

## **SPEECH TO IOWA HIMSS**

### **TELE MEDICINE – PRACTICAL CONSIDERATIONS FROM A MEDICAL-LEGAL PERSPECTIVE**

#### **OBJECTIVES**

1. Explore Practical and Legal Considerations for the Use of Telecommunication for Providing Healthcare
2. Discuss Applicable/Proposed Policies to Address Legal Considerations and Timely Healthcare Via Telecommunication

#### **USES**

1. Third World Medicine
  - ✓ Can you get sued??
2. Doctor to Doctor Diagnosis
  - ✓ Charting
  - ✓ Accountability
3. Doctor to Patient Consult
4. Teleradiology
5. Telepathology
  - ✓ Charting
  - ✓ Later Overread
  - ✓ Accountability
  - ✓ Technology Limitations
    - Ordering Doctor Know Limits of Reviewers Technology?

- ✓ Equipment Specifications for Radiology or Pathology Reviewers
- 6. Post-Op and Chronic Care Monitoring
  - ✓ Home ICU Care

### **CHARTING**

- 7. Who Charts the Interaction
  - ✓ Accountability
  - ✓ If Remote Site Charting – How Does Near Site:
    - Get Information?
    - Record Information?
    - Protect and Preserve Information?
  - ✓ Confirm Via Log
    - Date/Time Received
    - Information Received
  - ✓ Examples: Confirm Read and Understood Significant Unexpected Finding
    - Probable Small Bowel Obstruction
    - Possible/Probable Cancerous Growth

### **RECEIVING SERVICES**

- 1. Doctor to Doctor – Easy
  - ✓ Both Likely to Record Consult – Video and Audio?
  - ✓ No Sharing of Charting With Collaborative Doctor
  - ✓ Solutions?

- Joint Authorship
  - ❖ Send It and Scan It.
  - ❖ Add or Subtract Content by Addendum

2. Doctor to Remote Patient

- ✓ Patient Consent to Recording Doctor-Patient Interaction

**LICENSING ISSUES**

1. Diagnosing Patient From Afar Without License

2. Must Be Licensed in the State Patient Resides and Care Provided?

- ✓ Not Always – State Compact Agreements Reciprocity Among Participating Compact States
- ✓ Border State Doctor Exemption
- ✓ Abbreviated Licensure to Practice Medicine in State Where Patient Located
- ✓ Colorado – Permits Consults With Out of State Doctors Without Colorado License
- ✓ Does Foreign Doctor Submit to Colorado Jurisdiction?

3. EXAMPLE: Treating Patient by Phone While Riding in a Car in Kansas City Metro or Quad Cities

4. International Issues

- ✓ Licensed in That Country
- ✓ E.U. Compact Agreement Among Doctors
- ✓ Not Yet Available in U.S.
- ✓ London Teleradiologist

- Example – Hughes Case

## **TECHNOLOGY MALFUNCTIONS**

1. Miss Vital Comment
2. Miss Vital Image
3. Data Breaches/HIPAA HITECH, COPPA
  - ✓ How is Patient's Sensitive Information Handled?
  - ✓ Do You Have a Policy/Procedure Included in HIPAA/COPPA Policies which Provides for Reasonable Efforts to Protect Sensitive Information
  - ✓ Get Review of Counsel

## **TELEMEDICINE STANDARD OF CARE**

1. Defined By State Law
2. Hawaii, Colorado, Texas – Have Telemedicine Statutes on Standard of Care
  - ✓ Typical Definition
  - ✓ Statues of Limitations for Telemed Differ From In Person?
3. Liability Concerns
  - ✓ Incorrect Diagnoses
  - ✓ No “On Hands” Physical Exam – When Needed?
    - Some States Physical exam is Precondition to Subsequent Use of Telemed
    - Who Decides Physical Exam Necessary
    - Charting Patient Advised to Seek Physical Exam
  - ✓ Image Distortion of Rash
  - ✓ Only Using Eyes, Ears and Speech – Not Touch and Smell
  - ✓ Many Diagnoses Require Physical Exam

- Does State Statute Enumerate Limited Scope of Permissible Diagnoses Which Can Be Made Via Telemedicine
- ✓ Prescribing Controlled Substances
  - Allowed
- ✓ Obtaining Valid Informed Consent
  - E Signature
- ✓ Recording Telemedicine Consult
  - State Law on Recording
  - HIPPA Privacy Issues
- ✓ Consent to Treating Minors
  - Mom’s Verbal Consent Sufficient to Care for Minor?
- ✓ Prescribing Medication
- ✓ Reproductive Rights
- ✓ End of Life Decisions
- ✓ Permissible Scope of Practice
  - Policies on Permissible Technology for Given Condition
    - ❖ Standard Telephone Call US – Video Required
    - ❖ Video and Onsite M.D.

### **WHEN IS A DOCTOR-PATIENT RELATIONSHIP CREATED OR TERMINATED**

1. Defined By State Law – Varies Widely
  - ✓ Missouri – “Last Contact” Rule Defines End of Care
  - ✓ Includes Phone Calls or Telemedicine
  - ✓ Last Contact Effects Triggering of Statute of Limitations

2. Need Evidence Based Guidelines That Can Be Uniformly Applied to Telemedicine
  - ✓ AMA Working on Guidelines

### **DATA OWNERSHIP**

1. Fitbits - Patient Send Fitbit Data to Patient Portal
2. Health Data Sharing
3. What Is Doctors Obligation To
  - ✓ Review, Protect, Store Data In Patient's Portal
  - ✓ HIPAA Concerns
  - ✓ Liability Concerns – Documentation Can Avoid Liability Issues

### **COMMUNICATION POLICIES**

1. Radiology Has Good Policy
  - ✓ Radiology Findings
  - ✓ Significant Unexpected Finding
  - ✓ Duty of “Direct Communication”
  - ✓ Log Book

### **INSURANCE CONSIDERATIONS**

1. Coverage for Out of State Practice

### **JURISDICTIONAL ISSUES FOR LAWSUIT**

1. Can Doctor Be Sued in Patient's Home State?

## **BILLING CONSIDERATIONS**

1. Medicare – See Exhibit 1
  - ✓ Medicaid
2. Commercial Health Plans
  - ✓ Confirm Ok to Use Telemed
3. Self-Funded Employee Plans

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## **WHO GETS PAID?**

1. Distant Consulting Doctor or “Near Doctor”
  - ✓ Can Both Bill for Same Service
2. Dual Billing – Fraud Issues
  - ✓ Need Clear Policy/Agreement Which Doctor is Billing
3. Patient Phone Calls – Billable?

## **TECHNOLOGY CONSIDERATIONS**

1. How is Sensitive Data Being Exchanged and Protected Pursuant to HIPAA and State Privacy Laws?
  - ✓ Hardware Considerations
  - ✓ Software Considerations
  - ✓ Data Storage Issues