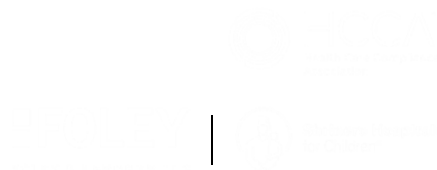


Anna G. Small, MSN,
JD, CHC
Thomas (T.J.)
Ferrante, Esq.

Telehealth Legal and Compliance Issues for Hospital Systems

February 2018



Your Speakers



FOLEY
FOLEY & LARDNER LLP

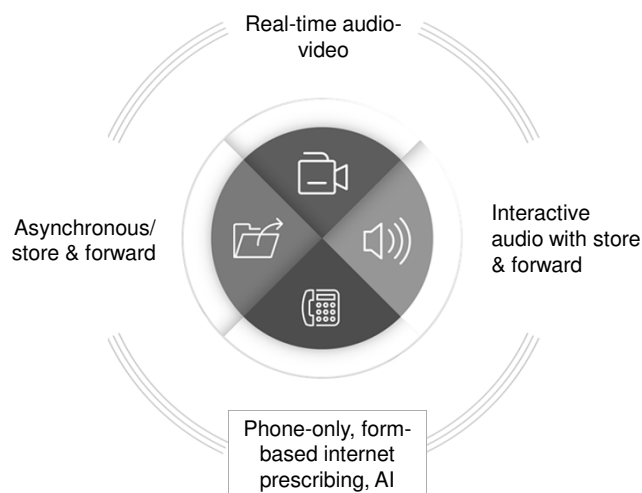


 **Shriners Hospitals
for Children®**

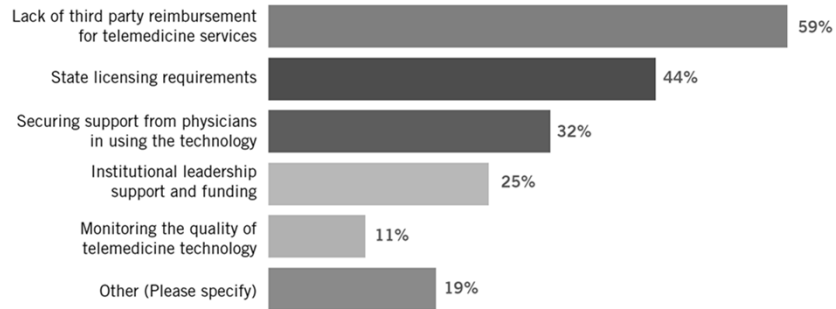
Overview of Learning Objectives

- Physician licensing rules and consultation between providers in Florida and other states
- Telehealth practice standards
- Payment and reimbursement landscape
- Implementing a telehealth program

What Is Telehealth? What Are the Modalities?

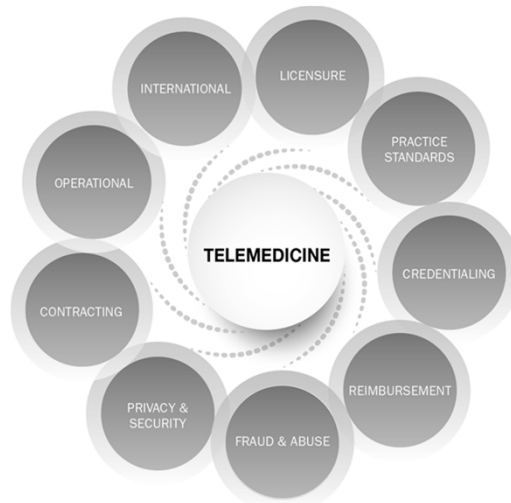


Obstacles in Telehealth



Source: Foley & Lardner LLP 2017 Telemedicine & Digital Health Survey (Nov 2017)

Telehealth Law 101



Telehealth and Licensing

6

Licensing

Physician offering care via telemedicine is subject to licensure rules of:

1

The state in which the patient is physically located at the time of the consult

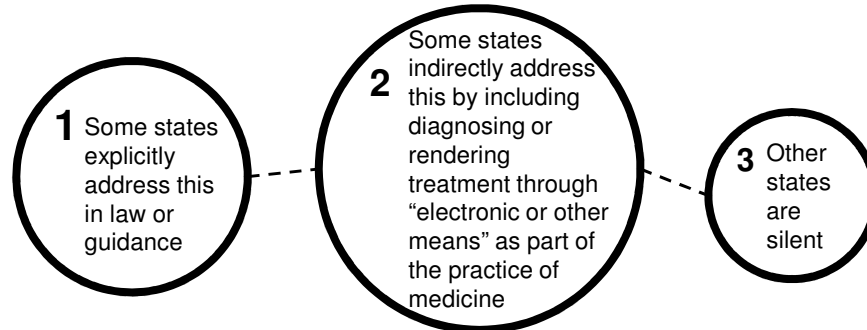
2

The state where the physician is located/licensed

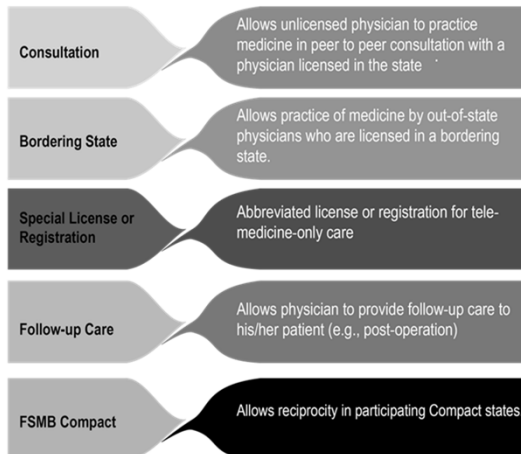
7

Licensing

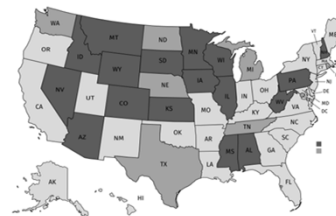
Regarding medical practice rules, it is generally accepted that the law that governs the consult is the state where the patient is located at the time of the consult. This is the locus of care.



Exceptions



Federation of
**STATE
MEDICAL
BOARDS**



Telehealth Practice Standards

10

Telemedicine State Practice Standards

1

**New Patient vs.
Established**

5

**Modality of
Communication
Technology**

9

**Patient Choice
of Provider**

2

In-Person Exam

6

**Remote
Prescribing (incl.
Controlled
Substances)**

10

Disclosures

3

**Originating Site
Restrictions**

7

**Record-Keeping
and Record-
Sharing**

11

**Malpractice &
Professional
Insurance
Considerations**

4

**Patient-Site
Telepresenter**

8

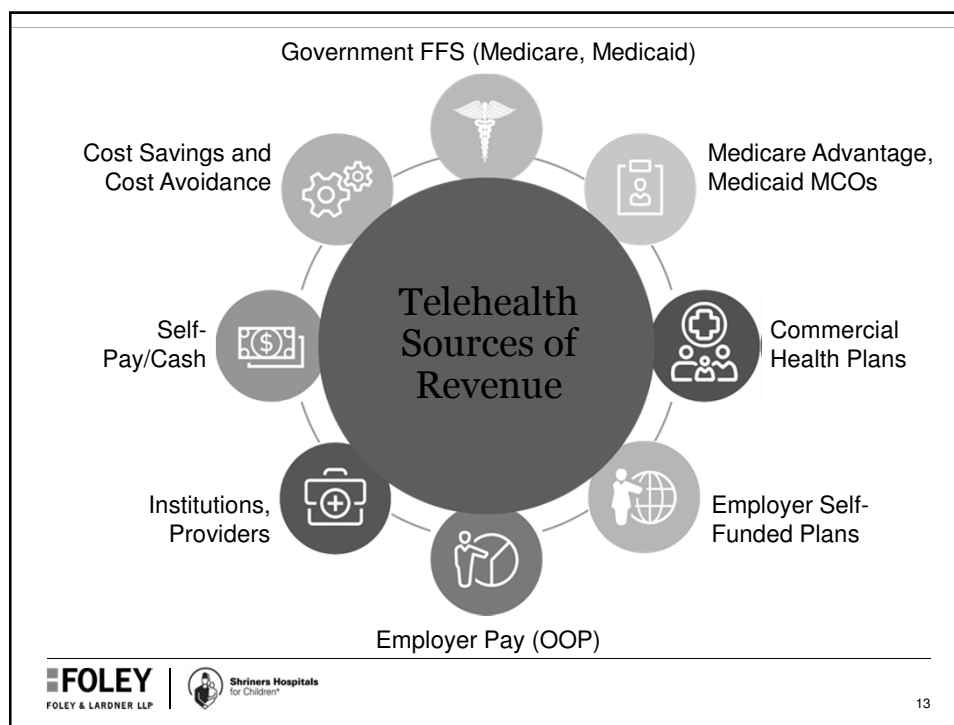
**Informed
Consent**

12

Credentialing

Telehealth Payment and Reimbursement

12



Slide 14

RSE1 Can we find images to replace the text?
Reith, Shannon E, 2/24/2017

Telehealth and Medicare

1. Patient in a qualifying rural area
2. Patient at one of eight qualifying facilities (“originating site”)
3. Service provided by one of ten eligible professionals (“distant site practitioner”)
4. Technology is real-time audio-video (interactive audio and video telecommunications system that permits real-time communication between the beneficiary and the distant site provider)
5. The service is among the list of CPT/HCPCS codes covered by Medicare

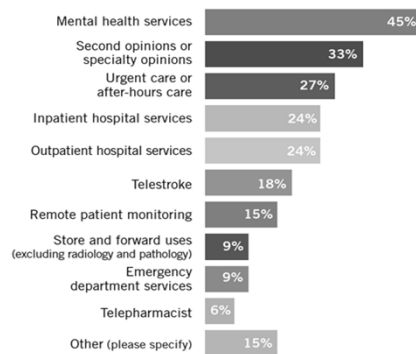
Medicare and Telehealth

- In 2001, the Congressional Budget Office estimated it would cost the Medicare program \$150 million (\$30 million a year) to cover telehealth services from 2001 through 2005
 - Reality, during those first five years, Medicare paid a total of \$3,103,912 for telehealth services
- CY 2015: Medicare paid a total of \$22,449,968 for telehealth services (372,518 claims)
- CY 2016: Medicare paid a total of \$28,748,210 for telehealth services (496,396 claims)

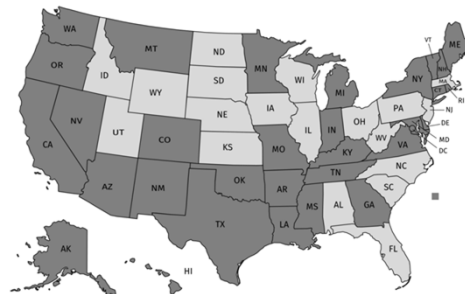
Medicare Advantage and Medicaid Managed Care

Medicare Advantage	<p>MA plans are free to contract with providers to cover telehealth services. They can do so as a supplemental health care benefit per Social Security Act section 1852(a)(3)(A)</p> <p>One reason some MA plans choose not to is because CMS has historically taken the position that telemedicine must be a supplemental benefit for MA plans, which means it cannot be categorized as a basic benefit cost when the plans submit their bids</p> <p>The CMS Innovation Center is considering a demonstration project that would allow Medicare Advantage plans to offer telemedicine services as a basic benefit</p>
Medicaid Managed Care	<p>Most Medicaid MCOs are free to contract with providers to cover telehealth services</p> <p>Most Medicaid MCOs may also provide expanded services to its members outside the FFS coverage conditions</p>

Telehealth Commercial Insurance Coverage



Source: Foley & Lardner LLP 2017 Telemedicine & Digital Health Survey (Nov 2017)



Real World Telehealth Implementation

18

Shriners Hospitals For Children



19

SHC Mission

Shriners Hospitals for Children has a mission to:

1

Provide the highest quality care to children with neuromusculoskeletal conditions, burn injuries, and other special healthcare needs within a compassionate, family-centered, and collaborative care environment

2

Provide for the education of physicians and other healthcare professionals

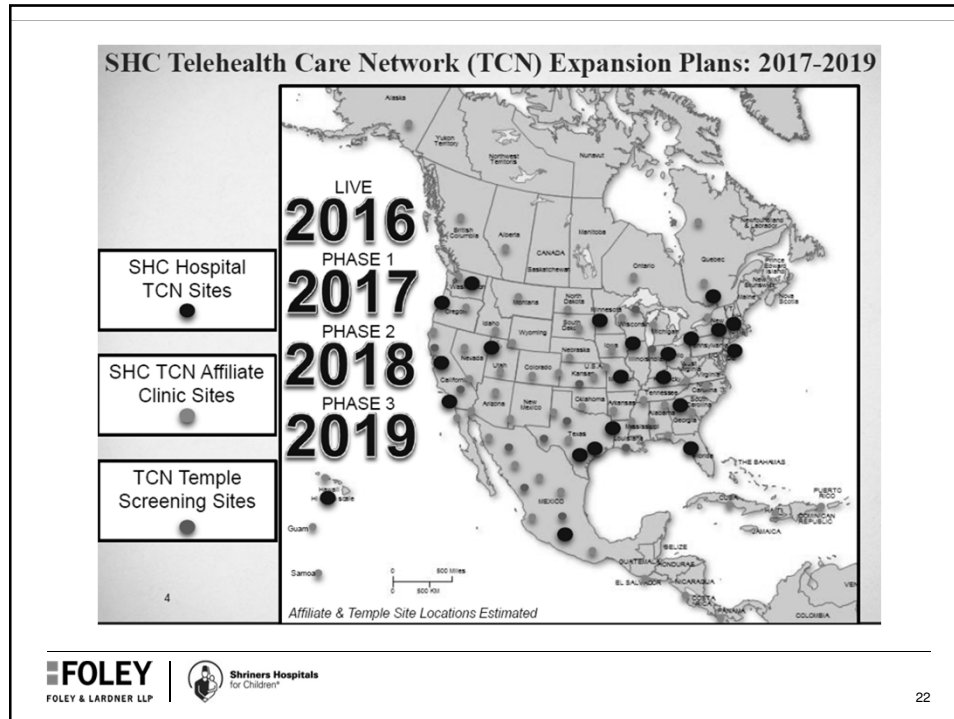
3

Conduct research to discover new knowledge that improves the quality of care and quality of life of children and families

This mission is carried out without regard to race, color, creed, sex or sect, disability, national origin, or ability of a patient or family to pay.

Telehealth Pilot Program

- Telehealth Care Network (TCN)
 - Three pilot hospitals
 - Each to pick two affiliates (originating sites)
 - Initiate in 2015, go live in 2016
- Expansion to other hospitals in the system during 2017 – 2019
 - Wrap in pre-existing telemedicine programs



Compliance Concerns

- Policies and procedures
- Licensing
- Compliance with state laws and rules/regulations
- Contracting with originating sites
 - Scope of practice of personnel at originating sites
- Privacy and security concerns

Financial Issues

- Revenue:
 - Medicare not a payor of significance
 - Medicaid payor requirements vary
 - Limited reimbursement in telehealth
- Miles saved
 - 2017: Two (2) million miles
 - 2018: Four (4) million miles
 - 2019: Seven (7) million miles

Why Is Transportation a Compliance Issue?

- Four ways patients finance travel:
 - Self pay
 - Fraternal arrangement
 - Outside charities or entities
 - Q Foundation for Kids
 - Fundación Michou y Mau
 - Foreign governments
 - SHC pays for transportation



Provision of Transportation

- Advisory Opinion 2011-01
 - Financial need
 - Will also consider:
 - Exigent circumstances of a case
 - Availability of hospital funds
 - Cost of transportation not claimed on any federal cost report or claim
 - No advertisement

Ongoing Compliance Involvement

- Additional policies and procedures
- Monitoring and auditing of compliance with regulations
- International expansion
- Revenue cycle
- Security and privacy – new technologies

Questions and Contact Info

Thomas (T.J.) Ferrante


Foley & Lardner LLP
813.225.4148
tferrante@foley.com
<https://www.foley.com/thomas-b-ferrante/>

Anna G. Small, MSN, JD, CHC

Shriners Hospitals for Children
Chief Compliance Officer
813.518.7647
asmall@shrinenet.org
<https://www.shrinershospitalsforchildren.org/shc>

News & Resources

www.healthcarelawtoday.com
www.foley.com/telemedicine

 @TJFerrante

Thank you

ATTORNEY ADVERTISEMENT. The contents of this document, current at the date of publication, are for reference purposes only and do not constitute legal advice. Where previous cases are included, prior results do not guarantee a similar outcome. Images of people may not be Foley personnel.
© 2017 Foley & Lardner LLP