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## **Increasing Use of Telemedicine Presents Regulatory Issues**

As healthcare providers seek to lower costs and provide services in underserved areas, many are looking to technology and the growing use of telemedicine. Telemedicine is the remote delivery of healthcare services over a telecommunications infrastructure. With the advance of technology and the introduction of services such as Skype, Tango and FaceTime, it is relatively easy to establish a simultaneous video and voice connection with an individual in a remote location. However, recent disciplinary action taken against an Oklahoma physician who engaged in telemedicine demonstrates that providers should proceed with knowledge and caution in this area.

### **Oklahoma Physician Disciplined for Treating Patients Via Skype**

Until recently, a physician in Oklahoma used Skype to treat patients for pain management issues and prescribed powerful narcotics in the process. The physician's nurse would travel to various satellite clinics and present the patients to him via Skype. The Oklahoma Health Care Authority, however, disciplined the physician because Skype was not an approved telemedicine communication system. The physician was placed on probation for two years and ordered to complete a course on prescribing practices.

### **Texas Medical Board Requirements**

The Texas Medical Board (TMB) has promulgated requirements for the provision of telemedicine services (Texas Administrative Code, Title 22, Part 9, Chapter 174). These are numerous, but not overly burdensome. The patient must be in an "established medical site," which is any location that has a "patient site presenter" and sufficient technology to allow for an examination via telemedicine (a patient's home cannot be an "established medical site"). A "patient site presenter" is an individual licensed or certified in Texas to perform health care services. The patient site presenter must be delegated tasks and activities within the scope of the individual's licensure or certification. The patient site presenter could be a nurse, NP, PA or PT.

In Texas, a physician may provide an initial patient visit via telemedicine so long as the patient is at an established medical site. The initial visit could be used to establish a proper physician-patient relationship. For new conditions, a patient site presenter must be reasonably available onsite to assist with the provision of care.

## **Billing**

Medicare pays for telemedicine services according to the physician fee schedule (physicians should bill using the normal CPT or HCPCS code for the professional service as they would for a “normal” visit, but they should use the “GT” modifier to signify that the service was provided via telemedicine). However, Medicare pays for telemedicine visits only when the “originating site” (i.e., where the patient is located) is in a rural Health Professional Shortage Area or outside of a Metropolitan Statistical Area (MSA). (42 CFR Section 410.78(b)(4)) Providers may also bill Medicare if they are participating in a federal telemedicine demonstration project approved by HHS.) A provider’s contracts with the commercial payors will determine whether commercial payors will reimburse for telemedicine.

Texas Medicaid reimburses for telemedicine, but only in certain instances. The telemedicine services must be designated for telemedicine reimbursement in the Texas Medicaid Provider Procedures Manual. As opposed to the TMB requirements, Texas Medicaid requires that the patient must receive an in-person evaluation for the same condition or diagnosis before receiving telemedicine services.

## **Notice Requirements**

A notice of privacy practices must be provided to patients, as well as a notice of the limitations of telemedicine. The notice must advise patients of the risks and benefits of telemedicine, how to receive follow-up care, and how to communicate with the physician in the event of communications failure. Additionally, patients must be advised how to file complaints with the TMB.

## **Technology Requirements**

Physicians that use telemedicine must have protocols that prevent fraud and abuse and protect the privacy and security of the communications. Because of the need to have a secure communication line with patients in remote areas, providers cannot use services such as Skype, Tango or FaceTime to provide telemedicine services. Rather, providers should contract with services that provide HIPAA-compliant technologies if they are to provide telemedicine services.