

# **Telemedicine Advantages and Pitfalls**

**Presented to:**

**American College of Osteopathic Internists**

**By**

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# DISCLOSURES

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NONE

# Pre-Covid-19 Telemedicine

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- To provide access of care to individuals who reside in Health Professional Shortage Areas (HPSA)
- Common applications include primary care, teleconsultations, behavioral health, chronic care management
- Originating site (patient location) is usually a clinic or hospital, distant site (provider location) typically in provider office.
- Payment split in two: facility and provider
- Medicare did not cover most telemedicine services except in rural areas
- Some commercial payors allowed reimbursement for telemedicine at reduced rates

# Covid-19 Application of Telehealth

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- In 2020, 1135 Waiver Authority / Coronavirus Preparedness and Response Supplemental Appropriations Act
- Allows for telehealth services to be furnished to patients in all areas of the country in all settings.
- Includes services provided in any healthcare facility or in patients home.
- These visits are considered the same as in-person visits and are paid at the same rate as regular, in-person v

# COVID-19” Application of Telehealth

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- A rocky start.....
  - Q: What about patients who don't have/refuse to use video technology or internet?
  - Q: Why isn't my CPT code on the list of allowed telehealth services?
  - Q: How do we document?
  - Q: Do all payers follow Medicare?
  - Q: What place of service code do we use?
  - Q: How long will this last?

# Covid-19 Growth of Telehealth

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- 32% of all medical visits were conducted remotely in March and April of 2020
- Use of telemedicine has declined its peak at the height of the pandemic to a stable 13% to 17% of all visits
- Despite the decline, use of telehealth has increased 38% overall from pre-pandemic levels
- A majority of physicians believe that increased use of telemedicine is here to stay in some form

# Future Growth of Telemedicine

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- In its proposed fee schedule, CMS has retained certain codes added to the schedule during the pandemic through 2023
- CMS also proposed allowing greater flexibility in access to mental health services via telehealth
- However some states have acted to roll back executive orders and regulations that expanded telemedicine during the pandemic
- State actions can affect reimbursement by commercial payers as they are generally state regulated
- Concerns exist about continued parity with reimbursements for telemedicine

# Advantages of Telemedicine

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- Convenience for patient and physician
- Cost effective for patient and physician
- Reduces ER visits by allowing quick treatment of some emergencies
- Extends ability to reach certain specialists to remote areas
- Allows easier monitoring of chronic conditions



# Possible Pitfalls

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- Standard of Care
  - Informed Consent
  - Physician-Patient Relationship
  - Diagnosis/Treatment/Follow-up Care
  - Documentation
  - HIPAA Privacy & Security
- Online Prescribing, particularly controlled substances

# More Potential Pitfalls

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- Need for privacy in consultation
- Patient inability to use technology
- Ineffective technology or technology interruptions
- Use of interpreters for sign language or languages other than English
- Limitation on ability to conduct thorough physical examination
- Most telemedicine malpractice cases involve missed diagnosis
- Physician licensure

# Interstate Medical License Compact

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- Provides additional, expedited pathway to licensure in another state. 14 states have complete reciprocity of medical licenses.
- Doesn't change state's existing Medical Practice Act
- Practice of medicine occurs where the patient is located at time of physician-patient encounter
  - Thus, physician must be licensed by the medical board where patient is located
- During pandemic, many states allowed non-licensed physicians to provide telemedicine services to patients with COVID-19.

# Compliance Issues

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- Services Agreements
  - Schedule/Location/Compensation/Billing/Compliance
- Equipment/Technology Leases & Security
- Self-referral –Stark and Anti-Kickback Issues
- Prescribing Concerns
- Practice Entity/Employer

# Regulatory Concerns

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- Using telemedicine is like opening a branch office
  - Standards of care apply
    - Check your liability policy for any exclusions
  - Privacy and Security rules apply
  - Documentation rules apply
  - Referral laws apply
  - Corporate practice of medicine rules apply

# QUESTIONS

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# About Capehart Scatchard

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- Full-service regional law firm with offices in NJ, NY and Philadelphia
- The Health Care Group represents clients in:
  - Health care business transactions
  - Healthcare mergers and acquisitions
  - Billing and coding audits and investigations
  - Regulatory compliance, including HIPAA
  - Medical practice employment and human resource questions
  - Licensing board investigations and litigation

# **Thank you.**

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