Welcome to Today’s Webinar on Telehealth Program Development and Policy

Presented by ASTHO as part of the CDC-funded project “Providing Public Health Subject Matter Expertise to State Innovation Model Initiative – State Health Departments.”

Participant call-in number: (866) 740-1260; Required conference ID: 3185493#
Objectives of the call:

- Provide a foundation for telehealth program development by describing telehealth modalities and relevant state and federal laws and regulations.
- Describe the steps necessary to develop a telehealth program, from design to implementation.
- Share resources to support healthcare providers and public health agencies develop telehealth programs.
Speakers

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OKLAHOMA
April 21, 2017

For ASTHO’s CDC-Funded project “Funding Public Health Subject Matter Expertise to State Innovation Model Initiative – State Health Departments”
DISCLAIMERS

• Any information provided in today’s talk is not to be regarded as legal advice. Today’s talk is purely for informational purposes.

• Always consult with legal counsel.

• CCHP has no relevant financial interest, arrangement, or affiliation with any organizations related to commercial products or services discussed in this program.
CCHP is an independent, *public interest* organization that strives to advance state and national telehealth policies that promote better systems of care, improved health outcomes, and provide greater *health equity of access to quality, affordable care and services.*
Current Laws, Regulations, Pending Bills State & Federal

Interactive Policy Map
TELEHEALTH & ITS MODALITIES

- Synchronous or Live Video

- Remote Patient Monitoring

- Asynchronous or Store-and-Forward

- mHealth
TELEHEALTH GOES BEYOND JUST PROVIDING HEALTH CARE SERVICES

- Health Care Services
- Training & Education
- Public Health Information
- Electronic Health Information
- Information Sharing
- Data Collection
- Care Coordination

TELEHEALTH
PROGRAM DEVELOPMENT
WHERE TO START?

Assess & Define
- Assess service needs
- Define program model
- Develop business case

Develop & Plan
- Develop & plan program & technology
- Develop performance monitoring plan

Implement & Monitor
- Implement telehealth program
- Monitor & Improve program

Source: California Telehealth Resource Center Developer’s Kit
ASSESS & DEFINE

- Assess service needs & environment
  - Assess service needs
  - Identify potential telehealth opportunities
  - Assess organizational readiness
- Define Program Model
  - What type of program will meet the needs?
- Develop Business Case
  - Determine the impact of the proposed telehealth program

Source: California Telehealth Resource Center Developer’s Kit
ASSESS & DEFINE

• To determine need
  – What might telehealth do for your organization?
  – Is my organization ready and willing to support telehealth?
  – What resources need to be allocated?
  – What are the unmet needs that can be met with telehealth?

• Define the program
  – What services did you decide to provide?
  – How will they be provided?
  – What is the proposed scope of the program?

• Business plan
  – What is the demand?
  – What is the financial model?
  – What is the funding?
  – Is the program sustainable?
  – What are the policies that may impact it?
DEVELOP & PLAN

• Develop and plan program & technology
  – Create a detail project plan
    • Determine not only the service you want to offer, but what technology would be best to deliver that service
    • What would it take for that technology to work?
      – Look at your staffing
      – Look at your broadband capability
      – Look at your space

• Develop performance monitoring plan
  – Define monitoring and evaluation mechanisms and program improvement process

Source: California Telehealth Resource Center Developer’s Kit
IMPLEMENT & MONITOR

• Implement telehealth program
  – Do some dry runs before you go live
  – Patience is required!

• Monitor and improve the program
  – There is always room for improvement!
  – Most likely your program will initially operate at a loss
  – Figure out efficiencies

Source: California Telehealth Resource Center Developer’s Kit
RESOURCES FOR PROGRAM DEVELOPMENT

- Training
- Developer’s Kit
- Fact Sheets
- Examples of forms
- Check lists
- Policy & Technology Information

Heartland Telehealth Resource Center
(http://heartlandtrc.org)

Most services are free!
WHAT ARE THE POLICIES I NEED TO KNOW?
LEGAL & REGULATORY ISSUES

- Licensing
- Credentialing & Privileging
- Prescribing
- HIPAA/Security
- Informed consent
- Malpractice
- Anti-Kickback/Stark Law
- Reimbursement
  - Federal & State Telehealth Policy
- Pending Legislation/Regulations
LICENSING

• Must be licensed in the state that patient is located
• Very few exceptions (e.g., infrequent interactions in state, consultation)
• A few states have a “telemedicine license”
• Interstate Licensure Compact
  ❖ Not a multi-state license; it’s an expedited process to get a license
  ❖ State needs to pass legislation to join Compact
  ❖ Still in the process of being formed
  ❖ 18 States members of the compact

PROBLEM! – The Compact has run into issues because the FBI has stated that the use of their databases as described in the legislation is not legal as the Commission would not be an eligible entity to do so. FSMB has responded back to the FBI. Working on issue.
CREDENTIALING & PRIVILEGING

• An originating site may rely on the credentialing and privileging the distant site did for a provider who will be providing services to the originating site.

• **Federal Regulations**
  - 42 CFR 482.12
  - 42 CFR 485.616
  - 42 CFR 482.22
  - 42 CFR 485.641

• **The Joint Commission**
  - LD.04.03.09
  - MS.13.01.01
**CREDENTIALING & PRIVILEGING**

**Federal Regulations**

- Went into effect July 1, 2011
- For Originating Sites – Hospitals & Critical Access Hospitals (CAHs)
- The distant site must be a hospital that participates in Medicare or is a telemedicine entity.
  - Provides telemedicine services;
  - Is not a Medicare participating hospital; and
  - Provides services in a manner that meets all applicable Conditions of Participation (CoP)
- Likely a bylaw change will be needed
- Optional
CREDENTIALING & PRIVILEGING

Federal Regulations - Originating Site Obligations

• Written agreement between distant and originating sites
• Governing body must choose to rely on distant site’s credentialing & privileging decisions
• Internal review of telehealth provider’s performance & that information shared with distant site
• Sends all adverse events and complaints to distant site
Federal Regulations - Distant Site Obligations

- Is a Medicare participating hospital OR telemedicine entity
- Telehealth provider privileged at the distant site
- Distant site must provide to the originating site a current list of the telehealth provider’s privileges
- Telehealth provider is licensed or recognized by the state of the originating site hospital
CREDENTIALING & PRIVILEGING

TJC Regulations

• TJC aligned with CMS & finalized Dec 2011
  ❖ Distant site is TJC accredited hospital or ambulatory care organization
  ❖ Telehealth provider privileged at distant site for the services providing to originating site
  ❖ Originating site has an internal review process of telehealth provider’s performance & sends that to the distant site
  ❖ Telehealth provider has license or is recognized by the state the patient is located in
  ❖ Written agreement between the distant and originating sites
PREScribing

Controlled Substances

- Federal Laws/DEA

State Prescribing Laws

- Provider/Patient Relationship
- Some states allow telehealth to establish the relationship and allow prescribing
- Most require an in-person examination
- Oklahoma requires – Sufficient examination takes place.
HIPAA/PRIVACY

- Still held to the same standards
- Equipment alone cannot be HIPAA compliant
- HIPAA compliancy is a combination of physical, administrative & technical safeguards
- Using telehealth may require you to think differently to be compliant
INFORMED CONSENT & MALPRACTICE

Some States with Specific Informed Consent Policies
- Both in law, regulations or Medicaid policies

Malpractice Coverage
- Does your malpractice insurance cover telehealth?
- Does your malpractice insurance cross state lines?

Malpractice Suits
- Very few cases involving telehealth
  - Most are concerning radiology
  - Most are about provider’s actions, not technology
  - Most have been settled out of court
ANTI-KICKBACK

• **Stark Law**
  Federal law prohibits physicians from referring Medicare beneficiaries to an entity that physician has a financial interest for designated health services (DHS) reimbursable by Medicare.

• **Anti-Kick Back**
  Federal law makes it a crime to offer, solicit, pay or receive any remuneration intended to induce, or is in return for, the referral of patients or the ordering of items or services reimbursable by any federal health care program.
ANTI-KICKBACK

• Exceptions Available to Both (examples)
  ❖ Stark Law
    ▪ Bona fide employment agreements (similar to Anti-Kickback Statute)
    ▪ Lease arrangements space/equipment exceptions
    ▪ Personal services exception
  ❖ Anti-Kick Back
    ▪ Bona fide employment relationship with the employer
    ▪ Space or equipment rental
    ▪ Independent contractor agreement
    ▪ If provided to a health center via contract/agreement that contributes to the ability of the health center to maintain or increase the availability or quality of services the medically underserved population it services.
**MEDICARE**

**HISTORY OF FEDERAL TELEHEALTH POLICY**

**Balanced Budget Act of 1997**
- Medicare beneficiaries in rural HPSAs may receive care via telehealth
- Practitioner required to be w/patient during consult
- Consulting & Referring physicians share fee (75/25)

**Benefits Improvement & Protection Act 2000**
- Included non-MSA sites
- Eliminated fee sharing
- Expanded eligible services for reimbursement

**Medicare Improvements for Patients & Providers Act, 2008**
- Expanded list of facilities that may act as an originating (patient location) site

**Various Changes Made Administratively**
- Credentialing & Privileging Regulations
- Increase in number of codes reimbursed
- Redefinition of “rural”
- Inclusion of Chronic Care Management Codes

Medicare telehealth policy very limited & has not changed much in recent years
SOCIAL SECURITY ACT OF 1835(m) or 42 USC 1395m

- Only Live Video reimbursed
- Store & Forward (Asynchronous) only for Alaska & Hawaii demonstration pilots
- Specific list of providers eligible for reimbursement
- Limited to rural HPSA, non-MSA, or telehealth demonstration projects
- Limited types of facilities eligible
- Limited list of reimbursable services, but CMS decides what can be delivered via telehealth and reimbursed
ELIGIBLE PROVIDERS

- Physicians
- Nurse practitioners
- Physician assistants
- Nurse midwives
- Clinical nurse specialists
- Certified registered nurse anesthetists
- Clinical psychologists & clinical social workers
- Registered dietitians or nutrition professionals

ELIGIBLE SITE (FACILITY)

- Offices of physicians or practitioners
- Hospitals
- Critical Access Hospitals
- Rural Health Clinics
- Federally Qualified Health Centers
- Hospital-based or CAH-based renal dialysis centers (including satellites)
- Skilled Nursing Facilities
- Community Mental Health Centers
## MEDICARE REIMBURSED SERVICES

<table>
<thead>
<tr>
<th>SERVICE</th>
<th>HCPCS CODE</th>
<th>CPT CODE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Telehealth consultations, emergency department or initial inpatient</td>
<td>G0425-G0427</td>
<td></td>
</tr>
<tr>
<td>Follow-up inpatient telehealth consultations furnished to beneficiaries in hospitals or SNFs</td>
<td>G0406-G0408</td>
<td></td>
</tr>
<tr>
<td>Office or other outpatient visits</td>
<td></td>
<td>99201-99215</td>
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<tr>
<td>Subsequent hospital care services, w/limitation of 1 telehealth visit every 3 days</td>
<td></td>
<td>99231-99233</td>
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<tr>
<td>Subsequent nursing facility care services, w/limitation of 1 telehealth visit every 30 days</td>
<td></td>
<td>99307-99310</td>
</tr>
<tr>
<td>Individual and group kidney disease education services</td>
<td>G0420-G0421</td>
<td></td>
</tr>
<tr>
<td>Individual &amp; group diabetes self-management training services w/min. 1 hour of in-person instruction in initial year training period to ensure effective injection training</td>
<td>G0108-G0109</td>
<td></td>
</tr>
<tr>
<td>Individual &amp; group health &amp; behavior assessment &amp; intervention</td>
<td>96150-96154</td>
<td></td>
</tr>
<tr>
<td>Individual psychotherapy</td>
<td>90832-90834, 90836-90838</td>
<td></td>
</tr>
<tr>
<td>Telehealth Pharmacologic Management</td>
<td>G0459</td>
<td></td>
</tr>
<tr>
<td>Psychiatric diagnostic interview examination</td>
<td>90791-90792</td>
<td></td>
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<tr>
<td>ESRD-related services included in the monthly capitation payment</td>
<td>90951-90952, 90954-90955, 90957-90958, 90960-90961</td>
<td></td>
</tr>
<tr>
<td>ESRD-related services for home dialysis per full month for patients &lt;2 years to 19 includes monitoring for nutrition, growth &amp; development &amp; counseling of parents; ESRD-related services for dialysis less than a full month of service per day for patients &lt; 2 years, 12-19 years, 20 &amp; &lt;</td>
<td>90963-90965, 90968, 90969, 90970</td>
<td></td>
</tr>
<tr>
<td>ESRD-related services for home dialysis per full month patients 20 &amp; older</td>
<td>90966</td>
<td></td>
</tr>
<tr>
<td>Individual &amp; group medical nutrition therapy</td>
<td>G0270</td>
<td>97802-97804</td>
</tr>
<tr>
<td>Neurobehavioral status examination</td>
<td></td>
<td>96116</td>
</tr>
<tr>
<td>Smoking cessation services</td>
<td>G0436-G0437</td>
<td>99406-99407</td>
</tr>
<tr>
<td>Alcohol and/or substance (other than tobacco) abuse structured assessment &amp; intervention services</td>
<td>G0396-G0397</td>
<td></td>
</tr>
</tbody>
</table>

As of March 2017
<table>
<thead>
<tr>
<th>Service Description</th>
<th>Code(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annual alcohol misuse screening, 15 minutes</td>
<td>G0442</td>
</tr>
<tr>
<td>Brief face-to-face behavioral counseling for alcohol misuse, 15 minutes</td>
<td>G0443</td>
</tr>
<tr>
<td>Annual depression screening, 15 minutes</td>
<td>G0444</td>
</tr>
<tr>
<td>High-intensity behavioral counseling to prevent sexually transmitted infection; face-to-face, individual, includes: education, skills training &amp; guidance, performed semi-annually, 30 minutes</td>
<td>G0445</td>
</tr>
<tr>
<td>Annual, face-to-face intensive behavioral health therapy for cardiovascular disease, individual 15 minutes</td>
<td>G0446</td>
</tr>
<tr>
<td>Face-to-face behavioral counseling for obesity, 15 minutes</td>
<td>G0447</td>
</tr>
<tr>
<td>Transitional care management services w/moderate medical decision complexity (face-to-face w/in 14 days of discharge)</td>
<td>99495</td>
</tr>
<tr>
<td>Transitional care management services w/high medical decision complexity (face-to-face visit w/in 7 days of discharge)</td>
<td>99496</td>
</tr>
<tr>
<td>Advance Care planning, 30 minutes/Advancing Care Planning, additional 30 minutes</td>
<td>99497, 99498</td>
</tr>
<tr>
<td>Psychoanalysis</td>
<td>90845</td>
</tr>
<tr>
<td>Family psychotherapy w/o the patient present</td>
<td>90846</td>
</tr>
<tr>
<td>Family psychotherapy (conjoint psychotherapy w/patient present)</td>
<td>90847</td>
</tr>
<tr>
<td>Prolonged service in office or other outpatient setting requiring direct patient contact beyond the usual service; first hour &amp; additional 30 minutes</td>
<td>99354, 99355</td>
</tr>
<tr>
<td>Prolonged service in inpatient or observation setting requiring unit/floor time beyond usual service, first hour &amp; each additional 30 minutes</td>
<td>99356, 99357</td>
</tr>
<tr>
<td>Annual Wellness Visit, first visit &amp; subsequent visit</td>
<td>G0438, G0439</td>
</tr>
<tr>
<td>Telehealth Consultation, Critical Care, initial, physicians’ typically spend 60 minutes communicating with patient and providers via telehealth. Subsequently spending 50 minutes</td>
<td>G0508, G0509</td>
</tr>
</tbody>
</table>

**Approximately 80 codes reimbursed if provided via telehealth out of 10,000 possible codes**
OTHER FEDERAL POLICY

• Next Generation ACOs
  ❖ Different from Pioneer ACOs because higher risk, but also higher rewards
  ❖ Waiver for beneficiaries to be located in rural areas
  ❖ Waiver for specific type of originating site – home now eligible in certain cases
  ❖ LOIs due in May 2016
  ❖ To start in 2017

• Comprehensive Care for Joint Replacement Model
  ❖ Waive the geographical restrictions under Medicare and allow the home to be an eligible originating site.

• Administration’s Goal of 90% payments tied to value
  ❖ CMS set goal to have 90% of Medicare fee-for-service payments in value-based purchasing categories by 2018
     Fee-for-service w/link of payment to quality
     Alternative payment models built on fee-for-service architecture
     Population-based payment
OTHER FEDERAL POLICY

• Federal Drug Administration (FDA)
  - Issuance of guidelines for mobile health software

• Federal Trade Commission (FTC)
  - *North Carolina Board of Dental Examiners v. Federal Trade Commission*
    - Supreme Court case that ruled in favor of FTC and found that the make-up of licensing board can have unfair trade practices implication.
  - *FTC Comment letter on Alaskan State legislation SB 75*
    - FTC comments indicated that by allowing out-of-state providers to have equal capabilities of in-state providers (in this situation prescribing), it would create better competition, cost savings and more options for consumers
    - FTC also questioned the fairness in the medical board writing standards targeted at telehealth providers if the standards differed from what was required in-person for no good reason
    - FTC comments stopped short of saying these were unfair or anti-competitive practices
  - *Delaware Occupational Therapy Board ProposedRegs*
STATE TELEHEALTH POLICY

44 states (and DC) have a definition for telemedicine.

33 states (and DC) have a definition for telehealth.

2 states: Alabama and New Jersey have no definition for either.

As of September 2016
MEDICAID REIMBURSEMENT BY SERVICE MODALITY

- **Live Video**: 48 states and DC
- **Store and Forward**: Only in 13 states
- **Remote Patient Monitoring**: 22 states
Parity in Payment with In-Person

34 states and DC have telehealth private payer laws. Some go into effect at a later date.

This is the most common policy change at the state level!

Parity is difficult to determine:

- Parity in services covered vs. parity in payment
- Many states make their telehealth private payer laws “subject to the terms and conditions of the contract”
CURRENT OK TELEMEDICINE POLICIES

• Reimbursement in OK’s Medicaid program – SoonerCare
  ➢ SoonerCare reimburses for telemedicine services if provided via live video.
  ➢ SoonerCare does not consider store-and-forward as “telemedicine” but it can be used to deliver services.
  ➢ Unlike other states, few restrictions such as location, type of provider

• Private payer law
  ➢ Fairly broad definition that allows for inclusion of all modalities but excludes phone & fax
  ➢ Health care provider determines appropriateness of using telemedicine
  ➢ No parity of payment for services provided via telemedicine.
  ➢ Some leeway in establishing a patient-provider relationship via telemedicine to allow for prescribing & mental health.
RESOURCES

• Center for Connected Health Policy
  ❖ www.cchpca.org

• Telehealth Resource Centers
  ❖ www.telehealthresourcecenter.org

• HRSA Telehealth Programs
  ❖ https://www.hrsa.gov/ruralhealth/telehealth/
OKLAHOMA RESOURCES

• Telehealth Alliance of Oklahoma
  ❖ www.taoklahoma.org

• Heartland Telehealth Resource Center
  ❖ www.heartlandtrc.org
APPENDIX
OTHER STATES TELEMEDICINE POLICIES

• KENTUCKY
  ➢ Medicaid limited to live video and to services that include consultation, mental health/psych services and medical nutrition
  ➢ Specific list of providers that exclude the allied professions (OT, PT, etc.)
  ➢ Private payer law that reimburses for live video

• MASSACHUSETTS
  ➢ Lacks a Medicaid policy related to telehealth, though managed care plans may reimburse for it.
  ➢ Private Payers may reimburse for telehealth delivered services, no mandate

• PENNSYLVANIA
  ➢ Medicaid reimburses for live video
  ➢ Medicaid reimburses for a limited list of providers (Physicians, certified registered nurse practitioners, certified nurse midwives and for FQHCs and RHCs only telepsych services
  ➢ No private payer law
THANK YOU!

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Q&A

If you have a question, you may type it into the chat box now or press the phone commands to have the operator unmute your line.

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Thank you for joining us!

Please complete our webinar evaluation survey:
http://astho.az1.qualtrics.com/jfe/form/SV_9soj07oft17S14F

Visit ASTHO’s website for additional resources:
http://www.astho.org/Programs/Health-Systems-Transformation/

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