Telehealth: Legal and Compliance Issues

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Telehealth Legal Considerations
Sample Business Models

1. Direct-to-patient/consumer
2. Institution-to-institution
3. Clinician-to-clinician consulting
4. Internal oversight and processes
5. Chronic care management
6. Online patient access/portals/tech
7. mHealth, medical apps
8. Hardware/software

Sample Arrangements

1. DTC urgent care access
2. Telestroke PSA with critical access hospital
3. Peer-to-peer specialty consulting services
4. eICU
5. Follow-up visits/consults for existing patients (e.g., post-op, mental health, chronic disease)
6. Online second opinions
7. Self-tracking apps and diagnostics
8. On-site kiosks (schools, factories, oil rigs)
9. International (e.g., U.S. to China telemedicine)
Sources of Compensation

- Government
- Commercial Plans (incl. MMC, MA)
- Employer-pay (incl self-funded plans)
- Org-to-org, peer-to-peer
- Patient self-pay
- Cost savings

Compensation Models

- FFS
- Capitated
- Shared savings, risk-based
- Hybrid models
Telehealth Arrangements

• Fraud & Abuse Concerns
  – Anti-kickback Statute
  – Physician Self-referral
  – Civil Monetary Penalty
  – State Laws
    • Fee-Splitting
    • Patient Brokering
    • Corporate Practice of Medicine
    • Insurance Laws

Operational Considerations

• Informed Consent
• Patient Choice of Provider
• Malpractice Considerations
• Record Keeping
• Nature of Exam and Technology Requirements
• Privacy & Security
**Telemedicine Credentialing**

Payment + Reporting

- **Originating Site Hospital**
- **Distant Site Hospital**

Services + Credentialing

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**Telemedicine Credentialing**

- **Written agreement** between the two parties
- Provisions in **Bylaws**
- Distant-site hospital is a Medicare-participating hospital or telemedicine entity
- The professional is privileged at the distant-site hospital;
- A current list of the professional’s privileges is given to the originating-site hospital;
- The professional holds a license issued or is recognized by the state in which the originating-site hospital is located;
- The originating-site hospital has an internal review of the professional’s performance and provides this information to the distant-site hospital;
- The originating-site hospital must inform the distant-site hospital of all adverse events and complaints regarding the services provided by the professional.
Telemedicine Credentialing

- Medicare
  - Conditions of Participation
    482.12; 482.22(a)(3); 485.616(c); 485.635; 485.641(b)(4)
  - State Operations Manual
  - CMS Memorandum
- Joint Commission Standards
  - LD.04.03.09; MS.13.01.01
- State Board of Medicine

Telehealth is Not Scary!
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