KRIEG DEVAULT®

Leveraging the Utilization of **Telemedicine** to Improve Access to Care

Brandon W. Shirley and Laura A. Brown

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Brandon W. Shirley

- One Indiana Square, Suite 2800
- Indianapolis, IN 46204
- Tel: 317-238-6229
- bshirley@kdlegal.com

Associate with 6 years health law experience. Focus on State/Federal government regulatory compliance, administrative matters, State Medicaid programs and reimbursement, fraud and abuse laws, pharmacy, and legislative drafting and implementation.

Former Deputy General Counsel, Family and Social Services Administration and Medicaid attorney.

Laura A. Brown

- One Indiana Square, Suite 2800
- Indianapolis, IN 46204
- Tel: 317-808-5847
- lbrown@kdlegal.com

Associate with the Governmental Affairs and Public Advocacy Practice Group. Laura is responsible for representing clients at various levels of government, particularly in the health care arena, in addition to managing all lobby compliance for the practice group. Prior to joining Krieg DeVault, Laura worked for the Indiana State Senate for four legislative sessions, most recently as the Deputy Majority Attorney.

Telemedicine and the Future

Medicare

- Federal (Medicare)
  - Regulated and tightly restricted
    - Originating Site (Patient location) – qualifying rural area and qualifying facility
    - Distant site practitioners (limited)
    - Interactive Audio and Video Technology – real time communication
    - Must be a covered service
    - No store and forward except in Alaska and Hawaii
    - Originating site receives facility fee

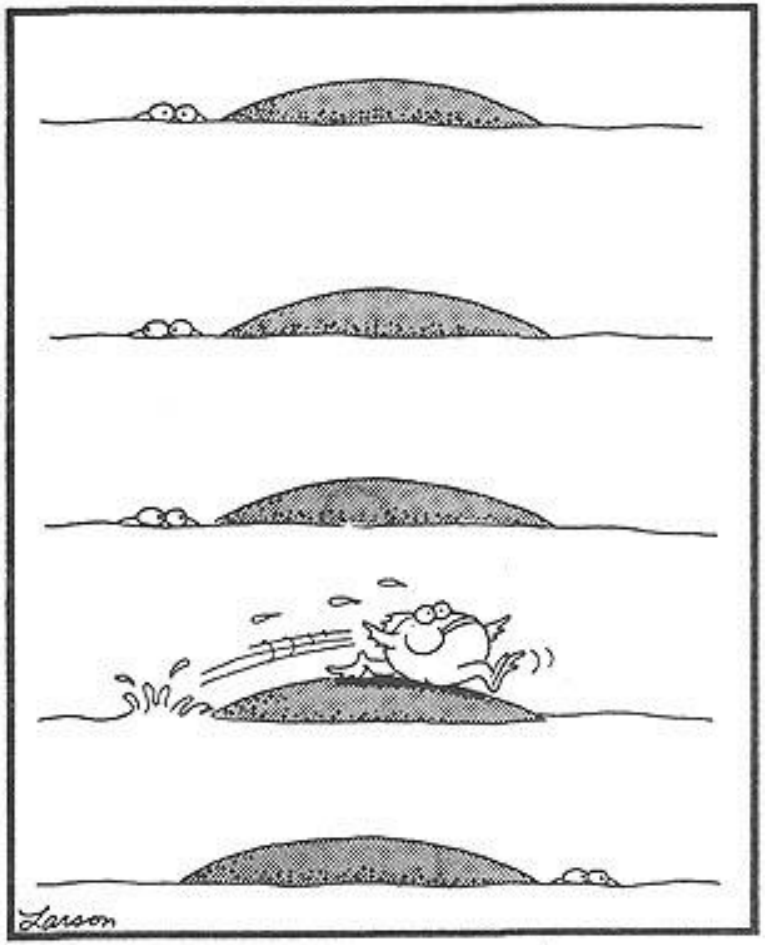
Medicare

- Originating site
  - Basically rules out facilities in urban areas.
  - HHS website to check whether the location qualifies
    - https://datawarehouse.hrsa.gov/tools/analyzers/geo/Telehealth.aspx
- Qualifying area
    - Offices of physician or practitioner, hospitals, CAHs, CMHCs, SNFs, RHCs, FQHCs, Hospital-Based or CAH-Based Renal Dialysis Centers (satellites)

Medicare

- Qualifying practitioners
  - Physicians, NPs, PAs, Nurse Midwives, Clinical Nurse Specialists, Clinical Psychologists and Clinical Social Workers, and Registered Dieticians and Nutrition Professionals

Medicare



Another great moment in evolution

Medicaid

- Medicaid
  - Almost every State Medicaid program reimburses telemedicine services.
  - Federal law defers to States to set rules.
    - Who – scope of practitioners
    - What – video, store and forward, remote patient monitoring, geographic restrictions, reimbursement
  - No two states are the same.

Medicaid

Medicaid

- Common threads
  - Live video requirement
  - Remote patient monitoring (limited)
  - Scope of practice (out-of-state)
  - Distant and originating sites
  - Facility fee reimbursement
  - Provider types

Medicaid

- Medicaid Managed Care
  - Capitation rates based on State Plan services. 42 CFR 438.3(c)
  - Can exceed those services under certain conditions. 42 CFR 438(e)
  - Reimbursement and billing requirements may vary based on the provider network and negotiated rates.
  - Parity
  - Billing: outpatient, inpatient, provider type
  - Check manuals for coverage requirements/limits

Commercial

- Established by State law
- May require parity
  - Health plans cover services to the same extent as an in-person visit
  - Cost-shifting, i.e., same deductible or co-payment as in-person visit
  - Payment
- May cover remote patient monitoring

Prescribing

- Common requirements
  - Establishing patient/physician relationship
  - Conducting in-person examination before prescribing
  - Continuity of care
  - Valid prescription
  - Informed consent
  - Credentialing and privileging

Controlled Substances

- Federal law – Ryan Haight Act of 2008
  - Applies only to prescribing controlled substances online
  - Requires at least one in-person examination (in physical presence) – some exceptions apply
  - DEA regulations
- State laws
  - State laws may be more restrictive
- State Administrative Boards
- Check them all!

Indiana Telemedicine

Phase 1: House Enrolled Act 1263

- House Enrolled Act ("HEA") 1263, authored by Representative Cindy Kirchhofer and sponsored by Senator Mike Crider, was enacted during the 2016 legislative session and codified the use of telemedicine for both in-state and out-of-state providers and the standards to establish a physician-patient relationship.

- Effective July 1, 2016, the new law replaced the old Indiana Telehealth Pilot Program in administrative code, which was set to self-expire on that same date.

HEA 1263 Continued

- Under HEA 1263, physicians, physician assistants with prescriptive authority, advanced practice nurses with prescriptive authority, and optometrists are permitted to provide health care services through telemedicine; those providers are held to the same practice standards as services provided at an in-person setting.

- HEA 1263 permits prescriptions to issued via telemedicine if the following are met: 1) A "provider-patient relationship" is first established; 2) the issuance is within the provider's scope of practice and certification; and 3) the prescription is not for a controlled substance (more on this later), an abortion inducing drug, or an ophthalmic device.

Provider-Patient Relationship for Non-Controlled Substances

- The provider-patient relationship by a provider who uses telemedicine to prescribe non-controlled substances must at a minimum include the following:

(1) Obtaining the patient's name and contact information.

(2) Disclosing the provider's name and whether the provider is a physician, physician assistant, advanced practice nurse, or optometrist.

(3) Obtaining informed consent from the patient.

(4) Obtaining the patient's medical history and other information necessary.

(5) Discussing with the patient the: (A) Diagnosis; (B) evidence for the diagnosis; and (C) risks and benefits of various treatment options, including when it is advisable to seek in-person care.

(6) Creating and maintaining a medical record for the patient and, subject to the consent of the patient, notifying the patient's primary care provider of any prescriptions the provider has written, if the contact information for the primary care provider is provided by the patient.

(7) Issuing proper instructions for appropriate follow-up care.

(8) Providing a telemedicine visit summary to the patient, including information that indicates any prescription that is being prescribed.

NOTE: An in-person visit is not required for a provider to prescribe non-controlled substances via telemedicine.

Prescribing of Controlled Substances

- HEA 1263's controlled substances limitation caused some to question its reach. Specifically, some have interpreted the controlled substances limitation as prohibiting the issuance of *any* prescription for a controlled substance through telemedicine, while others have interpreted HEA 1263 to allow providers who have previously seen a patient in person to prescribe a controlled substance (i.e. suboxone) through telemedicine.

Final Notes on HEA 1263

- An out-of-state provider must certify in writing to the Indiana Professional Licensing Agency that the provider and the provider's employer or provider's contractor agree to be subject to: (1) The jurisdiction of the courts of law of Indiana; and (2) Indiana's substantive and procedural laws; concerning any claim asserted against the provider, the provider's employer, or the provider's contractor arising from the provision of health care services via telemedicine.

- HEA 1263 did not prohibit a provider, insurer, or patient from agreeing to a certain location of the patient or provider to conduct telemedicine.

Phase 2: House Enrolled Act 1337

- HEA 1337, authored by Representative Cindy Kirchhofer and sponsored by Senator Ed Charbonneau, was enacted during the 2017 legislative session and expanded coverage of telemedicine services to Medicaid providers.

- Effective July 1, 2017, the law removed the distance requirements for Medicaid providers to be reimbursed (part of the original pilot program) and requires the Office of Medicaid Policy & Planning to submit a State Plan Amendment to that effect by December 31, 2017.

HEA 1337 Continued

- HEA 1337 added podiatrists to the list of providers who may provide telemedicine services, as well as required a telemedicine services prescriber to contact the patient's primary care provider if the telemedicine services prescriber has provided care to the patient at least two consecutive times through the use of telemedicine services and issued a prescription.
  - The contact requirement does not apply if the prescriber is using an electronic health record that the primary care provider is authorized to access.

- HEA 1337 also removed the limitation for the prescribing of controlled substances if certain conditions are met.

Provider-Patient Relationship for Controlled Substances

- A prescriber may issue a prescription for a controlled substance through telemedicine, even if the patient has not been examined previously by the prescriber in person, if the following conditions are met:

  (1) The prescriber establishes a provider-patient relationship as required for the prescribing of non-controlled substances via telemedicine.

  (1) The prescriber maintains a valid controlled substance registration.

  (2) The prescriber meets federal requirements concerning the prescribing of controlled substances.

  (3) The patient has been examined in person by a licensed Indiana health care provider and the licensed health care provider has established a treatment plan to assist the prescriber in the diagnosis of the patient.

  (4) The prescriber has reviewed and approved the treatment plan.

  (5) The prescriber complies with the requirements of the INSPECT program.

NOTE: The controlled substance may not be an opioid. However, an opioid may be prescribed if the opioid is a partial agonist that is used to treat or manage opioid dependence (i.e. suboxone, buprenorphine).

Indiana Telemedicine Today

- Telemedicine may be used by physicians, physician assistants with prescriptive authority, advanced practice nurses with prescriptive authority, optometrists, and podiatrists to expand access and assist in the continuum of care
- Reimbursement expanded for both commercial and Medicaid payors (pending implementation of the latter)
- All telemedicine providers must establish a provider-patient relationship via telemedicine
- Telemedicine providers may issue a prescription for non-controlled AND controlled substances, except for opioids (not including partial agonists); additional steps to prescribe controlled substances via telemedicine
- Must contact primary care provider if telemedicine services prescriber has provided care two consecutive times and issued any prescriptions (unless the primary care provider has access to the EHR)

Medicaid Implementation

- State Plan Amendment.
  - Submit to State Budget Committee
  - CMS review, unknown approval date
  - October 1, 2017 effective date
  - Rulemaking in 2018

Medicaid Implementation

- State Plan Amendment details
  - Facility fee for the originating site (where patient is located); lesser of
    - provider's billed charge
    - Maximum allowed amount set by OMPP
    - Reimbursement rate per encounter is $21.86
  - Distance site reimbursement
    - E&M code paid as if traditional encounter occurred

Medicaid Implementation

- State Plan Amendment
  - Continues to prohibit reimbursement to certain providers and excludes certain services.
  - Prohibits payment for Medicaid waiver.
  - State likely clarifying the SPA.
  - Removes the geographic limitation (20 miles)
- Uncertainty over patient location

Telemedicine and the Future

- “There is a tide in the affairs of men. Which, taken at the flood, leads on to fortune.”

  – Julius Caesar

Questions?

Please do not hesitate to contact us with questions!

Brandon Shirley
bshirley@kdlegal.com
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Laura A. Brown
Lbrown@kdlegal.com
317.808.5847