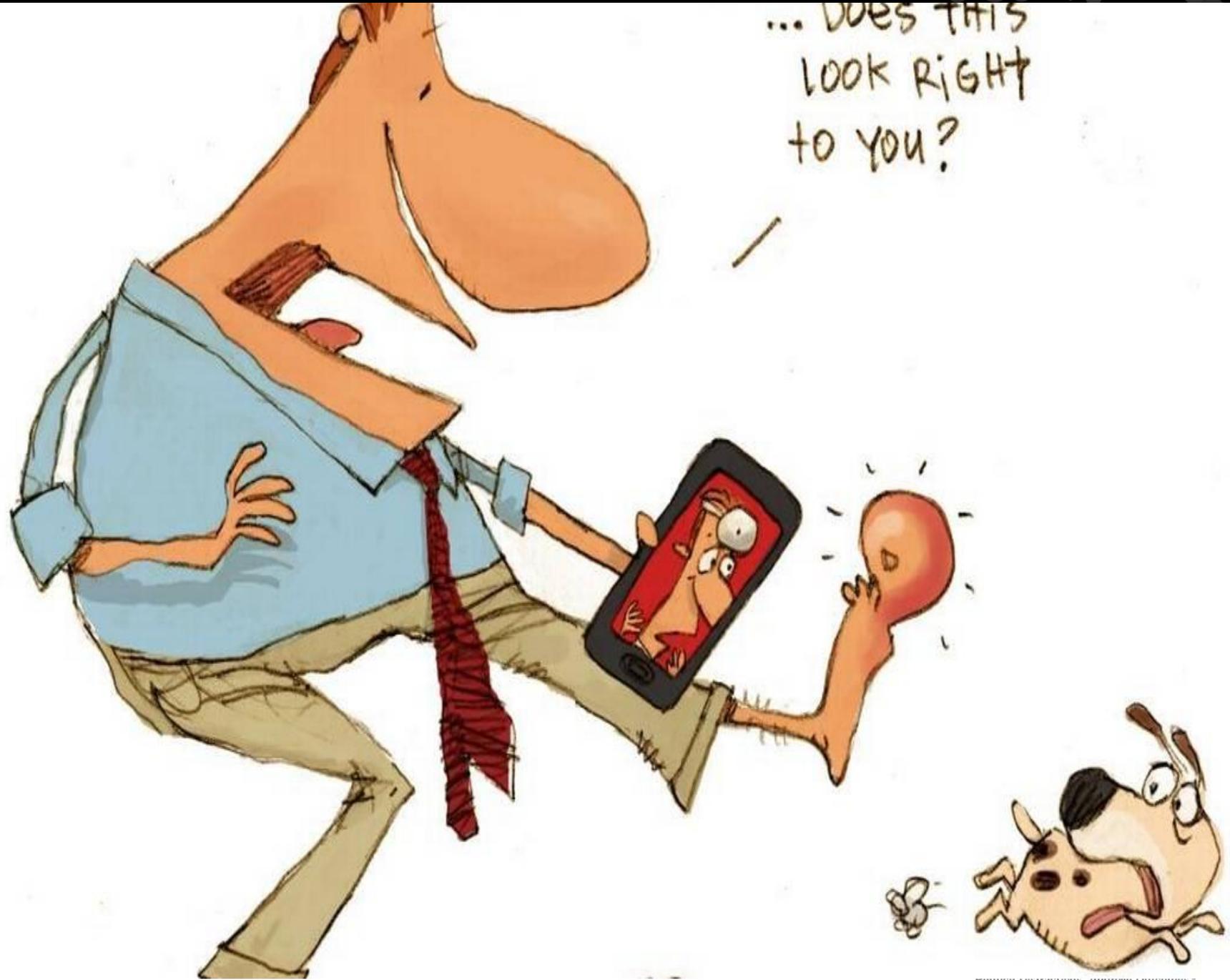
Why the boom?

Increase use of Telemedicine Services

- COVID19
- Customer demand/expectations
- Improved/user friendly technology
- 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



... DOES THIS
LOOK RIGHT
TO YOU?



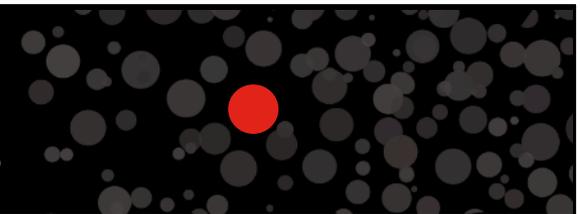
Potential liability – Claims

- Types of claims expected to be similar to what we see for in person visits
 - Missed/delayed diagnosis
 - Inadequate assessments, testing, 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



Case Scenario 1

Failure to Diagnose/Treat – Vision Loss



Case Scenario 2

Negligent Prescribing – Delayed Treatment, Surgical Intervention



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



Laws and Regulations

HIPPA Privacy

HIPAA Security

State Privacy Laws

[Telehealthresourcecenter.com](https://www.telehealthresourcecenter.com)

HIPAA Stepwise Guide To
Compliance



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>

- Must be licensed in state practicing in and the state where the patient is located
- 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 TM licensure

Licensure Recommendations

- Ensure compliance with licensing requirements when treating patients across state lines
- Stay current with state regulations
- Utilize the IMLC for an expedited pathway to licensure
- Consult with an attorney to ensure compliance
- Consult with your professional liability insurance carrier

Telemedicine - Policies and Procedures

- Administrative: fiscal management, ownership of data, network/data transmission, storage, access, security, use of equipment, devices, 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, etiquette
 - Handling medical emergencies
 - Prescribing
 - Threshold for ending encounters
 - Quality monitoring program
 - Training, competency, workflows

Standard of Care

- Same as traditional in person encounter
- Patient suitability for participating in TM 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 or during the visit



Informed Consent

Informed consent for TM 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



Obtain a separate consent to record the visit if the TM visit is to be recorded.

Verifying IDs and Locations

- Develop a means of verifying new patients ID to include full name, DOB, demographics (government issued photo ID)
- Provide verification of practitioner name, qualifications, location (town/state)
- Document verification process for all IDs and locations in the medical record

Screening Criteria for Telemedicine Visit

- Patient eligibility for a TM visit should be accessed 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, when a chaperone is needed
 - Patient experiencing symptoms outside the bounds of clinical protocols for TM visits or would have to deviate from the standard of care
- Include a list of common cases for TM visits
- Share this information with patients
- Include clinical factors and patient factors in considering whether a TM visit would be successful

Standards of Conduct – Patients

Visit expectations, Standard of Conduct, TM etiquette

Patients



- 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

Standard of Conduct – Healthcare Providers ●

Visit expectations, Standard of Conduct, TM etiquette

Healthcare Providers

- Train practitioners in webcam etiquette
- Ensure webcams at eye level, maintain eye contact
- Maintain private, professional, quiet, culturally sensitive and clean and 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 not waiting to long



Case study – Boundary Issues



Threshold for Ending Telemedicine Visits

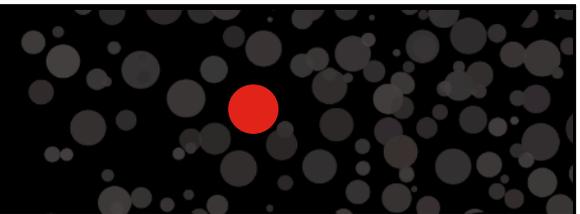
Recognize when TM visits should be discontinued

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



Ensure appropriate f/u with patient when TM visit is discontinued

Medical Emergency Plan



Develop protocols for handling medical emergencies during a TM visit.

- Knowing address of patient
- How to contact emergency services in patient's location
- Knowing patient's preferred healthcare system/hospital
- Knowing resources and travel requirements when making referrals and additional health services.

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

Prescribing

- Ensure SOC/best practice guidelines followed
- Know federal and state laws re: controlled substances
 - Is established pt/physician relationship necessary?
 - Does best practice recommend in person exam?
 - If national emergency declared does it qualify as an exception to the Ryan Haight Act for TM?
- Ensure follow organization's policy on educating pts on risks/benefits of high risk meds, document IC
- Educate patients on refill policy for TM visits and when in person visits are required
- Documentation is critical to show appropriate evaluation, checking PMP



Documentation in TM = 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, f/u communications
- Any verbal, audiovisual and written communication
- Document any e-communications such as lab/test results



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 pt in
- Confirm private area
- Confirm pt ID, location
- Determine expectations
- Informed consent
- Inform pt back up plans
- Ensure pt can hear/see
- Explain if documenting during the visit

Post Visit:

- Ensure pt knows next steps, F/U, pt understands instructions,
- Conduct checkout
- If summary to be sent
- Check in if TM met pt needs
- Document visit

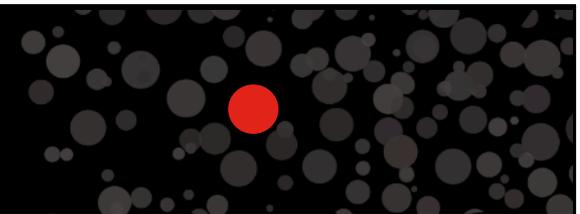
Education and Training

Practitioner and staff training is essential

- Know fully the technology being used, how to operate equipment and limitations
- Include training on how to troubleshoot problems and how to obtain technical assistance, back-up plan
- Ensure smooth transitions for TM workflow, staff check-in, handoff to practitioners
- Include role specific training
- Include webcam etiquette
- Include training on each type of TM modality
- Include competency testing specific to staff roles and responsibilities



Quality Program for Telemedicine



- Develop and track measurable key quality measures
- Measures may include:
 - Monitoring number of TM visits requiring in person visits
 - Tracking number of technology failures requiring rescheduling or delays
 - Access to care
 - Clinical Outcomes
 - MR documentation for TM visits
 - Patient and Practitioner satisfaction
 - Reimbursement
- National Quality Forum recommends measuring:
 - Access
 - Financial Impact
 - Experience
 - Effectiveness

Telemedicine Resources

- 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 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/>

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 and 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: Provide 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 a provider telehealth and 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...

