April 30, 2020

Seven Things to Consider When Transitioning to Telemedicine During COVID-19

Batya Swift Yasgur, MA, LSW

The use of telemedicine has been surging since the onset of coronavirus disease 2019 (COVID-19), with millions of Americans now using this medium for connecting with their clinicians, according to a report that appeared in *Kaiser Health News.*[1] The increase in use of this modality can be attributed to fears of contracting COVID-19, social distancing requirements, and shift in payment rules. For example, government and private insurers are now requiring telemedicine to be covered by insurers at the same rate as an in-person visit would be. Moreover, Medicare expanded reimbursement for telemedicine, which was once allowed only for people living in remote areas.[2]

The dramatic and rapid expansion in telemedicine has left many clinicians scrambling to institute this new means of conducting medicine; and even more seasoned providers who had been using telemedicine in their practice must learn to move telemedicine from the periphery to front and center of their practice.

To provide insight into the tasks required to transition to a primarily telemedicine-based practice, we turned to Michael J Sacopulos, JD, CEO of Medical Risk Institute (MRI), a firm that provides "proactive counsel" to the healthcare community to identify where liability risks originate and to reduce or remove those risks. He is also General Counsel to Medical Justice Services. Mr Sacopulos is the coauthor of Tweets, Likes, and Liabilities: Online and Electronic Risks to the Healthcare Professional (Phoenix, MD; Greenbranch Publishing: 2018).

"Telemedicine is not new," according to Mr Sacopulos, "but what COVID-19 has done is accelerate a trend that was already there, making the world of telehealth explode. So it is important to address both present and future challenges that may arise as you make the transition."

1. Decide if you plan to continue using telemedicine once the COVID-19 crisis is behind us.

You need to decide if you are going to do telemedicine just during this time of crisis or whether you want to have a permanent or long-term telemedicine practice. This is important for a number of reasons. One is that many of the requirements have been loosened because of the emergency nature of the current situation. For example, the Office of Civil Rights in the Department of Health and Human Services (HHS) has indicated that they will use their discretion in not pursuing what would otherwise be violations of the Health Insurance Portability and Accountability Act (HIPAA).[3] Clinicians engaging in telemedicine in good faith to promote social distancing and good patient care can use less secured, non-encrypted forms of transmission such as FaceTime, WhatsApp, or Skype if no other platform is available. However, you should notify patients that these third-party applications potentially introduce privacy risks, and enable all available encryption and privacy modes if you are using these applications. It should also be noted that applications such as Facebook Live, Twitch, and TikTok should not be used in the provision of telemedicine.

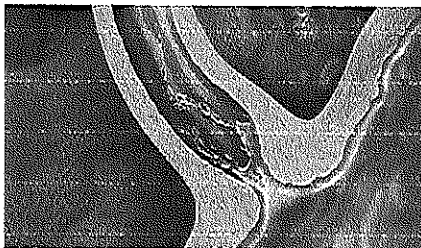This article originally appeared on MPR

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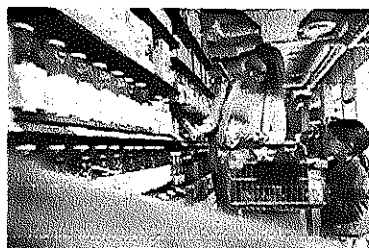COVID19

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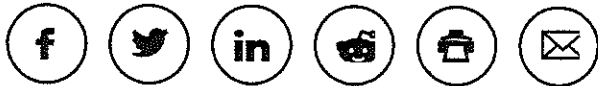
If you are planning to use telemedicine on a longer-term basis, you should set up HIPAA-compliant services and platforms right from the get-go. Fortunately, there are many platforms that meet government requirements. And you should be thoroughly familiar with the HIPAA regulations that relate to telemedicine so there are no unpleasant surprises. The Office of Health and Human Services provides a list of vendors that provide HIPAA-compliant video communications.[3]

It should be noted that, although you may have a consultation with a patient via an unencrypted platform during the COVID-19 crisis with less concern about HIPAA, electronic medical records (EMRs) should be maintained with the same rigor that you would for a patient seeing you in person. This applies not only to you but also to any of your staff (such as a nurse or bookkeeper) who is working from his or her home. (Precautions that providers must take in keeping EMRs secure can be found here.)

2. Address licensing issues.

At present, licensing requirements have also loosened, and clinicians in good standing are allowed to treat patients across state lines; again, in deference to the extenuating circumstances we are facing with COVID-19. But under ordinary circumstances, you can only treat patients who are located in the state or states in which you are licensed. If you develop new relationships with patients in other states, you should consider if you want to continue those relationships, which would necessitate being licensed in those states. The State Federation of Medical Boards provides a list of these state requirements.[4]

3. Understand what type of prior relationship, if any, you need to have with the patient.

Some states are requiring that you have met the patient at least once in person before you can have a telemedicine visit, and some are also requiring at least one in-person consultation before you can prescribe medication. While this may be the case for many types of medication, it is especially the case with opioids and other controlled substances. So it is important for you to ascertain what these requirements are from your state's medical board.

4. Develop and post notices regarding telemedicine policies and consent forms on your website.

Patients should be aware right up front that telemedicine may not be able to offer the same type of service that they would receive at an in-person appointment.

The informed consent forms that you have patients sign prior to their telemedicine appointment are also somewhat different from those that patients sign prior to an in-person visit. The form should specify what patients can and cannot expect during the appointment and follow-up. Although states may vary in their requirements for the contents of telemedicine informed consent documents, the Federation of State Medical Boards provides a great overview in its "Model Policy for the Appropriate Use of Telemedicine Technologies in the Practice of Medicine."[5]

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5. Create a treatment plan.

An essential part of any medical visit is creating a treatment plan for the patient that contains not only a medical strategy, such as what type of medication the patient should take and for how long, but also a larger continuity of care strategy. Components of this should include having in place resources that the patient might need beyond what you can offer, such as emergency services. One consideration might be whether you plan to continue treating the patient following the lifting of social distancing and the resolution of the COVID-19 crisis. Part of the discussion with the patient should include this longer-term question and what referrals you can make if you will not be treating the patient after the public health emergency has ended. Of course, this is especially important if your patient is not located in your state and you will be precluded from seeing him or her when the ordinary licensing rules are reinstated.

6. Appropriately document the care you are giving the patient.

This may sound elementary and unnecessary to bring up, but some clinicians I have worked with have regarded telemedicine patients as requiring a lower level of documentation, compared to their in-person patients. I would like to emphasize that no patient has a "junior" status merely because he or she is being seen via telemedicine. The same type of documentation is required and should be entered into the patient's electronic record. This is important not only for the patient's health but also to protect you legally in the event of any type of malpractice litigation and to ensure continuity of care so that any other provider who treats the patient has access to your chart notes.

7. Talk to your insurance broker.

Make sure your professional liability provider knows that you are seeing patients via telemedicine and also if you are treating patients located in other states. You may then be subject to the liability laws of the state in which the patient is located. For example, in my home state of Indiana, we have a cap on liability, but I am located 10 miles away from the Illinois state line, and in Illinois there is no similar cap. For this reason, malpractice insurance is much more expensive in Illinois than it is in Indiana.
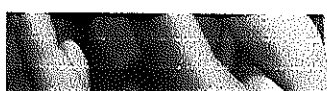
Cyber-hacking is another issue. This has been an ongoing concern and especially now, cyber attacks have increased.[6] For this reason, you need specific cyber-insurance. Different companies have different varieties of cyber-coverage, and most professional liability policies come with a certain amount of cyber-protection in case EMRs are hacked, but are probably not as much or as robust as you might need right now. So I encourage providers to talk to their broker to make sure you are fully covered.

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I should add that telehealth and telemedicine are not synonymous, although these terms are often used interchangeably. Telemedicine refers to the practice of medicine using technology to deliver clinical services at a distance, while telehealth refers more broadly to electronic and telecommunication technologies and services that provide care at a distance but are not necessarily clinical encounters.[7] One of the largest areas of telehealth is apps. Hundreds of apps claim the ability to do everything from perform an EKG to calculate a patient's Glasgow Coma Score. Such apps, and telehealth in general, are less regulated than telemedicine. If you are promoting telehealth apps for patients, be careful, since there is less oversight.

COVID-19 has catapulted telemedicine into a new era. My own opinion is that it is an asset to a medical practice and that most patients and providers enjoy it and find it useful. Looking at telemedicine only in the short-term is myopic. It is important to plan for long-term ways to integrate telemedicine into your practice. Although there may be some extra effort at the outset at a time of national and professional stress, the effort will pay off in the longer term when you have a safe and compliant structure in place for telemedicine going forward.

Telehealth and Telemedicine Resources

These Websites provide a variety of information about the use of telemedicine in clinical practice, including discussion of licensure requirements, HIPAA regulations, coding, and reimbursement.