

Telemedicine: The Technology is Here! But are the Hospitals and Providers Ready?



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Telemedicine Defined

The practice of medicine when the doctor and patient are widely separated using two-way voice and visual communication (as by satellite or computer)

How Telemedicine is Being Used

- Digital Images
 - Digital images are taken and forwarded to another location
 - Used for x-rays, CAT Scans, MRIs any other digital image
 - Used for non-emergency situations
- Two-way Interactive Television
 - Teleconferencing is used with the patient in the room
 - Used for face-to-face consultations
 - Allows “real time” consultations to take place
 - Used mostly in an rural-to-urban location or for examination by a specialist

Who is Using Telemedicine

- Specialist
 - Conferences with a specialist who is not in the area
- Oncology
- Mental health care to people in jail
- Hospice care
- School health services
 - Allowing school nurses to interact with physicians
- Home health care
 - Will be a huge area of telemedicine with the aging baby boomers
- Nursing homes

Future of Telemedicine

- Telesurgery
 - Using robotic equipment to perform a surgery
 - A surgeon in one location remotely controls a robotic arm for surgery in another location
 - The military and others have been experimenting with this
 - <http://www.mrcas.ri.cmu.edu/>

Advantages of Telemedicine

- Specialty care is more accessible
- Video consultations keep cost down for patients who would otherwise have to travel to a specialist
- Keeps cost down for hospitals
- Faster turn around time for evaluation
- Frees beds of patients who can be monitored from home
- More convenient for doctors to see patients

Disadvantages of Telemedicine

- The laws and regulations have not caught up with the technology
- Reimbursement issues
- Insurance issues

Louisiana: Telemedicine Defined

La. R.S. 37:1262

- The practice of health care delivery, diagnosis, consultation, treatment, and transfer of medical data using interactive telecommunication technology that enables a health care practitioner and a patient at two locations separated by distance to interact via two-way video and audio transmissions simultaneously.

Louisiana

Requirements for a Telemedicine License

La. R.S. 37:1276.1

- A full and unrestricted license to practice medicine in another state or territory of the United States
- Physician shall not open an office in this state
- Physician shall not meet with patients in Louisiana
- Physician shall not receive calls in Louisiana from patients
- Physician, when examining a patient by telemedicine, shall establish a bona fide physician-patient relationship
- Any other rules and the Louisiana Board of Medical Examiners establish

Louisiana Telemedicine: Establishing a Physician/Patient Relationship

- Conduct an appropriate examination of the patient as determined by the Louisiana Board of Medical Examiners
- Establish a diagnosis through the use of accepted medical practices including but not limited to patient history, mental status, and appropriate diagnostic and laboratory testing
- Discussing with patient the risks and benefits of various treatment options
- Ensuring the availability of follow-up care
- Fulfillment of any other requirements deemed by the Louisiana Board of Medical Examiners as necessary

Telemedicine – Are Providers/Hospitals Ready?

- Numerous legal/business/quality issues
 - Three include:
 - Licensure
 - Liability
 - Jurisdiction
 - Insurance Coverage
 - Credentialing
 - Quality
 - Standards
 - Business Model
 - Reimbursement
 - Local Docs v. Telemedicine Docs
 - Medical Staff reactions to Telemedicine Issue
 - Cost Issues – Telemedicine v. in-house services

Telemedicine Licensure

- Louisiana
 - Enacted 2008 Session
 - See La. R.S. 37:1276.1
- Compare to other states
 - Texas
 - California
 - Kentucky

Texas

Telemedicine License Qualifications

22 TAC 172.12 (2008)

- Be actively licensed to practice medicine in another state
- Not subject to pending investigation by a state medical board
- Be certified in a medical specialty pursuant to the standards of and approved by the American Board of Medical Specialties or the Bureau of Osteopathic Specialists and Boards of Certification
- Have passed the Texas medical Jurisprudence Examination
- Completed a board-approved application for special purpose telemedicine license for the practice of medicine across state lines

Texas

Telemedicine: Fraud and Abuse

22 TAC 174.3

- All physicians that use telemedicine services in their practices shall adopt protocols to prevent fraud and abuse
- The physician must implement written protocols that address:
 - Authentication and authorization of users
 - Authentication of the origin of information
 - The prevention of unauthorized access to the system or information
 - System security, including the integrity of information that is collected, program integrity and system integrity
 - Maintenance of documentation about system and information usage
 - Information storage, maintenance and transmission
 - Synchronization and verification of patient profile data

Texas Informed Consent

Tex. Occ. Code Sec. 111.002 (2007)

- A physician who provides or facilitates the use of telemedicine must obtain informed consent of the patient

California

Telemedicine: Informed Consent

Cal. Bus. & Prof. Code Sec. 2290.5 (2007)

- Prior to the delivery of healthcare via telemedicine, the practitioner must obtain verbal and written consent.
- The following information must be given to the patient in order to obtain consent
 - That the patient may withdraw consent at any time without affecting the right to future care
 - A description of potential risks, consequences, and benefits
 - All existing laws regarding patient access to medical information and copies of medical records apply
 - Dissemination of any patient identifiable images or information from the telemedicine interaction to researchers or other entities shall not occur without the consent of the patient

California

Telemedicine: Medical Records

Cal. Health & Saf. Code Sec. 123149.5 (2007)

All medical information transmitted during the delivery of health care via telemedicine shall become part of the patient's medical record maintained by the licensed health care provider.

California

Telemedicine: Licensure

Cal. Bus. & Prof. Code Sec. 2290.5 (2007)

- Cal. Bus. & Prof Code Sec. 2052.5 allows for the Medical Board of California to develop a registration program for physicians outside of the state to register with the state to practice medicine.
 - However according to the Medical Board of California no such program has been established

California

Telemedicine: Licensure Continued

Cal. Bus. & Prof. Code Sec. 2290.5 (2008)

- However, a practitioner located outside California, when in actual consultation, whether within the state or across state lines, with a licensed practitioner of the state and he or she is a licensed practitioner and surgeon or a licensed doctor of podiatric medicine in the state or county where he or she resides may consult with the doctor.
 - This practitioner may not open an office, appoint a place to meet patients, receive calls from patients, etc. in the state.

Kentucky Telemedicine: Licensure

KRS Sec. 311.560 (2008)

- No person shall engage or attempt to engage in the practice of medicine in the state without a license or permit issued by the Kentucky Board of Medicine.
 - This does not apply to persons, who are nonresidents of Kentucky and are lawfully licensed to practice medicine in their state of actual residence, who infrequently engages in the practice of medicine within the state when called to see or attend a particular patients consultation and association with a physician licensed pursuant to the laws of Kentucky

Kentucky

Telemedicine: Telehealth Board

KRS Sec. 194A.125 (2008)

- Kentucky has a 10 member Telehealth Board created by statute
- The Board consists of:
 - 5 members appointed by the Governor who are health professionals
 - Chancellors or a designee of the medical schools in the state
 - Executive director of the Kentucky's Office of Technology
 - The Chief information officer of the Cabinet for Health and Family Services

Federation of State Medical Boards Telemedicine Licensure

- The Federation of State Medical Boards (FSMB) is a national non-profit organization whose membership includes 70 medical licensing and disciplinary boards in the United States, and the U.S. territories.
- Mission is for the FSMB to support state medical boards (1) as primary vehicles of medical licensure and discipline and (2) in developing and using consistent standards, language, definitions and tools.
- FSMB weighed in on Telemedicine Licensure issues and determined that a set of standards for expedited licensure determination
- The report sets forth the expedited licensure process for physicians meeting identified and accepted standards and is dependent upon the development of a standard medical license application and acceptance of established standards for primary source verification of physician core credentials, including identity, medical education, postgraduate training, examination, and disciplinary history.
- The issue to be addressed was portability – physicians realized that licensure was a barrier to access to various states
- FSMB – addressed issue of standardized licensure applications - recommended

FSMB Requirements

Expedited Licensure – Portability

Requirements for Expedited Licensure from FSMB:

1. Full and unrestricted licensure (in all jurisdictions where a medical license is held);
2. Free of disciplinary history, license restrictions, or pending investigations (in all jurisdiction where a medical license is or has been held);
3. Graduation from an approved medical school or hold current Educational Commission for Foreign Medical Graduates (ECFMG) certification;
4. Passage of a licensing examination acceptable for initial licensure within three attempts per step/level and within a seven (7) year time period;
5. Completion of three (3) years of progressive postgraduate training in an accredited program; and/or,
6. Current certification from a medical specialty board recognized by the American Board of Medical Specialties (ABMS) or the American Osteopathic Association (AOA). Lifetime certificate holders who have not passed a written specialty recertification examination must demonstrate successful completion of the Special Purpose Examination (SPEX), Comprehensive Osteopathic Medical Variable Purpose Examination (COMVEX), or applicable recertification examination.

Telemedicine Licensure Issues Louisiana

- La. R.S. 37:1276.1 – Initial legislation is a great start at catching up with technology
- Needs to be revised however as statute leaves open several issues:
 - Jurisdiction
 - What jurisdiction is out of state physician licensed pursuant to La. R.S. 37:1276.1 subject to in a lawsuit with La. Patient?
 - Liability
 - Is out of state physician licensed pursuant to La. R.S. 37:1276.1 covered under La. MMA?
 - Coverage
 - What coverage does out of state physician licensed pursuant to La. R.S. 37:1276.1 need?
 - How will they be qualified under PCF?
 - Corporate Practice of Medicine issues – See LSBME website for current position of CPM
 - Aiding and Abetting – Are hospital's liable for contracting with physicians who don't comply with La. R.S. 37:1276.1?

Telemedicine Licensure Issues Louisiana

- How do we solve these issues?
 - La. R.S. 37:1276.1 – leaves open ended rulemaking by LSBME
 - Any other rules and the Louisiana Board of Medical Examiners establish
 - LSBME could establish rules addressing jurisdiction, liability, coverage, CPM, etc.
 - Legislature can amend La. R.S. 37:1276.1 to address these issues as well
 - Jurisdiction
 - Statute could be amended requiring any physician to submit him/herself to jurisdiction of Louisiana
 - Statute could delineate jurisdiction by location of patient – not physician
 - Liability
 - Statute could be amended to designate physician licensed pursuant to La. R.S. 37:1276.1 would subject himself to MMA
 - Coverage
 - Statute could be amended to require any physician licensed pursuant to La. R.S. 37:1276.1 to qualify with the PCF
 - Statute could require minimum coverage standards for insurance purposes

Telemedicine Credentialing Issues

- Appointment, Reappointment and Delineation of Clinical Privileges
- Physicians +
- Heavily Regulated ,CMS, state, TJC

Areas of Frequent Litigation Credentialing Issues - Telemedicine

- Contractual Challenges
- Bylaws
- Host of Other Theories

Telemedicine Credentialing

- Was Secondary to Licensure
- TJC Medical Staff Standards – Required sites receiving telemedicine services to credential and privilege , including radiologists, pathologists, consultants (See MS.4.120)
- 2004 “ New JCAHO Standard” to reduce the burden on patient location sites

TJC Standards for Telemedicine Credentialing

- (MS.4.120) - Applies to Licensed Independent Practitioners (LIPs) at distant sites where the practitioner provides professional services, who have total or shared responsibility for the patient's care, treatment and services via telemedicine
- See also LIPs who provide official readings of images, tracings, specimens through telemedicine are credentialing under (LD.3.50)

TJC MS.4.120

- Distant site practitioners may be credentialed at the originating site in one of three ways:
 1. Traditional credentialing and privileging at the *originating site* following MS.4.10-4.110.
 2. Practitioner maybe privileged at the originating site using *information from the distant site* ,if the distant site is TJC accredited

TJC MS.4.120

- 3) The *originating site* may use privileging and credentialing information from the distant site:
- *if the distant site is TJC accredited,*
 - *the practitioner is privileged for the services in question at the distant site,*
 - *and the originating site has evidence of an internal review of the practitioner's performance of these privileges and sends to the distant site information that is useful for evaluation of the practitioner's quality of care, treatment and services for use in privileging and performance improvement at the distant site*

Example – Applying MS.4.120

- Dr. X is a credentialed specialist at distant site General Hospital A
- Originating site Small Hospital B, if it chooses, may require Dr. X to be privileged and credentialed in order to treat patients in B via telemedicine *or*
- Hospital B may use Dr. X's credentialing data from Hospital A if it is a TCJ accredited hospital

Examples MS.4.120 Cont.

- Hospital B *may use* Hospital A 's credentialing and privileging *information*:
 - if A is TJC accredited,
 - if X is privileged by A for the services performed at B,
 - if B has evidence of an internal review of X's performance of these privileges and sends to A , X's performance data from B that is useful in A's quality reviews of X and in X's re-credentialing

TJC MS.4.120

- Reduces credentialing and privilege burden for the originating site
- Recognizes that the distant site has the key information for which it based its privilege decisions
- Acknowledges that originating site might not have experience to credential/privilege certain specialties

Is change coming – YES IT IS!

- CMS May Want More Say in Credentialing/Privileging
- TJC Standards Not Being Met
- Concerns Over Specialists Familiarity of Originating Hospital and Continuity of Care
- Rural Cost, Quality Concerns

CMS Telemedicine

- CMS Releases Final Rule – October 30, 2008
 - PFS 2009 effective 1/1/09 –
 - Contains instructions for implementation of telehealth provisions found in recently passed MIPPA (Medicare Improvements for Patients and Providers Act of 2008)
 - Contains comments on Medicare telehealth services in CMS proposed rule in July 08

CMS MIPPA Provisions

- MIPPA included provisions to expand the list of telehealth originating sites to include hospital-based renal dialysis centers, skilled nursing facilities, and community mental health centers.
- Final rule discusses reimbursement from these sites – CMS continues to use existing rules for reimbursement

CMS

Medicare Telehealth Services PFS 2009

- Requests to change approved telehealth services must be made by December 31st of every calendar year. The requests are then reviewed for placement in the proposed rule for the next rulemaking cycle.
- There were two requests that were made for changes to approved telehealth services during the proposed rule comment period for the CY 2009 final rule: 1) diabetes self-management training (DSMT), and 2) critical care services.
- CMS also made its own suggestion in the proposed rule: “to create HCPCS codes specific to follow-up inpatient consultations delivered via telehealth and to revise §410.78 and §414.65 to revise regulations accordingly.”

Where are we headed?

- Telemedicine is only going to expand
 - Use of Internet and other technologies
 - Diagnostic Services – via telemedicine
 - Remote monitoring
 - Remote surgery
- Legal/Business/Quality Issues will need to be addressed on an ongoing basis

Questions or comments?

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