MPIE E-NEWS: TELEHEALTH/TELEMEDICINE (PART 1)

Welcome to E-NEWS, the newest service from MPIE. E-NEWS differs from our E-ALERTS in the format and type of information shared. E-NEWS will be a bit longer and more detailed, somewhere between an alert and a newsletter article. This service allows us to highlight certain "top of mind" topics in a series, such as telemedicine, our first series of E-NEWS guidance.

MPIE EXPLORES TELEMEDICINE RISKS

It is impossible to predict the types or volume of medical malpractice claims that will arise from the COVID-19 pandemic, and legal immunities are already being challenged. Given the rapid expansion of telemedicine, all healthcare workers must recognize the risks, challenges, and limits of telemedicine services. An understanding and appreciation of telemedicine's risks and how to avoid or mitigate them can ensure the full benefits of these tools are brought to healthcare. This E-NEWS series on telehealth/telemedicine will be an ongoing discussion of best practices highlighting risk reduction methods, tools and, guidelines to assist insureds in successful and safe implementation.

Background

The COVID-19 pandemic and subsequent stay-at-home orders brought most healthcare services to a screeching halt. Fortunately, a rapid expansion of telehealth opportunities addressed many of the serious concerns.

Telehealth and telemedicine are often used interchangeably, but they each have distinct definitions.

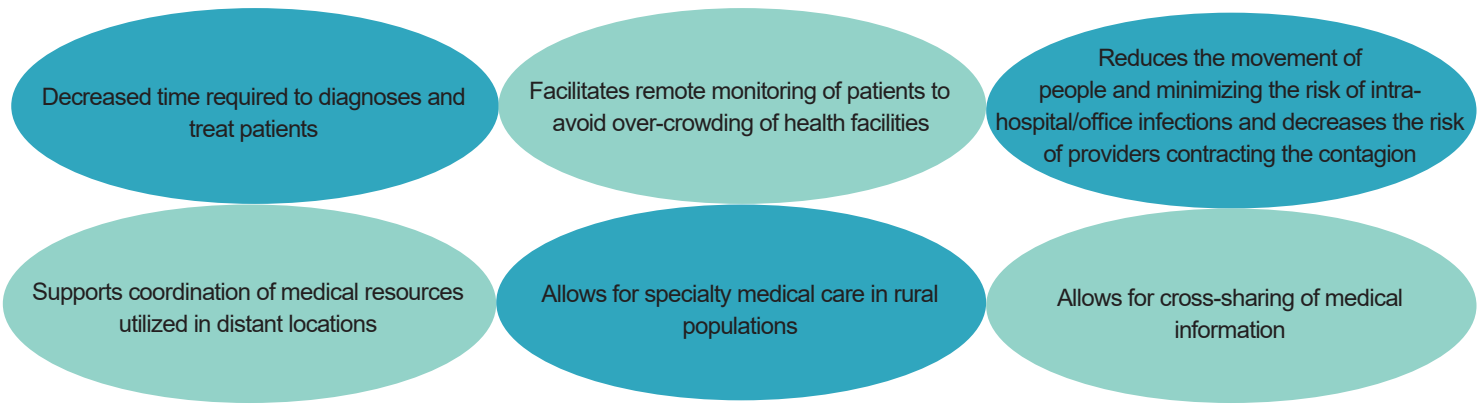
- Telehealth is defined as the use of electronic information and telecommunication technologies to provide care when the patient and the provider are not in the same place at the same time.
- Telemedicine refers specifically to remote clinical services, while telehealth can refer to remote non-clinical services.[1]

The COVID-19 pandemic and cessation of face-to-face interactions highlighted the importance of telemedicine in keeping patients and providers connected. While the pandemic propelled telehealth deployment, telemedicine, in its modern form, started in the 1960s due to NASA's needs in space travel.[2]

Benefits of Telehealth

Telehealth became a crucial tool for expanding access to medical services. Maintaining continuity of care to the extent possible can help avoid negative consequences from delayed preventive, chronic, or routine care. The COVID-19 pandemic certainly revealed the need and usefulness of telehealth, which led to rapidly increased availability. The improvements in the patient-provider relationship, continuity of care, and operating efficiencies of telehealth will last long after the COVID-19 pandemic ends.

Telemedicine (virtual software platforms) advantages:



Medical Professional Liability Considerations

Liability protections specific to COVID-19 currently exist; however, providers should not consider themselves exempt from litigation arising from the pandemic. In anticipation of future litigation, recognize what potential allegations may arise. The expansion of telemedicine identifies unique challenges related to miscommunication, misdiagnosis, software malfunctions, or other technologically based risks that threatened the patient's welfare. Some of the main allegations implicated are explored in Figure 1.

Failure to Diagnose	Remotely assessing and diagnosing patients can increase a provider's risk of failure to diagnose allegations. Alleged standard of care breaches can be mitigated by following a specialty medical society's best practice recommendation. Many medical societies have begun offering guidance on remote exam techniques specific to their specialty. • A study found that 66% of telemedicine-related claims were diagnosis related.[3] • Sensory judgments have always been a part of medical practice" (Maslen, 2017). Telemedicine prevents a provider from using sensory work to arrive at their final diagnosis. Visual acuity may be lost as pictures, or static images are transmitted. • Limited bandwidth, poor camera quality, connectivity issues all lead to diagnostic challenges. For example, the lack of real-time facial expression recognition and changes makes subtle changes nearly impossible to detect.
Failure to Refer	Inherent technology limitations mean providers must recognize when to request patients be seen in person. If an in-person visit is not feasible, appropriate referrals must be made and documented. Document an informed refusal discussion in the patient's medical record if the patient declines a referral.
Failure to Document	Providers of telemedicine services must maintain adequate and accurate patient records to demonstrate that the standard of care is met. Origination and distant sites should be identified and documented for licensing purposes. Verbal or e-consent via telemedicine platform should be obtained and documented. The importance of follow-up visits, as well as consultations and referrals, should be documented.
Failure to Ensure Patient Confidentiality	Visits requiring or involving a concern with a sensitive body part require the provider to confirm the patient's environment is appropriate for this type of visit. The practice must also ensure that recording is not possible during a private/ sensitive exam to insulate the provider and practice from allegations of sexual abuse.
Failure to Obtain Telemedicine Consent	Telemedicine consent sets the expectations and limitations of a telemedicine visit. It ensures the patient is aware of the limitations and willingly agrees to this type of visit.

Figure 1

Risk of patients' refusal to utilize telemedicine

Consider the patient's preferences. Some patients may be reluctant to engage in telemedicine visits and risk forgoing needed care. Telemedicine may not allow for effective evaluation of patients with low mobility, complex social problems, low hearing and vision, or cognitive impairment. Elderly patients (defined as a chronological age of 65 or older) may lack the technical skill and require assistance from a third person to engage in telemedicine.

Risk of technology barriers

Patients may lack access to technology, or their technology is insufficient. Although telehealth is generally well-accepted by those seeking medical services, there are challenges to its use and benefit. Patients may be challenged by limited access to the Internet or devices. Another barrier is a lack of familiarity with technology. The type of technology (such as the camera on a laptop or phone) may be insufficient to allow the provider to visualize a body part adequately.

Socioeconomic status also influences telemedicine utilization. A recently published study in *Health Affairs* noted a correlation between communities with higher poverty rates and lower telehealth utilization.[4] Telemedicine use was lower in communities with higher poverty rates (31.9 percent versus 27.9 percent for the lowest and highest quartiles of poverty rate, respectively).[5]

Risk of Inappropriate Patient Selection

Not all patient populations or conditions are appropriate for telehealth visits. Any situation in which a physical, in-person exam would change the provider's recommendation or treatment plan is not suitable for a telemedicine visit. Based on the patient's acuity level, an in-person examination or diagnostic testing may be necessary to confirm diagnoses.

Risk of fragmented care

Telehealth poses a threat to cohesive patient care. Increasing access without improved coordination and data sharing poses risks such as the patient visiting multiple providers, which may lead to duplicative services, conflicting advice, and inefficient care. In cases where patients are using on-demand telemedicine services, they could be connected with a random healthcare provider. The patient's primary care provider may not have adequate access to the patient's medical records when care is fragmented.

Organizational Risks

Organizations may lack technology resources. Purchasing equipment and increasing IT staff responsibilities takes time and has budget constraints. The rapid increase in use may not have allowed for the necessary training to build an effective telemedicine program.

When launching a telemedicine program, organizations and providers need a clear vision of the desired outcome. Identification and understanding of the organization's strategic objectives and vision are the foundation to establishing a successful telemedicine program.

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Primary Author: *Jade Thompson, RN, MSN, FASHRM, CPHRM, Claim and Risk Management Consultant*

Layout and Deisgn: *Chelsea Eanes, Associate, Risk & Client Services*