Telemedicine Tips
Know the Law

- **Not all telemedicine is created equal**
  - Definitions of telemedicine vary from state to state
  - In Illinois, telemedicine is providing written or oral opinions about diagnosis or treatment as a result of transmission of individual patient data by telephonic, electronic, or other means
  - Telemedicine in Illinois **IS NOT**:
    - Periodic consultations between a physician licensed in Illinois and a patient outside the state of Illinois
    - A second opinion given to a physician licensed in Illinois
    - Diagnosis or treatment services provided to a patient in Illinois following care or treatment originally provided to the patient in the state in which the physician is licensed to practice medicine – consider snowbirds

- **Be aware of licensure issues.**
  - While it varies from state to state, a physician typically must be licensed in, or under the jurisdiction of the medical board of, the state where the patient is located.
    - In Illinois, the location of the patient is the determining factor. If the patient is located in Illinois, a physician providing services to that patient must be licensed in Illinois. If the patient is located outside of Illinois, full licensure in the state where the patient is located is very likely required. Make yourself familiar with the laws of the states in which your patients will be located. The Center for Connected Health Policy has information available here: [http://cchpca.org/state-laws-and-reimbursement-policies](http://cchpca.org/state-laws-and-reimbursement-policies)
  - Similarly, if you have a nurse or physician assistant engage in telemedicine visits, that nurse or physician assistant must be appropriately licensed and the delegation of that service must be appropriate in the state where the nurse or physician assistant is licensed. If so, have that service specified in their written collaborative or supervision agreement, if applicable, and consider whether the consultation needs for services provided via telemedicine are different from those for services provided physically in person.
  - The Interstate Medical Licensure Compact will ease some of the burdens associated with licensure in multiple states.
Telemedicine Tips

- **Do not prescribe controlled substances via telemedicine**

- **Laws addressing prescription of legend drugs vary from state to state**—familiarize yourself with the laws of the state in which you are practicing (for the purpose of telemedicine, this is where the patient is located).

- **Check with your liability carrier regarding coverage for telemedicine services**

- **HIPAA applies to telemedicine**
  
  - The use of telemedicine raises significant privacy concerns. For example, patients using smartphones in public can inadvertently disclose their PHI.
  
  - Health care professionals should not engage in telemedicine visits via unsecure wifi, and applications such as FaceTime or Skype are not HIPAA-compliant.

- **Similarly, Stark and Anti-Kickback regulations apply**
  
  - Stark Law prohibits a physician from referring Medicare patients for designated health services to an entity with which the physician (or immediate family member) has a financial relationship, unless an exception applies. The designated health services entity is also prohibited from submitting claims to Medicare for those services resulting from a prohibited referral.
  
  - The Anti-Kickback statute prohibits offering, paying, soliciting, or receiving anything of value to induce or reward referrals or generate federal health care program business.
  
  - Please note that the above is federal law, and many states have their own versions of both of these laws.
  
  - It is advisable to speak with your corporate counsel regarding the application of those laws to your practice.

**Privacy and Documentation**

- **Be aware of network security and hacking risks**
  
  - Health care professionals are a huge target, and you should consider using an encrypted network.
  
  - Check with your liability carrier regarding cyber liability coverage.

- **Make sure you have informed consent.**
  
  - Informed consent remains a process, not just a piece of paper.
  
  - The patient should consent to use of telemedicine technology in situations where it is appropriate.
If you engage in telemedicine, inform the patient whether you will be physically in the office if they come for a visit.

Consider the use of disclaimers when patients sign-up/agree to use secured portal or telemedicine.

- **Appropriate documentation and transparency in disclosure are critical. There should be clear documentation of:**
  - Physician name, credentials
  - Patient name, location, copy of patient ID
  - Consent
  - Privacy and security warning
  - Teleconsulting allowed

- **Keep medical records, and consider whether you need to store video from the encounter**

**Reimbursement**

- **There is coverage via Medicare and Medicaid.**
  - Medicare will reimburse for remote patient face-to-face services via live video conferencing if the following conditions are met:
    - The eligible beneficiary must be in an originating site located outside of a metropolitan statistical area
    - Must be an eligible service
    - Must be an eligible provider, which includes physicians
    - Must be an eligible facility

- **Medicaid in Illinois:**
  - A physician or other licensed health care provider must be present with the patient at originating site.
  - The distant site provider must be a physician, PA, APN, or podiatrist licensed in Illinois or the state where the patient is located.
  - Site providers must be eligible to participate in DHFS programs.
  - The system must allow for the distant site provider to examine the patient to allow proper diagnosis, and send audible heart tones and lung sounds as well as clear video images of the patient.
Telepsychiatry is covered and the physician or other licensed health care professional, or other licensed clinician, mental health professional, or qualified mental health professional is no longer required to be physically present with the patient at the originating site. The distant site provider is required to be a physician.

Coverage and payment parity

- This varies from state to state.
- Illinois does not require private insurance coverage for telemedicine, but where individual and group accident and health insurance plans choose to cover telemedicine, they must comply with the following:
  
  ✔ Cannot require in-person contact
  ✔ Cannot require the health care professional to document a barrier to in-person consultation for coverage
  ✔ Cannot require use of telehealth when inappropriate
  ✔ Cannot require use of telehealth when the patient chooses in-person consultation
  ✔ Cannot charge higher deductibles, copayments, or coinsurance for the same services provided via telemedicine

Best Practices

- Physicians should ensure they meet the same standard of care as they would if the patient were in their office.
- Physicians should exercise caution when establishing a physician-patient relationship via telemedicine, including verifying the identity and location of the patient.
- Physicians should have a process in place for emergencies, including noting what patients they see via telemedicine should do in an emergency.
  - Consider disclaimers on all patient communications.
- Check with your specialty organization for telemedicine-based practice guidelines.
- The Illinois State Medical Society has developed a set of principles to help guide physicians. Those include:
  
  ✔ Support for the use of telemedicine where access to care is limited
  ✔ Use of best clinical judgment when treating patients via telemedicine
  ✔ Maintenance of the same professional standards as applied to in-person care delivery
  ✔ Use of written collaborative or supervisory agreements with non-physicians
  ✔ Transparency with respect to the specific training and credentials of the healthcare professional providing the care