Telemedicine’s Opportunities and Risks; A Balancing Act
Robert Park

INTRODUCTION
The U.S. has recently undergone a significant shift in healthcare delivery for the 21st century, utilizing technology to deliver more efficient and effective care. [1] Because the Affordable Care Act (ACA) and Health Information Technology for Economic and Clinical Health Act (HITECH) emphasizes healthcare to be preventative, to detect and care for patients before diseases or illness arise, technological innovation and standardization is critical in today’s healthcare world. [2] If healthcare organizations can capitalize on innovation and standardization, the government will reimburse a substantial monetary reward for successful implementation of telemedicine.

Areas that healthcare organizations have taken in this preventative shift include lean management, more efficient primary care coordination and of particular interest, preventative care technology deemed under the umbrella term, “telemedicine.” [3] Telemedicine isn’t singularly defined; some healthcare organizations interpret telemedicine as “the delivery of specialty care at a distance via telecommunications using applications that provide direct patient care.” [4] The U.S. Department of Health and Human Services (DHHS) and the Center for Medicare & Medicaid Services (CMS) also define “telemedicine” as the “provision of clinical services to patients by practitioners from a distance via electronic communications.” [5] In essence, telemedicine can be thought of as applications that can aid patient care outside of a traditional healthcare setting, even treating patients in their homes. [6]
Obstacles that can complicate successful implementation of telemedicine are the legal ramifications. Legal complications can include fraud and abuse, patient confidentiality, and compliance with state requirements. Violation of patient care can result in heavy fines, and in telemedicine, a recent case involving the Texas Medical Board and a Telemedicine company could heat up within the coming months. [7] Because of these obstacles, healthcare organizations face an arduous journey to getting reimbursed for implementing telemedicine.

II. Legal Complications That Arise from Telemedicine

Legal Complications are a definite obstacle when it comes to telemedicine implementation. The most prevalent scholarship revolves around anti-kickback law and Stark Law. [8] Anti-kickback and Stark laws are laws that prevent healthcare organizations from giving “self-referrals” that affect Medicaid and Medicare reimbursement. [9] In more simple terms, these laws prevent the exchange of services or money in an effort to induce the referral of federal health care reimbursement. For telemedicine implementation, the prevention of anti-kickback liabilities is critical because several telemedicine companies are competing to provide services to healthcare organizations. [10] Healthcare organizations should pick telemedicine companies that don’t overcharge Medicare or Medicaid costs due to these kickback laws.

In addition to kickback laws, another legal complication is patient confidentiality; this is keeping patient medical records private between the patient, physician, and parties that the patient wants involved. Patient confidentiality is required in healthcare since the implementation of the Health Insurance Portability and Accountability Act (HIPAA) was enacted in 1996. [11] In regards to telemedicine, patient confidentiality rules have been altered to reflect telemedicine and the
technological innovations of healthcare. [12] This means that healthcare organizations have to adhere to increasing security protocols to prevent breaches of data, such as the breach at Anthem in 2015. [13] A key concern is that because telemedicine is still advancing in terms of technology, the standard of telemedicine is still changing, which means that healthcare organizations have to make sure not to breach patient confidentiality by overstepping too far with telemedicine. [14]

A third concern is compliance with state requirements. As mentioned before, with telemedicine, the standards vary from state-to-state due to rapid technological innovations being made in the U.S. [15] In a report by the American Telemedicine Association (ATA), 26 states were graded as being proficient in several standards of measurement, such as physician-patient interaction, technology integration, etc. [16] State to state variations in telemedicine standards could prove difficult for healthcare organizations in providing the right kind of care for telemedicine. In states such as North Dakota and Pennsylvania, there is at least one failing grade in the various factors that play into the telemedicine standardization measurement. [17] Healthcare organizations should aim for the best possible standards when implementing telemedicine mediums.

III. Navigating the Legal Obstacles of Telemedicine

Healthcare organizations won’t be alone when trying to navigate the legal ramifications of telemedicine. The Food and Drug Administration (FDA) has been providing resources since 2012 to help bridge the gap in telemedicine standards and implementation. [18] By working with the Federal Communications Commission (FCC) and the Office of the National Coordinator for Health Information Technology (ONC), the FDA consistently provides reports and
recommendations for healthcare organizations to follow. [19] Within these reports, factors such as patient safety, functionality, and implementation are assessed and the FDA gives guidance to how to raise grades in these factors. [20]

In addition to the FDA, the ATA provides additional resources. [21] With reports coming out annually on how states are performing with respect to recommended industry standards, the ATA also provides current updates on rule or regulation standard changes within the federal government as well as significant changes by state statutes. [22] The ATA standards are established by experts within their field and healthcare organizations may want to optimize their telemedicine standards by following the ATA. [23]

CONCLUSION

Telemedicine represents a unique opportunity for healthcare organizations to provide more efficient, effective care. Telemedicine helps provide a more preventative focus on patient care, which in turn reduces costs of treatment for reactive medicine. The government also reimburses healthcare organizations for implementing telemedicine and healthcare organizations should take advantage of government reimbursement to help patients get better treatment. However, there are legal ramifications that make effective telemedicine implementation difficult. In order for healthcare organizations to avoid liabilities, reports and advice from the ATA and FDA can help navigate a more amenable path to better care.
SOURCES


[2]. *See Id.*


[9]. *See Id.*

[10]. *See Id.*


[12]. 45 C.F.R. § 160.103.


[16]. See Id.

[17]. See Id.


[19]. See Id.


[22]. See Id.

[23]. See Id.