

**Telehealth 202:
Anatomy of a Hospital Telehealth Arrangement**
Nathaniel Lacktman, Esq.
Deborah Randall, Esq.




Deborah Randall
Consulting LLC

©2015 Foley & Lardner LLP • All rights reserved. • For use only on the premises of a client or institution • Model used and not intended for use by any other party • 2015, Clark Street Suite 2000, Chicago, IL 60604 • 312.432.4500

Overview

- Learn key legal, regulatory and business issues by examining an actual hospital telehealth arrangement.
- Explore specific contract terms in telehealth contracts.
- Obtain meaningful telehealth handouts and tools. ↕

©2015 Foley & Lardner LLP

Telehealth Provider Arrangements



©2015 Foley & Lardner LLP

The Parties

THIS NEUROLOGY TELEMEDICINE SERVICES AGREEMENT (the "Agreement") is made and entered into as of April 18, 2016 (the "Effective Date"), by and between Vegas Medical Center ("Vegas Medical"), and Reno Rural Hospital ("Reno Rural"), for the provision of Neurology Telemedicine Services (as defined below herein).

PRO TIP:

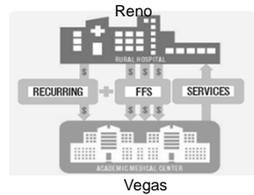
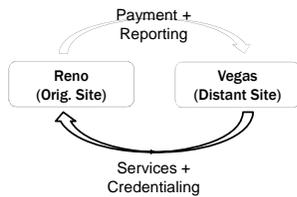
Reno Rural = Originating Site Hospital

Vegas Medical = Distant Site Hospital



4

Our Hospital Telehealth Contract



©2015 Fink & Lander LLP

Services

Compliance Issue:
Quality of Care

■ Reno hereby engages Vegas to provide professional neurology services via telemedicine (the "Services"), as more fully described in Exhibit __ attached hereto and incorporated herein by this reference, during the term of this Agreement, and Vegas hereby accepts such engagement, on the terms and conditions set forth herein.

©2015 Fink & Lander LLP

6

Services

Compliance Issue:
Quality of Care

Telemedicine-Based Physician Consults. Telemedicine-based physician consults are consultative services rendered by means of medical information exchanged via electronic communications by and between any Reno treating physician and related medical staff and a Vegas Physician. These consults may include telemedicine-based examination, history taking, diagnostic protocols (paper and/or computer driven), imaging analysis and recommendations for therapeutic interventions and/or diagnostic tests related to neurology. These consults may include specialty consulting, such as peer-to-peer consultations. These consults also include videoconferencing and teleconferencing, including the discussions between the Vegas Physician and the patient or patient's family members, as appropriate. The role of the Vegas Physician is advisory, and Reno understands that its own physicians remain ultimately responsible for exercising independent medical judgment regarding any advice or recommendations received.

©2015 Fink & Lander LLP

7

Services

Compliance Issue:
Quality of Care

Consents. Reno shall obtain, maintain, and make available to Vegas the following items for every patient scheduled to participate or be discussed in a telemedicine-based physician consult as part of the Services under this Agreement:

1. A patient consent form, which is to be signed by the patient, the patient's parent or legal guardian, or other legal representative as applicable (the "Consent"). Reno shall be fully responsible for ensuring that each patient is appropriately informed and that the Consent is appropriately executed;
2. The medical records of such Reno patient deemed pertinent by the patient's Reno physician; and
3. Any specific questions about which the Reno physician of the patient seeks advice from the Vegas Physician.

©2015 Fink & Lander LLP

8

Coverage & Service Levels

Compliance Issue:
Quality of Care

Coverage. During the term of this Agreement, Vegas shall make available Vegas Physicians (as hereinafter defined) to provide coverage to Reno for Services on a twenty-four (24) hour per day basis, seven (7) days per week. The term "Vegas Physician" shall mean a duly licensed and qualified physician employed by or contracted with Vegas and authorized to provide Services at Reno.

©2015 Fink & Lander LLP

9

Coverage & Service Levels

Compliance Issue:
Quality of Care

There are no limits on the number of telemedicine-based physician consults provided under the Agreement, provided that the volume of requests does not exceed the current level of resources Vegas can devote to Services under this Agreement, and that Reno understands and agrees that Vegas is not responsible for unavailability of the Services due to errors, delays, or failures in communication systems or equipment or unexpected volume beyond its control.

Reno acknowledges and agrees that Vegas shall not be responsible for not performing, or for a delay or interruption in performing, the Services if due to a network communications error, failure or interruption between Reno and Vegas.

©2015 Fink & Lander LLP

10

Staffing

Compliance Issue:
Quality of Care

Staffing. Vegas will identify a core group of Vegas Physicians to provide Services under this Agreement. In the event that Vegas and Reno mutually agree, Vegas may provide non-physician providers ("Vegas Providers") to assist in the provision of Services. Such Vegas Providers will be subject to such similar qualifications and standards requirements applicable to Vegas Physicians provided herein.

©2015 Fink & Lander LLP

11

Qualifications

Compliance Issue:
Background Screening

Qualifications. Each Vegas Physician who provides Services shall be duly licensed and qualified to practice medicine in Nevada, and to apply for, obtain, and maintain in good standing appointment to the medical staff of Reno and clinical privileges commensurate with his or her patient care responsibilities in accordance with Reno's credentialing policy, medical staff bylaws, and rules and regulations. Each Vegas Physician shall be board-eligible or board-certified in neurology.

©2015 Fink & Lander LLP

12

Qualifications

Compliance Issue:
Licensing

Consultation	Bordering State	Special License or Registration	Follow-Up Care	Endorsement
<ul style="list-style-type: none"> • Allows unlicensed physician to practice medicine in peer to peer consultation with a physician licensed in the state • Available in most states but significant variances in scope • Requires state-by-state understanding 	<ul style="list-style-type: none"> • Allows practice of medicine by out-of-state physicians who are licensed in a bordering state. • Only a few states offer this. 	<ul style="list-style-type: none"> • Abbreviated license or registration for telemedicine-only care • Offered in nine states 	<ul style="list-style-type: none"> • Allows physician to provide follow-up care to his/her patient (e.g., post-operation) • Only a few states have this. 	<ul style="list-style-type: none"> • Physician licensed in another state can more quickly obtain in-state license based on the out-of-state credentials.

©2015 Fink & Lander LLP

Credentialing

Compliance Issue:
Credentialing

Provider Credentialing. Reno shall be responsible for and shall take all necessary measures to credential in a timely manner the Vegas Physicians who provide Services under this Agreement. For those Vegas Physicians who provide services under this Agreement via telemedicine only, and who do not provide any in-person services at Reno's location, Reno may, to the extent allowed by applicable Nevada law and the rules of Reno's medical staff and governing body, elect to utilize an approved "credentialing by proxy" process for those Vegas Physicians. In that event, the parties shall utilize the Telemedicine Credentialing Agreement attached hereto as Exhibit __, incorporated herein. Reno is not required to utilize "credentialing by proxy." For all credentialing and medical staff applications of only those telemedicine-only Vegas Physicians in connection with this Agreement, Reno shall waive (or reimburse Vegas for) all medical staff and credentialing application fees (including but not limited to initial credentialing, reappointment and annual dues). Those telemedicine-only Vegas Physicians shall not be required to pay hospital or medical staff dues at Reno for the Services under this Agreement. This waiver/reimbursement is included in the Vegas Compensation set forth under Exhibit __, incorporated herein.

©2015 Fink & Lander LLP 14

Records

Compliance Issue:
Record Retention & Ownership

Records and Reports. The parties each shall create and maintain, in compliance with all federal and state requirements, medical records of all examinations, treatments, procedures, and other clinical services the parties provide. So that the parties may fully collaborate and provide integrated Services, Reno shall permit Vegas access to Reno's electronic health records system to access appropriate medical records of Reno, and Vegas shall permit Reno access to the medical records Vegas creates in connection with this Agreement. In order to comply with its obligations under federal and state record keeping laws and its policies, Vegas shall have the right and duty, during and after the term of this Agreement, to maintain and retain health information and records of the patients it provides clinical services to at Reno's location(s).

©2015 Fink & Lander LLP 15

Telehealth Equipment & Software

Compliance Issue:
Stark & Kickback

Telemedicine Equipment & Software. Vegas shall provide certain telemedicine equipment, software, supplies, and support services to enable Vegas to provide the Services at Reno.

Reno shall not use, or allow anyone else to use, the telemedicine equipment and software for any purpose other than for Vegas to provide Services under this Agreement. Each party, at its own expense, shall provide adequate IT and technical support staff at their respective locations to enable the Vegas to provide Services to Reno under this Agreement.

©2015 Fink & Lander LLP

16

Telehealth Billing Rights

Compliance Issue:
Billing & Claims

Professional Fees and Billing. Vegas shall have discretion in establishing its own fees for professional services it provides included as a part of the Services provided pursuant to this Agreement. Vegas shall have the sole and exclusive right to bill and collect all its own professional fees from third party payors, governmental agencies and other financially-responsible parties for professional services rendered hereunder by Vegas. Reno represents and warrants that it will not bill for or collect any professional fees from third party payors, governmental agencies and other financially-responsible parties for professional services rendered hereunder by Vegas, the Vegas Physicians and/or Vegas Providers. Reno has the right to bill for and collect all other fees from third party payors, governmental agencies and other financially-responsible parties as it deems fit in its sole determination.

Vegas makes no representation or warranty as to whether or not any of the services provided under or in connection with this Agreement are covered by any third party payors, governmental agencies and other financially-responsible parties.

©2015 Fink & Lander LLP

17

Compensation

Compliance Issue:
Stark & Kickback

Compensation. In consideration of the Services provided hereunder, Reno shall pay Vegas in accordance with Exhibit __ hereof, which is expressly incorporated herein by reference. Except as otherwise provided herein, Vegas shall provide Reno with invoices for any fees or expenses payable hereunder. Payment shall be remitted to Vegas in accordance with Exhibit __. Any overdue payments shall bear interest at a rate of one and one half percent (1.5%) per month (or such lesser rate as may be the maximum permissible rate under applicable law).

The waiver/reimbursement of hospital or medical staff dues at Reno for the Services under this Agreement has been incorporated into Vegas' compensation. The costs associated with the telemedicine equipment, software, supplies, and support services provided by Vegas to Reno have been incorporated into Vegas' compensation.

©2015 Fink & Lander LLP

18

Privacy and Security

Compliance Issue:
HIPAA

Vegas and Reno agree to comply with all applicable federal and state laws and regulations relating to the maintenance, uses and disclosures of protected health information, including without limitation the Health Insurance Portability and Accountability Act of 1996, as codified at 42 USC § 1320d through d-8 ("HIPAA") as amended by the Health Information Technology for Economic and Clinical Health Act, as incorporated in the American Recovery and Reinvestment Act of 2009 and any current and future regulations promulgated thereunder, including the federal privacy regulations contained in 45 C.F.R. Parts 160 and 164, the federal security standards contained in 45 C.F.R. Parts 160, 162 and 164, and the federal standards for electronic transactions contained in 45 C.F.R. Parts 160 and 162, all collectively referred to herein as "HIPAA Requirements." The parties agree to enter into any further agreements as necessary to facilitate compliance with the HIPAA Requirements.

©2015 Foley & Lander LLP

19

Warranties

Compliance Issue:
Risk Management

DISCLAIMER OF WARRANTIES. EXCEPT AS EXPRESSLY PROVIDED HEREIN THE EQUIPMENT, SOFTWARE, AND SERVICES ARE PROVIDED "AS IS," WITH ALL FAULTS, AND WITHOUT WARRANTY OF ANY KIND. VEGAS DISCLAIMS ALL WARRANTIES, EXPRESS AND IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. RENO EXPRESSLY AGREES AND ACKNOWLEDGES THAT USE OF THE EQUIPMENT, SOFTWARE, AND SERVICES IS AT RENO'S SOLE RISK. VEGAS DOES NOT WARRANT THAT THE EQUIPMENT, SOFTWARE, OR SERVICES WILL MEET RENO'S REQUIREMENTS, OR THAT THE EQUIPMENT OR SOFTWARE IS COMPATIBLE WITH ANY PARTICULAR HARDWARE OR SOFTWARE PLATFORM, OR THAT THE OPERATION OF THE EQUIPMENT OR SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS IN THE EQUIPMENT OR SOFTWARE WILL BE CORRECTED. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY VEGAS OR VEGAS' AUTHORIZED REPRESENTATIVES SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF THIS WARRANTY.

©2015 Foley & Lander LLP

20

Standards of Care, Quality & Liability

Compliance Issue:
Quality of Care

- National Standards of Care for Telemedicine
- www.americantelemed.org; AMA; specialty practices
- Training and quality review
- Research utilizing telehealth practices or outcomes
- Complexities of ACO participation

©2015 Foley & Lander LLP

21

Restrictive Covenants

Compliance Issue:
Human Resources

Exclusivity; Use of Telemedicine Equipment. This Agreement is non-exclusive and Reno and Vegas are free to contract with other hospitals or entities for telemedicine-based healthcare services. However, Reno shall not use, nor allow anyone else to use, the telemedicine videoconferencing equipment and software provided by Vegas for any purpose other than for Vegas to provide Services under this Agreement.

No Solicitations of Personnel or Contractors. Without the express written consent of Vegas, from and after the Effective Date and until the expiration of the twelve (12) month period immediately following the termination or expiration of this Agreement, Reno shall not, directly or indirectly, solicit the services of, hire, employ or procure on its behalf or for another, or contract with, whether as an employee, consultant, agent, independent contractor or otherwise, any person or entity employed by or under a service or consultancy contract with Vegas.

©2015 Fink & Lathin LLP

22

Other Considerations

Compliance Issue:
Legal Services

- IP & Proprietary Information
- Confidentiality
- Choice of Law/Venue
- Dispute Resolution
- Indemnification and Insurance
- Licensing Agreements

©2015 Fink & Lathin LLP

23

TELEHEALTH: RIDE THE WAVE



OR GET LOST AT SEA

24

A Full Deck of Handouts

- 📄 Telehealth Compliance Checklist
- 📄 Telemedicine Business & Legal Considerations
- 📄 Map of States Requiring Informed Consent (medical board)
- 📄 Map of States Requiring Informed Consent (Medicaid)
- 📄 Sample Hospital Telemedicine Credentialing by Proxy Agreement
- 📄 Checklist on Telemedicine Malpractice Insurance Coverage
- 📄 Checklist on Managing Telemedicine Tort Liability
- 📄 Article on Telehealth Managed Care Coverage

©2015 Foley & Lardner LLP

Speaker Contact

Nathaniel Lacktman

Foley & Lardner LLP
 813.225.4127
nlacktman@foley.com
www.foley.com/nlacktman

News & Resources
www.foley.com/telemedicine
www.healthcarelawtoday.com
 @Lacktman (DigitalHealth Lawyer)

Deborah Randall

Deborah Randall Consulting
 202.257.7073
deborah@deborahrandallconsulting.com
www.deborahrandallconsulting.com

©2015 Foley & Lardner LLP

26
