




Telehealth and Risk Management

The American Association of Nurse Attorneys – 34th Annual Meeting
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 University of Maryland Medical Center
 October 2, 2015



Definitions: Telemedicine and TeleHealth

The American Telemedicine Association (ATA) is the major advocacy group for telemedicine in the United States.

- **Telemedicine** defined as:
“the use of medical information exchanged from one site to another via electronic communications to improve a patient’s clinical health status.”
- **TeleHealth** defined as:
“a **broader definition** of remote healthcare that does not always involve clinical services, ATA uses the terms in the same way one would refer to medicine or health in the common vernacular.”

OR

TeleHealth – The practice of electronically connecting geographically separate healthcare facilities and providers.

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Definitions: TeleHealth from CMS

Telehealth Defined

A two-way, real time interactive communication between a patient and a physician or practitioner at a distant site through telecommunications equipment that includes at a minimum, audio and visual equipment.

Source: Centers for Medicare and Medicaid

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Definitions: TeleHealth from MHCC

Telehealth Defined

- The terms telehealth and telemedicine are used interchangeably.
- As a result, the definition has been expanded and merged in Maryland law.
- The use of communication and information technologies not only for delivering health care services remotely, but also for public health, education, and care coordination.
- Telehealth is considered to be a key element of health information technology (HIT).

Source: Maryland Health Care Commission (October 2014)

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mHealth or Mobile Health

mHealth or Mobile Health is the delivery of healthcare services via mobile communication devices to improve health, healthcare services and health research.



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Remote Patient Monitoring (RPM)

RPM is a subset of telehealth in which electronic devices or devices attached to a kiosk, like shown below, transmit patient health information to health care providers.



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The Evolution of Telehealth

- In existence for over 40 years.
- Amid ongoing challenges and changes within the healthcare industry, telehealth is emerging as an increasingly attractive tool for delivering quality medical services.
- Smartphones, tablets, laptops, and desktop computers allow patients to connect instantly via voice, video, text, or other internet based media.
- This has led to the ability of healthcare providers to interact with patients through electronic communication.

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United States Telehealth Landscape

200 Networks

3,500 sites & 50% of hospitals having telehealth capabilities

By 2017, telehealth will be used by 1.3 million U.S. residents...a sixfold increase since 2012

Source: American Telehealth Assoc.

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Overview of Telemedicine Programs

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TeleHealth at the University of Maryland

A ICU Care Management
Providing clinical support and care remotely by continuously capturing, analyzing & sharing clinical data generated during care delivery

B Remote Patient Consults
Includes collecting and sending patient data for interpretation leading to faster, more timely clinical decisions

C Provider to Provider Video Conferencing
UMMC and community locations for patient case conferences or medical education

D Home-Based or Self-Care
Providing home-based care or self care with technologies that assess health status and chronic disease management

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Tele-Health Services in place at UMMS and Across the State

UM Clinicians are currently providing an array of services

- A Remote Critical Care Management**
 - Service in 11 hospitals
- B Remote Patient Consultations and Diagnostic Data Interpretation**
 - Tele-Stroke, High-risk Prenatal Medicine, Psychiatry, Genetic Counseling, School-based Teleconsultation, etc.
- C Provider Conferencing**
 - UM Greenebaum Cancer Center & Radiation Oncology: tumor boards and patient case review conferences
 - UM Pediatric Department and Psychiatry Department
 - Distance Learning CME Programs by SOM Faculty (e.g. Emergency Medicine, UM Department Grand Rounds)
- D Home Monitoring**
 - GI (Crohn's and Colitis) outpatient self-management

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University of Maryland eCare: Remote ICU Care

- Goal: Right care at the right place at the right time
- Remote Intensivist management provided:
 - 7 pm-7 am weekdays
 - Weekends and holidays
- Team comprised of:
 - Critical Care Nurses
 - Data Coordinators
 - Board Certified Critical Care Physicians
- 24/7 Critical Care Nursing Support

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Video Assessment



Video Assessment performed in the patient's room for:

- Evaluation of new admissions
- On-going patient assessment
- At the request of the clinician

- Microphone and camera "go to sleep" when not in use
- There is no recording or taping capability

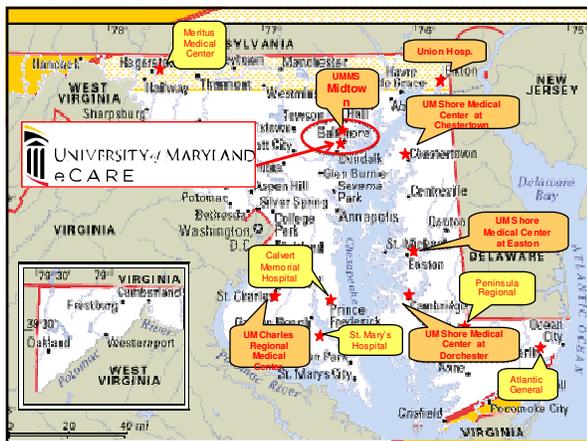
Video Assessment – Provider View



Video Assessment – Patient View



Video Assessment – Inside COR View



UM Tele-Stroke

- Goals: Improve health outcomes and care coordination of stroke patients in the State of Maryland
- UMMC stroke experts provide tele-consultations that include examining the patient, reviewing CT scans and speaking to the patient and family. The best course of action is determined and a treatment recommendation is then made
- UM Tele-Stroke program implemented December 2014 at Carroll Hospital Center
 - 127 consults performed since 12/14 go-live; 50% over video.
 - Contract between CHC and UM Department of Neurology for professional services and UMMS for management and eCare support



Remote Patient Consultation Programs

- High Risk Perinatal Fetal Medicine
- Greenebaum Cancer Center
 - Genetic Counseling – Carroll Hospital Center, Upper Chesapeake Health System, and UM Shore Medical Center at Easton
 - Verizon Wireless Grant – Deployed 15 iPads to community oncology practices for ease of access to UMGCC specialists
- UM Department of Psychiatry
 - School-based tele-psychiatry – several counties in Maryland
 - B-HIPP Psychiatry – 2 sites (Crisfield and Cambridge, MD + 1 future site)
 - Employee Assistance Program (EAP) – In Planning
 - Problem Gambling – Expansion
 - MPRC and Waterloo Crossing Offices

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Remote Patient Consultation Programs

- TeleStroke at BWMC connects ER physicians
- Tele-Advanced Liver Disease Program - Evaluation of patients for double listing and meet with physician team.
- UM Department of Pediatrics
 - School-based care - Howard County Public School and Health Department
 - ER-to-ER consultation - UM Shore Health – (In Planning)
- Tele-IBD Program – Dr. Raymond Cross – Follow-up visits with patients with CareFirst BCBS insurance (design).
- Tele-LVAD Program – Meet with patients to review LVAD issues.
- Tele-Psych – Evaluation of ED patients at UM Shore Health.

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Growing Importance of Telemedicine in HealthCare Delivery and Management

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Virtual Care Forecasting

Virtual Visits Will Become a Common and Central Component of Patient Care

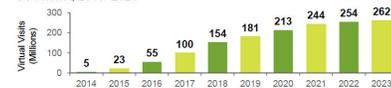
Today

70% of patients are comfortable communicating with physicians via texting, email or video instead of in person. (Cisco study 2013)

Tomorrow

"Within 10 years, face-to-face visits will be the exception rather than the rule."
—Eric Dishman, Intel Fellow
Sg2 forecast: By 2023, 17% of all E&M visits will occur virtually.

Sg2 Forecast, Virtual E&M Visit Volumes US Market, 2013-2023



Note: Volume includes electronic and synchronous. E&M = evaluation and management. Source: Impact of Change v13.2, Phorix LLC, 2019. Last updated: 2019.

Telehealth as a Tool

Telehealth Is a Tool Uniquely Suited to Address Challenges of Access, Quality and Efficiency



Access

Provide access to right provider, in the right setting, at the right time.

Quality

Improve health through better continuity across the continuum.

Efficiency

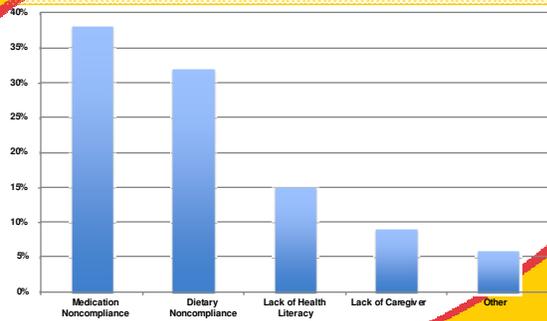
Deliver care and information that is more cost, time and resource effective.

Readmission Overview

- 2012 - CMS begins penalizing half of the nation's 5,000 hospital for high readmissions:
 - heart failure, myocardial infarction and pneumonia.
- Penalty results - Withholding of up to 3% of all CMS reimbursements to a hospital with above average readmission rate for congestive heart failure, myocardial infarction, or pneumonia.
- Avg. penalty for 40 excess readmissions - \$1 million.

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Drivers of Readmissions



Patricia A Hines, K. Y. (n.d.). CME Series: "Preventing Heart Failure" (April 1, 2012)

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Why start a telehealth program?

Telehealth Benefits

Improved Access

- Takes the service to the patient
- Extends the reach for health care service providers

Cost Efficient

- Better mgmt. of chronic disease
- Shared staffing
- Reduced travel times
- Shorter hospital LOS

Improved Quality

- Telehealth is as good as in person
- In mental health & ICU care, it delivers a superior product

Patient Demand

- Consumers want telehealth
- Reduced travel time and related stress
- Documented patient satisfaction and support

Source: AmericanTelehealth Assoc.

Benefits of Telehealth

- Decreased LOS (Length of Stay)
 - ICU Patients, ED Visits, Observation Cases
- Decreased mortality in ICU patients
- Improved staff interaction
 - Improvement in teamwork and communication
- Improved quality of care
 - Reduction in unnecessary transportation to hospitals.
 - Patients are able to recover close to home with family support nearby.
- Patient and provider satisfaction
 - Technology has been shown to improved patient and provider overall interactions.
 - Patients are more involved in their own care.
 - Healthcare is moving in "Patient Centered" focus.

Triple Aim

Telehealth and Telemedicine contributes to the triple aim for both patients and providers:

1. Improve Care
 - Quality of life
 - Satisfied with care
2. Improve Healthcare
 - Medication Adherence
 - Lower diabetes
 - Improve blood pressure
 - Lower mortality
3. Lower costs
 - Decrease readmission
 - Shift from inpatient to outpatient services

Modalities in Delivering Tele-Health

Monitoring: Tele-ICU

Face-to-face consultation and consultation on-demand: tele-stroke, tele-psychiatry, other tele-specialties, and ancillary services

Store and forward: radiology, imaging, dermatology, follow-up visits, or minor acuity visits

Asynchronous care: e-visits, internet communication, and social media use

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Tele-ICU in the ED

Advantages in ED:

1. Maintain an active resuscitation
2. Ventilator management
3. Off load the ED physician during periods of high activity
4. Potentially improve outcomes of ICU 'border' patients (recent literature suggests increase mortality of ED borders that may be time dependent)

Challenges:

1. Nurse staffing in the ED for borders

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Role of HealthCare Provider

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Telehealth Champions

When starting a telehealth program, either clinical or education, it is very important to find those champions:

- Physician Champion – Will help build and grow the telemedicine programs/outreach.
- Non-physician clinical champion – Typically a Nurse Manager.
- Administrative Champion – Will help operationalize the program, create the business plan, and seek out the potential for reimbursement via parity laws or contracts.

Building a sustainable Telehealth Program

Create a Telehealth Executive Committee to meet monthly with leadership from all areas, departments, and branches of the organization: Executive, Clinical/Physician, Administrators, and Technology to discuss current programs, services, and new projects that should be vetted through this committee.

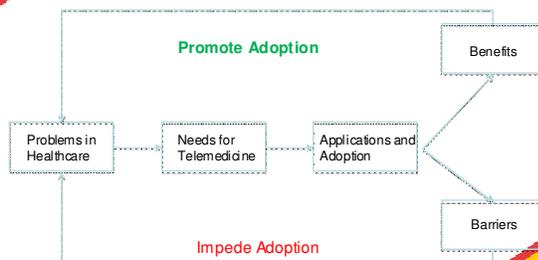
Creating a cost-effective sustainable telehealth strategy requires providers and payers to understand the market and the engagement between providers, patients, and communities using a four step approach.

Building a sustainable Telehealth Program

Shaping your Telehealth Strategy Steps:

- 1.) Integrate appropriate services across channels to build multi-faceted relationships with patients, referring physicians and health system partners.
- 2.) Develop a sustainable telemedicine strategy by defining goals and intent which requires conducting a needs assessment.
- 3.) Create a detailed comprehensive telehealth program design that incorporates everything from governance to human resources and revenue model to technology.
- 4.) Deployment and improvement of the program which includes testing, monitoring and making improvements based on user and provider feedback.

Telehealth Adoption in Healthcare



Barriers of Telehealth

- Organizational challenges
 - Requires significant changes to organizational culture that are challenges to implementation.
 - Resistance to change/failure to get buy-in from personnel.
 - i.e. Academic Medical Centers (AMC) have research, clinic, and their regular jobs to handle. Now they are being asked to participate in more requirements with telehealth.
 - Physicians and nurses view telehealth and telemedicine services as a threat to autonomy in practice.
 - Significant lack of understanding of the technology use.
 - Doubt the efficacy of the technology to provide effective “hands on” approach to patient’s care.
 - Lack of specialized training in telehealth delivery from nursing /medical schools to the delivery of this care to the patient.

Where do nurses fit into Telemedicine?

- Your program will fail if your nurses are not incorporated into the program from the beginning to the end and beyond.
- Nurses input and feedback is vital to the program success.
- Nurses will likely be the most frequent users of the solution (more than physicians) and it has to be easy to use with little to no training requirements.
- Marketing and communication plans need to include all shifts and part-time staff.

Influence of Telemedicine on State Practice Acts

State Telemedicine Gaps Analysis

Health care providers are challenged by licensure portability and practice standards when considering telemedicine adoption.

In September 2014, the American Telemedicine Association captured this complex policy landscape in a survey of 50 states.

The results indicate a mix of strides and stagnation in state-based policy.

The results: 22 states + D.C. - Composite Score "A" (Maryland)
27 states - Composite Score "B"
1 state - Composite Score "C" (Alaska)

Maryland Telemedicine Legislation

- The state of Maryland has promoted the practice of telemedicine.
- Telemedicine is an important strategy for Maryland to embrace for its cost reduction benefits and to improve access and delivery of health care services.
- Maryland has enacted both statutory and regulatory controls governing telemedicine.
- Currently, the practice of telemedicine is limited to physicians physically located in Maryland and treating patients who are also located in Maryland.

Source: (COMAR 10.32.05.03)

Maryland Telemedicine Legislation

Senate Bill 781 (2012), Health Insurance – Coverage For Services Delivered Through Telemedicine

Requires that health insurers and managed care organizations provide coverage for health care services delivered using telehealth technology; coverage cannot be denied because services were provided through telehealth rather than in-person.

Senate Bill 798 (2013), Hospitals – Credentialing and Privileging Process – Telemedicine

Enables hospitals to rely on certain credentialing and privileging decisions made by a distant site hospital or telehealth entity.

Maryland Telemedicine Legislation

Senate Bill 496 (2013), Maryland Medical Assistance Program – Telemedicine

Requires Maryland Medicaid to provide reimbursement for two pilot programs.

Senate Bill 776 (2013), Telemedicine Task Force – Maryland Health Care Commission (MHCC)

Requires MHCC to reconvene the Telemedicine Task Force.

Senate Bill 198, Maryland Medical Assistance Program – Telemedicine

Expanded Maryland Medicaid telehealth reimbursement under certain circumstances.

Know Your Role



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State-Specific Rules for Telehealth—Standard of Care & In-Person Exams

MD Regs. 10.32.05.05—

A. A physician shall perform a patient evaluation adequate to establish diagnoses and identify underlying conditions or contraindications to recommended treatment options before providing treatment or prescribing medication.

B. A Maryland-licensed physician may rely on a patient evaluation performed by another Maryland-licensed physician if one physician is providing coverage for the other physician. [CONSULTING OPTION]

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State-Specific Rules for Telehealth—Standard of Care & In-Person Exams (cont.)

MD Regs. 10.32.05.05—

C. If a physician-patient relationship does not include prior in-person, face-to-face interaction with a patient, the physician shall incorporate real-time auditory communications or real-time visual and auditory communications to allow a free exchange of information between the patient and the physician performing the patient evaluation.

[NO STORE AND FORWARD WITHOUT PRIOR RELATIONSHIP]

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State-Specific Rules for Telehealth—Standard of Care & In-Person Exams (cont.)

FSMB & AMA policy statements support same standard of care between telemed & in-person

"These guidelines support a consistent standard of care and scope of practice notwithstanding the delivery tool or business method in enabling Physician-to-Patient communications. a physician using telemedicine technologies in the provision of medical services to a patient (whether existing or new) must take appropriate steps to establish the physician-patient relationship and conduct all appropriate evaluations and history of the patient consistent with traditional standards of care for the particular patient presentation...some situations and patient presentations are appropriate for the utilization of telemedicine technologies as a component of, or in lieu of, in-person provision of medical care, while others are not." FSMB Model Policy for Telemedicine (2014)

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Tips

- Know your organization's role and include appropriate disclosures and disclaimers
- Verification and authentication of patient location and identity (licensure based on patient location)
- Disclosure and validation of physician's identity and credentials
- Use appropriate technology
- Obtain appropriate consents to provide care (ability to "reject" or "best direct" patients may be limited by technology & business model)
- Make appropriate provisions for follow-up care
- Arrange, as necessary, for referrals to emergency or other third party care

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Reimbursement Coverage for Telehealth

• Medicare

- Limited to (a) type of service and provider; (b) location of patient and (c) delivery method
- Some CMMI and ACO programs are exceptions
- Professional Service vs. Facility Service
- Appropriate MAC for claim filings
- New Chronic Care Management option

• Medicaid—State specific coverage

- **Private Payor**—Parity legislation/managed care interest

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Reimbursement Coverage for Telehealth (cont.)

Maryland: "telemedicine" means, as it relates to the delivery of health care services, the use of interactive audio, video, or other telecommunications or electronic technology by a licensed health care provider to deliver a health care service within the scope of practice of the health care provider at a site other than the site at which the patient is located...does not include: (i) an audio-only telephone conversation between a health care provider and a patient; (ii) an electronic mail message between a health care provider and a patient; or (iii) a facsimile transmission between a health care provider and a patient." MD Insurance Code Annotated Sec. §15-139.

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ATA – State by State Legislation Matrix

2015 ATA State Legislation Matrix

<http://www.americatelemed.org/docs/default-source/policy/2015-ata-state-legislation-matrix.pdf?sfvrsn=4>

State	Legislated Parity for Private Coverage	Legislated Medicaid Coverage (primarily Interactive video)	Other Legislation Affecting Telemedicine Access or Coverage	Notes
Delaware	✓		✓	HB 69 - Private insurance parity, amends practice standards for physicians and scope of practice for PAs, respiratory care practitioners, genetic counselors, podiatry, chiropractors, dentistry, NPs, RNs, OTs, optometry, pharmacy, mental health counselors, marriage and family therapists, psychologists, dietetic and nutrition therapy, and LCSWs (STATUS: SIGNED INTO LAW 7/7/15)
Maryland	✓	✓	Proposed	HB 1026 and SB 318 - Allow reimbursement to psychiatric nurse practitioners for telemental health under Medicaid; SB 252 - FQHC Compact
Pennsylvania	Proposed			HB 706 - Private insurance coverage of telehealth
New Jersey	Proposed	Proposed	Proposed	S. 2729 and A. 4233 - authorizes telemedicine under scope of practice, creates reciprocal license for out-of-state providers, requires parity for Medicaid, MCOs, and state employee health plans; A. 3675 and S. 2338 - parity for managed care plans and state employee health plans (STATUS: NOT RECOMMENDED FOR ENACTMENT); A. 3674 and S. 2337 - parity for Medicaid FFS and managed care; S. 3204 and AB. 2161 - Medicaid coverage and reimbursement of telebehavioral health in-home. (STATUS: CARRYOVER TO 2015 SESSION)

Legal Risks in Telemedicine And How to Avoid Them

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Telemedicine Risks

While wide-spread assumptions continue that telemedicine may pose new malpractice risks, these risks have yet to materialize.

In spite of the increasing trend in telemedicine, there is no apparent indication of a rise in telemedicine malpractice cases.

Telemedicine Risks

The Existence of a Physician/Patient Relationship

- Defined as an exchange of individual, patient-specific information.
- Three types recognized in telemedicine:
 - 1) **Consultative** for the sole purpose of offering an expert opinion;
 - 2) **Interpretive** for official readings of images, tracings, or specimens through a telemedicine link; and
 - 3) **Direct Patient Care** involving physical presence.
- Although legal authority on the formation of the relationship in telemedicine is still absent in Maryland, there is the likelihood that a court could find an implicit relationship.
- Once the relationship is established, a plaintiff could make a case based on duty, applicable standard of care, violation of the standard of care, and that the violation caused the alleged harm.

Telemedicine Risks

Privacy, Security, and Patient Confidentiality

- Same obligation of responsibility as face-to-face care...must abide by the rules of HIPAA.
- Verify the security of the telemedicine vendor's systems and operations.
- Avoid unencrypted communication platforms that do not protect against breaches.

Telemedicine Risks

Credentialing

- Health care providers must be legally permitted to provide services to the receiving hospital's patients.

Telemedicine Risks

Informed Consent

- Patients must be aware of and consent to the potential benefits and risks associated with telemedicine...includes delays, equipment failure, and security breaches.
- Should be discussed before signing a consent form.
- Proof of informed consent should be documented in the patient's record.

Telemedicine Risks

Continuity of Care

- Documentation of telemedicine encounters must be included in the ongoing medical record of the patient.
- This ensures an accurate and complete patient history that can be referenced by subsequent providers.

Telemedicine Risks

Reliability of the Technology

- Technology failure during a critical moment in a patient encounter may result in the exchange of incorrect information.
- The recommendation is to use a reliable vendor.
- Legal advisors can endorse protocols for accuracy of information transfer.

Telemedicine Risks

Appropriate Clinical Context

- Telemedicine is effective in acute primary care and with chronic conditions.
- It does not replace the role of the physician in attendance for escalating medical conditions.

Telemedicine Risks

Telephone Advice

- The oldest form of telemedicine.
- A system must be in place for the triage of phone calls by a skilled clinical person who can document all clinically relevant information.
- Two or more phone calls for the same condition within a finite period should prompt face-to-face interaction.
- When a provider is not available by phone, an alternative contact number must be provided for patients who need immediate assistance.

Telemedicine Risks

Health Care Provider Education

- Education should focus on the skills necessary to conduct telemedicine services smoothly and efficiently.
- At a minimum, training should include the following competencies:
 - 1) Communication skills (content, organization, & etiquette);
 - 2) Understanding of the scope of services provided;
 - 3) Familiarity with the technology system;
 - 4) Knowledge of operational protocols and procedures; and
 - 5) Ability to respond to equipment malfunctions and manage unexpected occurrences.

Telemedicine Risks

Text Messaging, Email, and Patient Photography

- Text messaging of PHI is inherently insecure and not in compliance with HIPAA and The Joint Commission. If used, messages must be retained for the legally required period of time.
- Email communication with patients should be retained with the medical record and does not replace the need for a face-face-encounter.
- Patient photography related to medical care requires consent (usually done in the registration process) and is considered part of the medical consent. Photographs used for professional purposes (conferences, articles, posters, etc.) require written consent from the patient or surrogate.

NOTE: If prosecuted for an unsecure message transfer, the provider will be fined up to **\$50,000** per incident.

Summary/Conclusions

Summary

- Once you decide to implement a Telehealth program, you have to commit to it.
- After you commit, you have to obtain commitment from other dependent resources to ensure program success and user adoption.
- If end users sense a lack of commitment to the solution, they will not buy-in.

Conclusion

My New Telehealth Project



"This is a major project of utmost importance, but it has no budget, no guidelines, no support staff, and it's due in 15 minutes. At last, here's your chance to really impress everyone!"

Copyright 2006 by Randy Glasbergen
www.glasbergen.com

Conclusion

- You need to identify an emergent leader to oversee and advocate for the program.
- An emergent leader needs to inspire and motivate end users to see the desired outcome for patient care and work collectively to achieve.
- Must have the qualities and characteristics to influence and affect organizational / culture change.

Conclusion

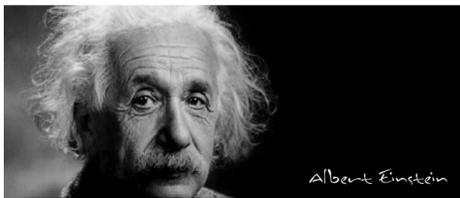
- Partner with marketing department to communicate program plans and benefits.
- Communicate to all areas and levels of staff throughout the organization and externally.
- Use social media and creative campaigns to get the word out ie. contests, giveaways, etc.

Do not be afraid of the unknown!!!



- Do not fear the “Boogie Man” aka HIPAA.
- Perform the appropriate due diligence to move forward with your program in confidence.
- Do not be afraid to make mistakes and learn as you go.

“We cannot solve our own problems if we use the same thinking we used when we created them”



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