

## Virtual Health Care – Oversight and Opportunities in this New World

HCCA 2021 Managed Care Compliance Conference  
Tuesday February 2, 2021

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1

## Topics To Be Covered

2

- Virtual care and its impact on health plan operations and compliance
- Regulatory landscape and actions seen
- Strategies for effective due diligence and risk mitigation

2

## Polling Question - 1

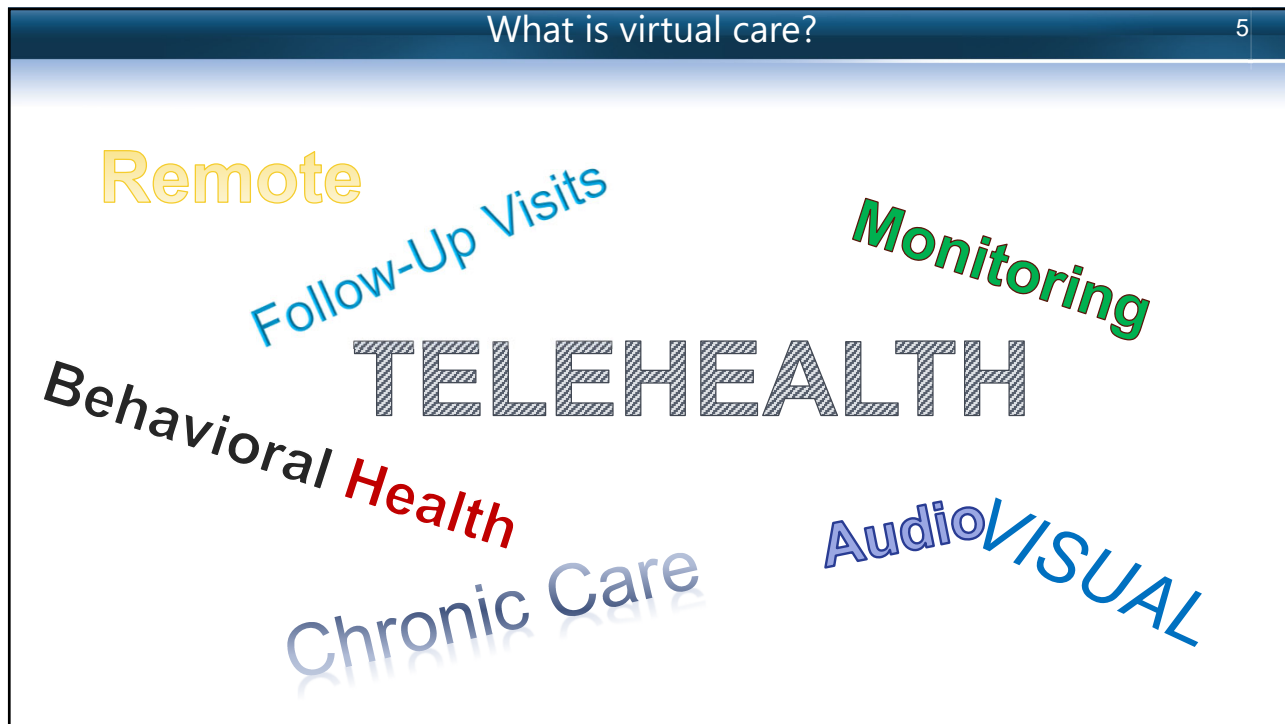
Which of the services listed below do you offer with a virtual care option?

- Urgent Care
- Primary Care
- Specialist Care (non-behavioral health)
- Behavioral Health
- Wellness Visits
- All of the Above
- Not Sure

3

Virtual care and its impact on health  
plan operations and compliance

4



5

	Quality	Patient Experience	Total Cost of Care
Personalized Care	Closure of gaps in care (preventive measures)	Chat bot health risk assessment and pre-visit labs done at the consumers' convenience	Primary care relationships proven to lower the total cost of care
Coordinated Care	Improved compliance for lab test completion	Virtual ecosystem leveraging high value tele-referrals and brick and mortar referrals	ED diversion and inpatient admission avoidance through digital first approach with VPC (virtual private cloud – example: Amazon AWS)
Predictive Care	Remote monitoring to trend metrics and data by individual and populations	Personalized connectivity avoiding the inconvenience of office phone calls and the avoidance of care	Chronic disease complication delay/avoidance and ED diversion and inpatient admission avoidance

Source: *Virtual Primary Care and the Evolution of Healthcare*

6

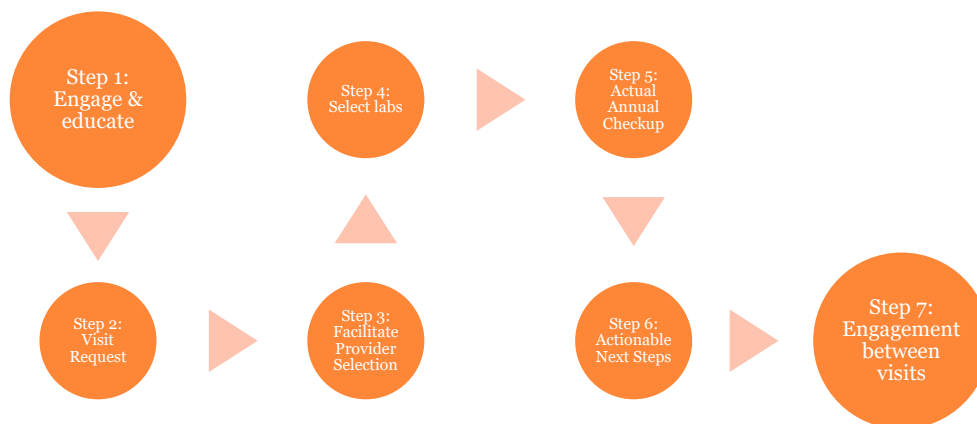
## Why Virtual Care?

Source: *Virtual Primary Care and the Evolution of Healthcare*

- Convenience & safety
  - Saves time
  - Eliminates hassle
  - Reduces exposure to others who are sick
- Patients
  - Accessible anywhere
  - Available nights & weekends
  - Contagion free – avoid the waiting room
- Plans
  - Enable existing care network
  - Integrate to plan's network for high value care options
  - Increase patient engagement & close gaps in care
- Together
  - Improves access & outcomes while reducing total cost of care through optimizing
    - High value referral management,
    - Testing coordination, and
    - Generic medication prescribing
  - Enables patient navigation through the care continuum with the delivery of high-quality preventive and chronic condition health care
  - Positioned to enable
    - Care continuity
    - Proactive/predictive care with patient engagement through chatbot
    - Remote monitoring, and
    - Device integration

7

## How it works – Annual Checkup Example



Source: *Virtual Primary Care and the Evolution of Healthcare*

8

## Common questions/trends

Sources: *Virtual Primary Care and the Evolution of Healthcare & 2020's Mental Health Crisis: How Virtual Care is Playing a Critical Role*; *COVID's Metamorphoses: Risk Adjustment and Telehealth Adaptations in the Age of Coronavirus*

### Common Questions

- Is it covered by insurance?
- Is it accurate?
- Will the doctor get to know me?
- Are there privacy concerns?
- Does it have end-to-end encryption?
- Is it HIPAA compliant?
- Can it handle a member population immediately?
- How does it do under stress?
- Is it immediately usable?
- Does it require a download?
- Do users have to register or configure it?
- Does it require a certain platform?
- Does it provide reminders?
- Is it easy to implement?
- How quickly can you get the service up and running?
- Or be integrated into your workflow?

### Trends

- Blue Cross Blue Shield of Massachusetts processed more than 1 million telehealth claims in nine weeks during COVID
  - Nearly half of telehealth visits were for mental health services
- A June 2020 study of large employers found that most employers are increasing access to virtual mental health and adding no or low-cost virtual counseling through tele-mental health
- In an APA survey last summer, 76% of clinicians reported they are solely seeing patients online
- As a result of CDC recommendations, PCP visits have fallen as much as 80%

Source: *Fast Break: Telehealth Update*

## Special Considerations: Audio-only visits

- Complex & contentious issue
  - State medical boards regulate whether audio-only encounters meet the standard of care
  - Payors (like Medicare & Medicaid) have generally prohibited payment for audio-only encounters
  - Many patients have trouble utilizing video conferencing
    - Lack of infrastructure or technology/know-how
  - CMS permitted Medicare temporarily to cover certain audio-only encounters

### SIDE NOTE:

*For risk adjustment purposes – Audio-only encounters are currently not allowed.*

## Special Considerations: Cross-state licensure issue

- Both federal and virtually all state governments waived the requirement that a practitioner be licensed in the state he or she sees a patient, if the practitioner is licensed in another state
  - Apply for special or temporary permit?
  - Work at medical facility?
  - Work specifically on COVID-related treatments?
- Broader efforts to coalesce & streamline licensure process
- Alternative ideas
  - Digital credentialing – state-based registry
  - Laws of all states make reciprocity difficult

11

REGULATORY LANDSCAPE and  
ACTIONS SEEN

12

## Polling Question - 2

Our processes to track and evaluate compliance with varying regulatory requirements (CMS vs. State vs. Federal) are:

- Strong/fully functioning
- Functioning/occasionally gaps are identified
- Weak/ gaps are regularly identified
- Non-existing
- Not Sure

13

## Telehealth issues

Sources: *Fast Break: Telehealth Update; Telehealth During the COVID-19 Pandemic; Telemedicine COVID-19 Weekly Briefing; COVID's Metamorphoses: Risk Adjustment and Telehealth Adaptations in the Age of Coronavirus*

### State

- 2 main sources
  - **Medical/professional practice acts**
    - Acceptable practice modalities
  - **Insurance laws**
    - Coverage requirements
- Permanent changes or funding appropriations
  - **Tennessee**
    - Payment parity
    - "originating site" includes patients in their homes or anywhere they are trying to receive telehealth service
  - **Florida**
    - Telemental health expansion in schools

### CMS

- Medicaid coverage criteria
- COVID-19 waivers
  - Allows providers to deliver Part B services via telehealth regardless of member/provider location
  - Easing of licensure renewals
  - Permitting individuals who haven't yet obtained licensure to practice
  - Allowing individuals licensed in other states to practice
  - Increased flexibilities for practice modalities
    - Asynchronous & audio only
  - Coverage requirements
- Remote patient monitoring services

14

## Regulatory Landscape

Source: *The Doctor Will See You Now: Telehealth Adoption, Security & Privacy*

- OCR Enforcement
  - Notification of enforcement discretion for telehealth remote communications during the COVID-19 nationwide public health emergency
    - Video conferencing exceptions permitted (FaceTime, Facebook Messenger video chat, Google Hangouts, Skype)
    - Public-facing apps not permitted (Facebook Live, Twitch, TikTok)
- Bipartisan House Bill: Protecting Access to Post-COVID-19 Telehealth Act
- State Exemptions
  - Massachusetts, Idaho, Colorado, & other states have taken action to make telehealth exemptions permanent
- ONC Final Rule: 21<sup>st</sup> Century Cures Act: Interoperability, Information Blocking, & the ONC Health IT Certification Program Final Rule

15



## Regulatory Landscape

Sources: *The Doctor Will See You Now: Telehealth Adoption, Security & Privacy*; *COVID-19 is Driving Telehealth Adoption – Understand the New Opportunities*; *Telehealth During the COVID-19 Pandemic*

- OCR Enforcement
  - Notification of enforcement discretion for telehealth remote communications during the COVID-19 nationwide public health emergency
    - Video conferencing exceptions permitted (FaceTime, Facebook Messenger video chat, Google Hangouts, Skype)
    - Public-facing video communications/apps not permitted (Facebook Live, Twitch, TikTok)
    - Will not impose penalties on health care provider where:
      - No Business Associate Agreement (BAA) with technology provider
      - Technology provider isn't compliant with HIPAA
    - Only applies during public health emergency
    - Does not apply to activities by health plans
  - Reminder – state privacy laws are still applicable!

16



## Fraud & Abuse

Source: *COVID-19 is Driving Telehealth Adoption – Understand the New Opportunities*; ; *Telehealth During the COVID-19 Pandemic*

- Temporary enforcement discretion from CMS & OIG
  - Guidance issued on Section 1135 waivers for Stark Law, Anti-Kickback Statute, & Beneficiary Inducement Civil Monetary Penalty (CMP) law
    - Blanket waiver of Stark Law
  - OIG Enforcement Discretion on Copay & Cost Sharing Waivers
    - OIG will not subject physicians & other practitioners to OIG administrative sanctions for arrangements that satisfy both of the following conditions
      - A physician or practitioner **reduce or waives cost sharing** obligations that a beneficiary may owe for telehealth services furnished consistent with the then applicable coverage & payment rules for federal health care programs.
      - The telehealth services are furnished during the time period subject to the COVID 19 declaration.
    - OIG will not view the provision of free telehealth services alone to be an **inducement** or as likely to influence future referrals
    - Other federal health care program billing rules and state & local laws still apply

17

## Medicare Fraud & Recent Federal/State Actions

Source: *Telehealth: COVID-19 Pandemic Unleashes New Practice Modality*

- US Department of Health & Human Services Report, April 2018
  - Originating site fraud
  - Unallowable means of communication
  - Cross-state licensing
  - Non-covered services
  - Non-US doctor
  - Relatively small Medicare spending, room for compliance development with technology growth
- Federal actions
  - Illegal kickbacks
- State actions
  - California & Arizona: Physicians issued prescriptions based on online questionnaires.

18

## Strategies for Effective Due Diligence and Risk Mitigation

19

### Polling Question - 3

Your Health Plan's 2021 Monitoring and Auditing Plan includes activities related to virtual care:

- Yes
- No
- Not Sure

20

## What is due diligence?

21

Due diligence – in relations to this topic – in very simple terms – systems, controls and oversight put into place to prevent, detect and correct non-compliance and potential FWA in any given area.

21

## Due diligence – assessing effectiveness?

22

We are likely well versed in the seven elements of an effective compliance program.

In utilizing specific elements, how can we strategize effective due diligence in relations to virtual health care?

22

### Policies and Procedures

- Documentation to how, when and with whom virtual health care is appropriate.

### Training and Education

- What and who are being trained on regulatory requirements as it relates to virtual health care?

### Risk Assessments

- Are ongoing assessment of risk being completed based upon the changes?

### Auditing and Monitoring

- What areas are being audited and monitored?

23

In this new virtual world, how do we know:

- Who is being seen?
  - Is there an established relationship between member and provider?
  - Is the virtual visit a follow-up to a prior visit that has occurred?
- For risk adjustment was it both a virtual and audio visit?
  - How is the medical record documenting the visit to the specificity needed?
- What provider type is being utilized and how are the lengths of time being validated within a visit?
- What is the benefit type?
  - A supplemental benefit that the plan has placed in the bid?
  - Part of a COVID-19 relaxations?

24

## Risk Mitigation Recommendations

- Deploy standards, train the workforce, & assess
  - Create security procedures & configuration guidelines for telehealth platforms including videoconferencing software like Zoom, Teams, BlueJeans, etc.
    - Look to those specifically created for healthcare
  - Configure video conferencing platforms to your security standards
  - Train your workforce properly on how to use the telehealth solutions
  - Assess the effectiveness of the controls through targeted risk assessments & penetration testing
  - Consider outsourcing assessments to specialists

25

## Risk Mitigation Recommendations

- Monitor changes & adjust
  - Keep a close eye on changes to telehealth capabilities & tools like remote patient monitoring & personal health apps
  - Monitor regulatory shifts & adjust approach accordingly
  - Consider telehealth as one of the “new normal” healthcare delivery models & prioritize security & privacy oversight

26

## Risk Mitigation Recommendations

- Third party vendor risk management
  - Prioritize telehealth application risk assessment
  - Ensure critical or high-risk findings / concerns elevated to leadership & the vendor for remediation
  - Request or require telehealth vendors to conduct penetration testing of applications and share results with you
  - Require telehealth vendors to maintain security certifications including HITRUST or SOC2
  - Require evidence & validation that telehealth vendor has built security in their Software Development Life Cycle (SDLC) development & product release processes
  - If not completed prior to setting up telehealth, go back & perform it

27

## Fraud & Abuse Risk Mitigation

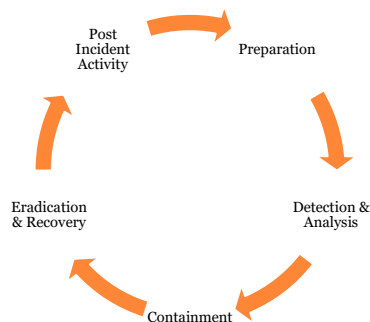
- Practical Tips for Fraud & Abuse Compliance in Telehealth Arrangements
  - **Written documentation**
    - Document arrangements in writing, referring specifically to OIG & CMS guidance and waiver authorities
  - **Termination link to COVID-19 emergency**
    - Termination of the arrangement qualifying for enforcement discretion should coincide with expiration of COVID-19 public health emergency
  - **Business records**
    - Maintain business records related to commencement & implementation of arrangement
  - **Compliance monitoring**
    - Continue to monitor compliance with billing, claims submission, cost reporting and other rules applicable to federal health care programs for telehealth arrangements subject to enforcement discretion
  - **Accounting for state law & special program requirements**
    - Comply with other requirements specific to state law or other programs

28

## Telehealth Incident Response

Source: *Telehealth Insecurities: Evaluating Emerging Threats & Risk Response*

- An incident response plan for Telehealth must be implemented taking into account that there are multiple stakeholders beyond the organization (i.e. patients, vendors, & other 3<sup>rd</sup> parties)



29

## Questions?

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30