Federal & State Telehealth Policies: The Current Landscape & A Look Ahead

National Telehealth Conference: Transforming Health Care Delivery & Academic Curriculum
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Presented by:
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Center for Connected Health Policy
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 to be discussed at this program.
CENTER FOR CONNECTED HEALTH POLICY

We develop and advance telehealth policy solutions that promote improvements in health and health care systems

• Created with funds from the California HealthCare Foundation in 2008

• Federally designated National Telehealth Policy Resource Center
NATIONAL TELEHEALTH POLICY RESOURCE CENTER
– www.telehealthpolicy.us

• Provides thorough, accurate, and current information on telehealth policy and issues
• Provides telehealth policy tracking, analysis, and technical assistance for twelve regional telehealth resource centers (TRCs)
• Independent, nonpartisan national resource on telehealth policy issues

State Laws and Reimbursement Policies

Select a state to view telehealth-related laws, regulations, and Medicaid programs. You can also view a list of pending laws or do an advanced search.
AGENDA

• Overview of Federal Telehealth Policy
• Overview States’ Telehealth Policy
• What to look forward to in 2014
Federal Policy
FEDERAL AGENCIES/DEPARTMENTS

Health & Human Services
- Center for Medicare & Medicaid Services
- Human Services & Resources Administration
- Food & Drug Administration

Federal Communications Commission
- Healthcare Connect Fund
HEALTH & HUMAN SERVICES

Center for Medicare & Medicaid
- Medicare & Medicaid Programs
- Meaningful Use/EHR

Health Resources & Services Administration
- Improves health access to uninsured, vulnerable
- Office of Rural Health Policy
  • Office for the Advancement of Telehealth

Food & Drug Administration
- Regulates medical devices
- mHealth
HISTORY OF MEDICARE TELEHEALTH POLICY

Balanced Budget Act 1997
- Medicare beneficiaries in rural HPSAs may receive care via telehealth
- Practitioner required to be with patient during consult
- Consulting and referring physicians shared fee (75/25 respectively)

Benefits Improvement & Protection Act 2000
- Now included non-MSA sites
- Eliminated fee-sharing
- Expanded services

Medicare Improvements for Patients & Providers Act 2008
- Expanded list of types of facilities that may act as an originating site
CMS - MEDICARE

- Social Security Act 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
### Allowable Services/Providers/Sites in Medicare

<table>
<thead>
<tr>
<th>Consultations, ED or initial inpatient</th>
<th>Follow-up inpatient in hospitals or SNFs</th>
<th>Subsequent hospital care services</th>
<th>Subsequent nursing facility services</th>
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<td>Individual/group:</td>
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<td>- kidney disease education</td>
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<td>- diabetes self-management</td>
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<td>training services</td>
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<td>- medical nutrition therapy</td>
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<td>Mental health services</td>
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<td>ESRD-related services</td>
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<td>Smoking cessation</td>
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<td>Neurobehavioral status exam</td>
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<td><strong>Physicians</strong></td>
<td><strong>Nurse Practitioners</strong></td>
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<td><strong>Nurse Midwives</strong></td>
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<td><strong>Physician/Practitioner Offices</strong></td>
<td><strong>Hospitals</strong></td>
<td><strong>Critical Access Hospitals</strong></td>
<td><strong>Rural Health Clinics</strong></td>
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<td><strong>FQHCs</strong></td>
<td><strong>Hospital or CAH-based</strong></td>
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<td>Telehealth consultations, ED or initial patient</td>
<td>G0425-G0427</td>
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<td>Follow-up inpatient telehealth consultations furnished to beneficiaries</td>
<td>G0406-G0408</td>
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<td>in hospitals or SNFs</td>
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<td>Office or other outpatient visits</td>
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<td>99201-99215</td>
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<td>Subsequent hospital care services, limit of 1 telehealth visit every</td>
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<td>99231-99233</td>
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<td>3 days</td>
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<td>Subsequent nursing facility care services, limit of 1 telehealth visit</td>
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<td>99307-99310</td>
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<td>every 30 days</td>
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<td>Individual &amp; group kidney disease education services</td>
<td>G0420-G0421</td>
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<td>Individual &amp; group diabetes self-management training services</td>
<td>G0108-G0109</td>
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<td>(minimum of 1 hour in-person instruction furnished in the initial year</td>
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<td>training period for injection training)</td>
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<td>Individual and group health and behavior assessment &amp; intervention</td>
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<td>96150-96154</td>
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<td>Individual psychotherapy</td>
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<td>90832-09834,</td>
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<td>90836-90838</td>
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<td>Psychiatric diagnostic interview examination</td>
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<td>90791-90792</td>
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<td>End-Stage Renal Disease-related services included in the monthly</td>
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<td>90951, 90952,</td>
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<td>capitation payment</td>
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<td>09054, 90955,</td>
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<td>09057, 09058,</td>
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<td>90960, 90961</td>
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<td>Individual and group medical nutrition therapy</td>
<td>G0270</td>
<td>97802-97804</td>
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<td>SERVICE</td>
<td>HCPCS CODE</td>
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<td>Neurobehavioral status examination</td>
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<td>96116</td>
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<td>Smoking cessation services</td>
<td>G0436, G0437</td>
<td>99406, 99407</td>
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<td>Alcohol and/or substance abuse structured assessment &amp; intervention services</td>
<td>G0396-G0397</td>
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<tr>
<td>Annual alcohol misuse screening, 15 minutes</td>
<td>G0442</td>
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<td>Brief face-to-face behavioral counseling for alcohol misuse, 15 minutes</td>
<td>G0443</td>
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<tr>
<td>Annual depression screening, 15 minutes</td>
<td>G0444</td>
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<td>High-intensity behavioral counseling to prevent sexually transmitted infection; face-to-face, individual, includes: education, skills training and guidance on how to change sexual behavior; performed semi-annually, 30 minutes</td>
<td>G0445</td>
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<td>Annual, face-to-face intensive behavioral therapy for cardiovascular disease, individual, 15 minutes</td>
<td>G0446</td>
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<td>Face-to-face behavioral counseling for obesity, 15 minutes</td>
<td>G0447</td>
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<td>Transitional Care Management Services</td>
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<td>99495, 99496</td>
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REIMBURSABLE SERVICES IN MEDICARE (cont):
POLICY AREAS

• HIPAA
• Stark/Anti-Trust Laws
  • Mindful of relationships & contracts
  • Privileging & Credentialing
• Federal Regulations
  • 42 CFR 482.12(a); 42 CFR 485.616(c);
    42 CFR 482.22(a) & (c); 42 CFR
    485.641(b)
• The Joint Commission
  • LD.04.03.09; MS.13.01.01
OFFICE OF RURAL HEALTH POLICY (ORHP)
Coordinates activities related to rural health care & analyzes possible effects of policy on residents of rural communities. Four Divisions within ORHP.

Border Health – coordinates HRSA’s investments along US-Mexico border

Community Based – programs providing direct support to community organizations for health service delivery & creating & sustaining health networks.

Hospital State – supports grants and activities for State Offices of Rural Health & support & technical assistance to small rural hospitals including CAHs

Office for the Advancement of Telehealth – promotes use of telehealth technologies for health care delivery, education & health information services; funding for telehealth grants & resource centers
Telehealth Resource Centers
12 Regional Resource Centers
2 National Centers (Policy & Technology)

National Telehealth Network
Grant program that funds projects that demonstrate the use of telehealth networks to improve healthcare services for medically underserved areas

Licensure Portability
Grant program that provides support to State professional licensing boards to develop & implement state policies that reduce statutory & regulatory barriers to telehealth
Established in 2006, funded by the Office for the Advancement of Telehealth

- Twelve regional centers
- One national technology assessment center & One policy center
- Collectively form a network of telehealth program expertise and experience
- Independently serve a designated region
FEDERAL AGENCIES/DEPARTMENTS

Health & Human Services
- Center for Medicare & Medicaid Services
- Human Services & Resources Administration
- Food & Drug Administration

Federal Communications Commission
- Healthcare Connect Fund
FCC HEALTHCARE CONNECT FUND (HCF)

- Supports broadband connectivity and networks for health care providers (HCP)
- 65% discount with a required 35% HCP contribution
- Non-rural HCPs may participate if they belong to a consortium with a majority of rural HCPs
- HCF annual funding cap is $150 million
- In HCF is $50 million SNF pilot program
MEDICAID PROGRAMS

CMS reimbursement policy for Medicaid:

States may reimburse for telehealth under Medicaid so long as the service satisfies federal requirements of efficiency, economy, and quality of care.
Most states have some form of reimbursement by Medicaid fee-for-service for telehealth delivered services

As of Feb. 2014
STATE MEDICAID POLICY

- Limitation on the type of provider reimbursed
- Limitation of the types of services that are reimbursed
  - Not only types of services offered, but how they’re offered (live video vs. store and forward vs. remote patient monitoring)
- The actual definition contains restrictions
  - Specifies a physician is involved or references a particular code section that defines a “provider” narrowly
PRIVATE PAYERS

• 22 states passed private payer laws (not all laws mandate coverage).
• Most simply say “health care professional” and don’t define what that is.
• How they define telehealth/telemedicine may still be limiting.

As of Feb. 2014
CURRENT STATE TELEHEALTH POLICY

44 states have a definition for “telemedicine”
25 states have a definition for “telehealth”
2 states have no definition for either

46 states reimburse for live video
11 states reimburse for remote patient monitoring
9 states reimburse for store & forward

Most common reimbursements: Consultations, mental health & radiology
Most common providers reimbursed: Physicians & nurses

As of Feb. 2014
<table>
<thead>
<tr>
<th></th>
<th>OHIO</th>
<th>OKLAHOMA</th>
<th>ALASKA</th>
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</thead>
<tbody>
<tr>
<td>Reimbursement (Medicaid)</td>
<td>Live Video for speech therapy services in the Medicaid School Program (Speech-language pathologist only)</td>
<td>Payment provided for consultations, office visits; mental health; pharmacological management via live video</td>
<td>AK Medicaid pays for Live Video, S&amp;F &amp; self-monitoring (home monitoring)</td>
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<tr>
<td>Reimbursement (Private Payer Law)</td>
<td>Reimbursement for services delivered via live video</td>
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<tr>
<td>Distance Requirement</td>
<td>Limited to rural (&lt;50,000) or geographical areas where there is a lack of expertise.</td>
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<tr>
<td>Special Telehealth/Telemedicine License</td>
<td>Telemedicine certificate is issued.</td>
<td>State Board of Osteopathic Examiners has authority to issue telemedicine license</td>
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<tr>
<td>Site/Transmission Fee</td>
<td>Facility fee for originating site</td>
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As of Feb. 2014
OTHER POLICY AREAS

- Licensing
  - Nurse Licensure Compact
    - One license to cover 24 states
- HIPAA/Privacy
  - Some states have their own laws that can be more stringent
- Informed Consent
- Malpractice
  - Insurance & liability
2014 FEDERAL & STATE TELEHEALTH POLICY TRENDS
FEDERAL LANDSCAPE
(As of Feb. 2014)

• Current Federal Bills
  • HR 2001 (Rangel)
  • HR 3077 (Nunes)
  • HR 3303 (Blackburn)
  • HR 3306 (Harper)
  • HR 3507 & HR 3577 (Peters)
  • HR 3750 (Matsui)

• Potential bills on the horizon to address:
  • Medicare restrictions including reimbursement, location & provider definition
  • Licensing
  • Location

• Current Federal Regulations
  • Definition of “rural” in CMS regulations - http://datawarehouse.hrsa.gov/telehealthAdvisor/telehealthEligibility.aspx
Pending Federal Legislation

Medicare/Medicaid
• HR 3077
• HR 3306

Veteran’s Administration
• HR 2001
• HR 3507
• HR 3577

FDA
• HR 3303
## Pending Federal Legislation

### Medicare/Medicaid

#### Changes to services reimbursed & how they are delivered

- **HR 3306**
  - Use of RPM in some programs/pilots
  - Restrictions in Sec. 1834(m) would not apply to certain programs/pilots
  - Added provision of hospice care or home dialysis to reimbursable services

#### Changes to providers reimbursed/impacts to providers

- **HR 3077 & HR 3306**
  - No current bill would expand the types of providers reimbursed
  - Medicare provider will not need to be licensed in the patient state (HR 3077)
  - For liability, services are considered furnished from the provider’s location

#### Changes to site/location

- **HR 3306**
  - Addition of originating sites that do not have to be located in a rural HPSA or MSA
PENDING FEDERAL LEGISLATION - VA

Medicare/Medicaid
- HR 3077
- HR 3306

Veteran’s Administration
- HR 2001
- HR 3507
- HR 3577

Licensing Liability at provider location
TriCare coverage

FDA
- HR 3303
PENDING FEDERAL LEGISLATION - FDA

Medicare/Medicaid
- HR 3077
- HR 3306

Veteran’s Administration
- HR 2001
- HR 3507
- HR 3577

FDA
- HR 3303

FDA oversight over mobile apps
FEDERAL LANDSCAPE

• Federal Trade Commission
  • To prevent business practices that are anticompetitive or deceptive or unfair to consumers; to enhance informed consumer choice and public understanding of the competitive process; and to accomplish this without unduly burdening legitimate business activity.
  • 2-day workshop
  • mHealth
  • Privacy
STATE LEGISLATIVE LANDSCAPE
(As of Feb. 2014)

- 153 Active bills
  - 44 Reimbursement – Private Payer or Medicaid
  - 23 Creation of pilots, studies, councils or workgroups
  - 10 Mental Health services
  - 14 RPM/Home Monitoring/Chronic Disease Management
  - 8 Licensing
  - 3 Patient-provider relationship/e-prescribing
EXAMPLES OF CURRENT STATE LEGISLATION.

- California – **AB 1771** – Payment to physicians for telephone & electronic patient management (email)
- Rhode Island – **HB 7137** – Clarifies licensing rules for out of state providers to practice in RI
- New Hampshire – **HB 1158** – Requires health plans to offer financial incentives to covered persons to obtain care for specific health services from a less expensive health care provider, including a provider using services provided via telemedicine
OHIO LEGISLATION.

- **SB 118** – Private payer & Medicaid telehealth coverage bill
- **SB 166** – Indicates that OH Medicaid program may cover telemedicine to the extent and in the manner authorized by rules adopted under 5164.02 of the revised code
- **HB 317** - Creates the Joint Medicaid Oversight Committee
  - Among duties, is tasked with examining payment models for group appointments, telehealth services and innovative care delivery systems
- **HB 398** – Creates the Veterans and Medicaid Eligibility Study Committee
  - Will study establishing payment models for group appointments, telehealth services and innovative care delivery systems
LINKS

- CCHP – telehealthpolicy.us
- Telehealth Resource Centers – telehealthresourcecenters.org
- Health Resources & Services Administration – hrsa.gov
- Center for Medicare & Medicaid Services – cms.gov
- **CMS Telehealth Fact Sheet (Dec. 2012)** -
- Federal Communications Commission – fcc.gov
- Food & Drug Administration – fda.gov
- US Department of Veterans – va.gov
- American Telemedicine Association – americanantelemed.org
- Center for Telehealth and e-Health Law – ctel.org
Thank You

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