Telehealth: A Game-Changer for Health Care — Are Laws Keeping Pace?

August 20, 2015
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Telehealth: A Game-Changer for Health Care — Are Laws Keeping Pace?

August 20, 2015
Moderator

Kim Weidenaar, J.D., Deputy Director, Network for Public Health Law – Western Region

- J.D., Sandra Day O’Conner College of Law at Arizona State University
- Research interests/areas of expertise:
  - Emergency legal preparedness
  - Land use planning for public health
  - Science, technology, and the law

Public Health Law Series:  Telehealth: A Game-Changer for Health Care — Are Laws Keeping Pace?
Presenter Introduction

Steve North, M.D., M.P.H., Medical Director and Founder, Center for Rural Health Innovation, and Medical Director for Outpatient Telehealth for the Mission Health Center for Telehealth

- M.D., Chapel Hill School of Medicine at the University of North Carolina
- M.P.H., University of Rochester

- Research interests/areas of expertise:
  - Telemedicine
  - Rural health
  - Adolescent medicine
Presenter Introduction

Brittney Bauerly, J.D., Staff Attorney, Network for Public Health Law — Northern Region

- J.D., University of Minnesota Law School
- Research interests/areas of expertise:
  - Rural health
  - Mental health
  - Video Directly Observed Therapy

Public Health Law Series: Telehealth: A Game-Changer for Health Care — Are Laws Keeping Pace?
Presenter Introduction

Kelly Thompson, J.D., Law and Policy Program Manager — National Nursing Centers Consortium

- J.D., Beasley School of Law at Temple University
- Research interest/area of expertise:
  - Intersections of criminal justice issues with public health outcomes
  - Telehealth
The Growth of Telehealth:
A clinician’s perspective

Steve North, MD, MPH
Mission Center for Telehealth/Center for Rural Health Innovation
Traditional Telemedicine

• Currently well regulated at a state level
• Challenges exist when trying to follow rapidly changing state policies
• Hospital credentialing issues arise
Licensure Issues

• Very simple on the surface
  • Need to be licensed in the state where the patient is currently located.

• Source of significant confusion and debate

• 10 states have special telemedicine licenses
FSMB Interstate Licensure Compact

- Sharing of information in licensure process
- Must be licensed where patient is located
- Specific criteria of who will be eligible
- Each state retains ultimate control of the license
What is a School-Based Health Center?

The Intersection of Health and Education

Our mission is to promote the health and academic success of children and youth by increasing access to school-based health care and support services.
Common Features of SBHCs

- Work cooperatively to become an integral part of the school
- Comprehensive services: physical and behavioral health
- Multidisciplinary Team
- Advisory board consisting of community, parents, youth and family organizations
SBHCs Health Outcomes

- Higher quality adolescent care
- Improved adolescent mental health access
- Decreased use of urgent and emergency care
- Increase in risk assessments and health care maintenance
- Reduction in Medicaid expenditures and cost of hospitalizations
- Decrease in risk behaviors and increase in health promoting behaviors
SBHC Academic Outcomes

• Decrease tardiness and absenteeism
• Improved attendance
• Increased GPA
• Decrease drop-out rate
• Increased school engagement
• Increased seat time
“I think he has pink eye”.....

HIPAA/FERPA

- Medical records maintained by SBHC are subject to HIPAA
- Medical records maintained by the school nurse are subject to FERPA
- A release from the parent is needed for sharing of health information.
HIPAA and FERPA

“Her whole medical chart is none of a nosey teacher’s business”
– 8th grade parent
Virtual Visits: The (Next) Big Things

- Fee for service telemedicine
- Rapid investment and expansion
- Definition of doctor-patient relationship
  - key Medical Board concern
- Continuity of care
  - key PROVIDER concern
- NEED INTEGRATION w/PCMH
Barriers to Telemedicine Implementation

- Stark laws
- Reimbursement policies
  - Patient location
  - Type of service
  - FQHC/RHC
- Finding partners
  - Provider capacity
- Local politics
Ryan Haight Act of 2008

• Recent concern coming from *US vs. Zadeh* and an opinion piece.

• **Center for Connected Health Policy**

  The Act provides a definition for the “practice of telemedicine,” which would allow prescribing to take place even if there was no physical encounter. The practice of telemedicine is defined as the practice of medicine by a practitioner who is at a location remote from the patient and is communicating with the patient or health professional treating the patient via a telecommunication system so long as the patient “is being treated by, and physically located in, a hospital or clinic” or “while the patient is being treated by, and in the physical presence of, a practitioner.”
Patient generated data
Contact information

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Using Telemedicine to Aid in Medication Monitoring: *Video Directly Observed Therapy for Tuberculosis*

Brittney Crock Bauerly, J.D., Staff Attorney
Network for Public Health Law—Northern Region

August 20, 2015
The Network for Public Health Law: Public Health Legal Support — National Scope with Local Expertise

» Five Regional Offices provide local and state support
Northern Region

» Serves 8 states

Areas of national expertise:
» Rural public health
» Mental health and wellness
Telemedicine

- Today’s focus: Video Directly Observed Therapy (VDOT) for Tuberculosis
Tuberculosis (TB)

- TB is a disease caused by a bacterium called *Mycobacterium tuberculosis*.

- The bacteria usually attack the lungs, but TB bacteria can attack any part of the body such as the kidney, spine, and brain.

- If not treated properly, TB can be fatal.

- One-third of the world’s population is infected with the bacteria that causes TB, though only 10% of those infected will develop the active form of the disease during their lifetime.

# Number of Active TB Cases (2013)

<table>
<thead>
<tr>
<th>Location</th>
<th>Cases</th>
<th>Case Rate per 100,000</th>
</tr>
</thead>
<tbody>
<tr>
<td>Worldwide</td>
<td>9,000,000</td>
<td>--</td>
</tr>
<tr>
<td>United States</td>
<td>9,582</td>
<td>3.0</td>
</tr>
<tr>
<td>California</td>
<td>2,171</td>
<td>5.7</td>
</tr>
<tr>
<td>Texas</td>
<td>1,222</td>
<td>4.6</td>
</tr>
<tr>
<td>New York</td>
<td>872</td>
<td>4.4</td>
</tr>
<tr>
<td>Florida</td>
<td>652</td>
<td>3.3</td>
</tr>
</tbody>
</table>

Devastating Human Cost

- Of those treated with drug-resistant TB:
  - 9% fatality rate
  - 73% hospitalized
  - 37% require home isolation
  - 27% stop working during treatment
  - Severe side effects

Cost of Treatment

- The average cost of treating a TB patient increases with greater resistance.

- Direct costs average from $17,000 to treat drug-susceptible TB to $430,000 to treat the most drug-resistant form of the disease (XDR-TB).

- When including productivity losses (e.g., lost income) experienced by patients while undergoing treatment, costs are even higher.

Directly Observed Therapy (DOT)

- Global standard of care.
- Method in which a healthcare worker or other designated individual watches the patient swallow every dose of the prescribed medication.
- Helps patients adhere to their treatment regimens.
Challenges of Traditional DOT

- Time-consuming
- Costly
- Especially difficult to deliver in rural communities
- Inconvenient for patients
Video Directly Observed Therapy

- Health care workers observe patients taking prescribed medication remotely via a webcam, videophone or smartphone
- Sometimes known as video-DOT, VDOT, VOT or miDOT
VDOT Benefits

- Increased privacy and autonomy for patients
- Reduced staff travel time and expense
- Increased access to observed treatment
- Reasonable alternative when TB control program is understaffed
- Patients and providers have reported satisfaction with use of the technology
VDOT Challenges

• Technology requirements/barriers
• Technology failures
• Only acceptable to use among select patients -- selection/exclusion criteria must be carefully considered
• Patient failure to return equipment
• Delays in replacing equipment due to budget constraints
Examples of State Guidances

California


Kentucky


Washington

Harris County’s VDOT Program

Key Components:

• Patients record videos using smartphone application
• Videos transmitted from smartphone using HIPAA-compliant data encryption, then automatically deleted from the phone
• Videos stored in HIPAA-compliant cloud servers
• Clinicians review videos for compliance using secured web portal, within access controlled facility
• Preliminary analysis: high patient satisfaction; routine use of VDOT may be both cost-effective and efficacious

VDOT Program: https://www.youtube.com/watch?v=uAcyMQXh964
Legal Permissibility of Video Directly Observed Therapy (VDOT)—Western Region Analysis

Source: Kim Weidenaar, Asha Agrawal & James G. Hodge, Legal Permissibility of Video Directly Observed Therapy (VDOT)—Western Region Analysis, https://www.networkforphl.org/_asset/7f4ji4/Western_Region_Table_-_Video_DOT_Table.pdf.
Real-Time v. Recorded Video

Real-Time
• Health care workers can provide immediate feedback and can answer questions.
• Scheduling visits less convenient for patients.

Recorded Video
• Patients can take their medication on their own schedule.
• Patients can make a video even if the phone is out of cellular or Wi-Fi coverage for later upload to a secure server.
• No live interaction with patient.
Informed Consent & Electronic Health Records

• Informed Consent
  • Does your state have specific informed consent requirements for telemedicine?

• Electronic Health Records
  • Will a video recording become part of the patient’s health record, or will the interaction be documented in writing only?
Privacy, Security & Confidentiality

- HIPAA and state data practices statutes
- Privacy – protecting the privacy of an individual’s identifiable health information
- Security – how to keep a system secure
- Confidentiality – the responsibility of the agency or provider to keep the patient’s information confidential

Reimbursement

- Some state Medicaid programs allow for reimbursement of DOT while others are silent.
- Lack of formalized policies for reimbursement of telehealth-delivered DOT.

Twenty-two states and the District of Columbia have enacted parity laws requiring insurers to cover telemedicine services.

Chart 4: Private Payer Coverage and Reimbursement for Telemedicine Services

Source: Trendwatch: The Promise of Telehealth for Hospitals, Health Systems and Their Communities, American Hospital Association (January 2015)
Other Telemedicine Applications

- Ebola – Outbreak Symptoms Monitoring
- HIV/AIDS – Directly Observed Therapy
- Telemental Health – Virtual Counseling
The Network for Public Health Law

Contact the Network to:

• Get practical legal assistance on a variety of public health topics
• Find helpful resources from webinars and trainings to fact sheets and legal briefs
• Connect with a community of experts and users of public health law

Support is available at no cost! Visit www.networkforphl.org for more information.
Legal Technical Assistance

• The Network provides legal technical assistance, and the information provided in this presentation should not be considered legal advice.

• If you need legal advice or representation on a particular matter, I would encourage you to contact an attorney licensed to practice law in your jurisdiction.
Contact Info

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bbauerly@networkforphl.org

Thank you for your attention!
Tracking Telehealth Legislation & Policy Trends:

A tool to increase access to primary health care & nurse practitioners
NNCC and CCA: Increasing Access to Primary Health Care

PHMC affiliate & nonprofit trade association for nurse-managed health clinics (NMHCs)

PHMC affiliate & trade association for retail clinics
50 State Policy Tracking Aims

- Track legislative trends:
  - Frequency of changes
  - Substantive vs. housekeeping

- Identify meaningful variation:
  - Across states
  - Over time

- Compare to other research

- Develop advocacy strategies
Policy Tracking Aims: Telehealth

How does the language of the law impact its purpose?

- Intentional & unintentional results

- Examples:
  - Provider types
  - Reimbursement
Policy Tracking: Legal Datasets

LawAtlas
The Policy Surveillance Portal

Does your state give nurse practitioners the authority to prescribe medication?

LawAtlas is the central, authoritative place for systematically collecting, measuring and displaying laws.

LawAtlas is a tool designed to help policymakers, advocates and researchers understand what the laws are on a given topic, know how the laws differ over time and across jurisdictions, and evaluate their impact.

Explore the Law
Access maps, tables and reports.

Data
Download data, codebooks and protocols.
Telehealth Dataset Map

LawAtlas
The Policy Surveillance Portal

Telehealth and Primary Care Provider Laws Map

Telehealth is an important tool for providing healthcare in the United States, particularly to individuals who live in areas without access to high quality primary care. Through the use of telecommunication technologies, patients, health care providers, and health care administrators are able to provide health care at a distance. Telehealth practices are regulated at the state level, and those regulations vary from state-to-state, by type of medical service being provided and how those services may be reimbursed. This page presents information about the ability of non-physician providers to provide primary care through telehealth and be reimbursed for those services in all 50 states and Washington, D.C.

You can explore the law in your state by clicking it on the map below, or being a search by clicking “Start Here.” Those laws are current through December 31, 2014.

Related Resources
Institute of Medicine report (2012)—The Role of Telehealth in an Evolving Health Care Environment
HRSA: “How can telehealth technology benefit primary care?”
American Telemedicine Association – State Telemedicine Gaps Analysis (September 2014)

Content Expert
Kelly Thompson, JD
Law and Policy Program Manager
National Nursing Centers Consortium

http://lawatlas.org/query?dataset=telehealth
Building Queries

Explore the Law
make selections from the categories below

- State law defines telehealth
- State law allows primary care telehealth
- Additional physician oversight requirement
- Other requirements to practice primary care telehealth
- Telehealth reimbursement by Medicaid-funded state insurance
- Telehealth reimbursement by private insurance
- Out-of-state telehealth providers

Start here

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a PHMC affiliate
Building Queries

Explore the Law
make selections from the categories below

State law defines telehealth

State law allows primary care telehealth

- Yes
- No

Type of telehealth providers
- Physician
- Nurse Practitioner
- Physician Assistant
- Advanced Practice Nurse
- Advanced Registered nurse practitioner
- Broad Authorization

Jurisdiction(s) Found 25

Show Map
24 states and D.C. allow primary care providers to deliver telehealth care.
**Query: Primary Care Telehealth**

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Effective</th>
<th>Valid Through</th>
<th>Law</th>
<th>State law allows primary care telehealth</th>
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<td>California</td>
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<td>02/28/2015</td>
<td></td>
<td>Yes</td>
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<td>02/28/2015</td>
<td></td>
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<td>District Of Columbia</td>
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<td></td>
<td>Yes</td>
</tr>
<tr>
<td>Georgia</td>
<td>02/01/2015</td>
<td>02/28/2015</td>
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<tr>
<td>Iowa</td>
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## State-by-State Data

### California

<table>
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</table>

<table>
<thead>
<tr>
<th>Question</th>
<th>Answer</th>
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</thead>
<tbody>
<tr>
<td>Does the state have a law defining the practice of telehealth?</td>
<td>Yes</td>
</tr>
<tr>
<td>Does the state have a law allowing healthcare providers to provide telehealth in a primary care setting?</td>
<td>Yes</td>
</tr>
<tr>
<td>What types of primary care providers may provide telehealth services?</td>
<td>Broad Authorization</td>
</tr>
<tr>
<td>Does the state have a law creating an additional physician oversight requirement specifically for practicing telehealth?</td>
<td>No</td>
</tr>
<tr>
<td>Does the state have a law providing other requirements to practice telehealth in primary care settings, unrelated to types of providers?</td>
<td>Yes</td>
</tr>
<tr>
<td>Does the state have a law addressing telehealth reimbursement under Medicaid funded state insurance?</td>
<td>Yes</td>
</tr>
<tr>
<td>Does Medicaid-funded state insurance limit reimbursement for telehealth services to specific types of providers?</td>
<td>No</td>
</tr>
<tr>
<td>Does the state have a law addressing telehealth reimbursement under private insurance?</td>
<td>Yes</td>
</tr>
<tr>
<td>Does the state have a law allowing out-of-state providers to practice in-state through telecommunications, aside from acquiring an in-state license?</td>
<td>No</td>
</tr>
</tbody>
</table>
CA Statute 2290.5

Telehealth; “asynchronous store and forward”, “distant site”, “health care provider”, “originating site”, “synchronous interaction”, and “telehealth” defined; verbal consent; violations; scope of practice; confidentiality; exceptions; privileges and credentials of telehealth service providers.

(a) For purposes of this division, the following definitions shall apply:

1. “Asynchronous store and forward” means the transmission of a patient’s medical information from an originating site to the health care provider at a distant site without the presence of the patient.

2. “Distant site” means a site where a health care provider who provides health care services is located while providing these services via a telecommunications system.

3. “Health care provider” means a person who is licensed under this division.

4. “Originating site” means a site where a patient is located at the time health care services are provided via a telecommunications system or where the asynchronous store and forward service originates.

5. “Synchronous interaction” means a real-time interaction between a patient and a health care provider located at a distant site.

6. “Telehealth” means the mode of delivering health care services and public health via information and communication technologies to facilitate the diagnosis, treatment, or management of a patient’s health conditions.

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Tracking Telehealth Legislation & Policy Trends

Thank you!

Kelly Thompson
kthompson@nncc.us
Q&A

Please type your questions in the Q&A panel.
Thank you for attending

Please join us for this upcoming webinar:

**Legal and Policy Options to Improve Oral health**
Thursday, September 17 | 1:00 – 2:30 p.m. (ET)

Learn more and register at: [networkforphl.org/webinars](http://networkforphl.org/webinars)