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PROFESSIONAL LIABILITY UNDERWRITING SOCIETY

PLUS SOUTHWEST CHAPTER  
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**TELEMEDICINE: TRENDS, TRIALS  
AND TRIBULATIONS**

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# OBJECTIVES

- Define telemedicine (TM)
- Provide a high-level overview of the TM industry
- Identify barriers and challenges in TM
- Identify malpractice issues in TM
- Review insurance issues in TM
- Review privacy and technology issues in TM
- Wrap-up, Q & A



# TELEMEDICINE: WHAT IS IT?

- General definition:

*The use of technology to provide medical care remotely*

- “Telehealth” versus “telemedicine”

- Telehealth is a broader term
- Applies to clinical and non-clinical services, including remote medical education, and remote research



# TELEMEDICINE: WHAT IS IT?

- CMS definition:

*The use of communication equipment to link health care practitioners and patients in different locations*

- This definition applies to Medicare; each state Medicaid program may or may not recognize and define TM



# TELEMEDICINE: WHAT IS IT?

- The Joint Commission and the American Telemedicine Association definition:

*The use of medical information exchanged from one site to another via electronic communications for the health and education of the patient or health care provider and for the purpose of improving patient care, treatment, and services*



# TELEMEDICINE: WHAT IS IT?

## ○ Montana:

*“(1) ...the practice of medicine ...by a physician located outside the state who performs an evaluative or therapeutic act relating to the treatment or correction of a patient's physical or mental condition, ailment, disease, injury, or infirmity and who transmits that evaluative or therapeutic act into Montana through any means, method, device, or instrumentality under the following conditions:*

*(a) The information or opinion is provided directly to a patient in Montana for compensation or with the expectation of compensation.*

*(b) The physician does not limit the physician's services to an occasional case.*

*(c) The physician has an established or regularly used connection with the state, including but not limited to:*

*(i) an office or another place for the reception of a transmission from the physician;*

*(ii) a contractual relationship with a person or entity in Montana related to the physician's practice of medicine; or*

*(iii) privileges in a Montana hospital or another Montana health care facility, as defined in [50-5-101](#).*

*(2) ...telemedicine does not mean:*

*(a) an act or practice that is exempt from licensure under [37-3-103](#);*

*(b) an informal consultation, made without compensation or expectation of compensation, between an out-of-state physician and a physician or other health care provider located in Montana;*

*(c) the transfer of patient records, independent of any other medical service and without compensation;*

*(d) communication about a Montana patient with the patient's physician or other health care provider who practices in Montana, in lieu of direct communication with the Montana patient or the patient's legal representative; or*

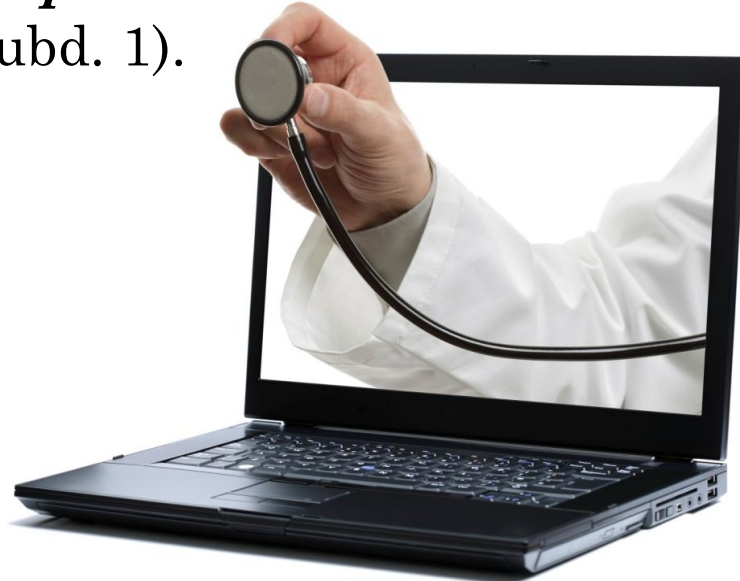
*(e) a communication from a physician located outside Montana to a patient in Montana in consultation with a physician or other health care provider licensed to practice medicine in Montana (MT Code 37-3-342).*



# TELEMEDICINE: WHAT IS IT?

- Minnesota:

*“...the practice of medicine ...when the physician is not in the physical presence of the patient”*  
(MN Stat. Sec. 147.032 Subd. 1).



# TELEMEDICINE: APPLICATIONS

- **Teleradiology**
- **Teledermatology**
  - Real-time interactive consultation (“synchronous”)
  - Store and forward—images and clinical information sent electronically for consultation with remote physician independent of time (“asynchronous”)
- **Telepathology**
  - Store and forward
  - Robotic control of a distant microscope
  - “Virtual” slides





# TELEMEDICINE: APPLICATIONS

- **Telepsychiatry**
- **Telestroke**
  - Primary stroke center (“hub”) linked to remote “spoke” hospitals
  - Speedy neuro eval → clot-busting medication within 3 hours
- **“Captive” populations**
  - Remote ICUs
  - Incarcerated
  - Military stations
  - Cruise ships



# TELEMEDICINE: APPLICATIONS

## ○ Primary care

- Patient consultation from a remote clinic to a physician's office, or from provider to patient's home
- [www.mdlivecare.com](http://www.mdlivecare.com) provides 24/7/365 access to doctors and licensed therapists via video, phone and email
- Link to specialists
- Remote patient monitoring

## ○ Other



# TELEMEDICINE: DRIVERS

## ○ Multiple drivers, including:

- Physician shortages
  - Primary care, specialists
  - Especially in rural areas
- Aging population
- Increasing incidence of chronic health conditions (COPD, diabetes)
- Healthcare reform
- Cost savings
- Emergency of faster and better TM technologies
- Improving reimbursement



# TELEMEDICINE: BARRIERS

## ○ **Significant:**

- **Cost**

- Large up-front investment in equipment, software and training

- **Significant culture change**

- Long tradition of delivery of medicine in person, and in hospitals and physician offices
- Privacy concerns

- **Slow growth in EHR penetration**



# TELEMEDICINE: BARRIERS

## ○ Significant:

### • State laws re TM differ

- Definition of TM and other TM requirements
- Medicaid reimbursement (see below)
- Licensing/credentialing (see below)
- Quality and reporting requirements
- Corporate practice of medicine
- Medical malpractice liability

### • Fragmented approach to TM

- Multiple piecemeal initiatives in each state AND
- Multiple piecemeal initiatives in different states



# TELEMEDICINE: BARRIERS

## ○ Major:

### ● Reimbursement

- Medicare reimbursement convoluted and selective
- State by state variability in reimbursement
- Commercial insurance payment for TM varies widely



# TELEMEDICINE: BARRIERS

- **Major:**

- **Licensing of providers**

- The practice of medicine occurs in the state where **patient** is located
- Most states require practitioners to have full license to practice in that state; some states offer a special-purpose TM license



# TELEMEDICINE: BARRIERS

- **Major:**

- **Licensing of providers, cont.**

- Federal agencies that provide health care (VA, Dept. of Defense) offer license portability for their physicians
- Sen. Tom Udall (D-NM) working on legislation: “tandem” (multi-state) medical license
  - **Opposed** by Federation of State Medical Boards





# TELEMEDICINE: PRIVACY AND TECHNOLOGY

- Additional technology = additional risk of technology failure
- Learning curve for providers to develop necessary technical expertise
- Some patients lack necessary technical skills to use the technology



# TELEMEDICINE: PRIVACY AND TECHNOLOGY

- Increased potential for HIPAA violations
- Need privacy safeguards at:
  - Patient location
  - Provider location
  - Over the transmission medium



# TELEMEDICINE: PRIVACY AND TECHNOLOGY

- Questions (that need answers)
  - How does one determine where the patient is located?
  - What *are* telemedicine medical records? Are video interactions medical records that must be retained?
  - How should records be stored?
  - What if there is an emergency?



# TELEMEDICINE: WRAP-UP

- It's only going to get bigger
- Many potential benefits but...
- In addition to the cost, malpractice risks, insurance issues, and privacy concerns, it adds **complexity**
  - More steps
  - More options
  - More regulations/laws
  - More information/skills needed



# TELEMEDICINE: WRAP-UP

- **Complexity** leads to:
  - “Complexity Compression”
  - 2006: 40% of the workday of nurses is spent on learning new and ever-changing technologies and procedures, and increasing documentation requirements
  - Affects everyone who works in healthcare, not just nurses
  - Chases away
    - Veteran nurses—fed up
    - Young nurses—quickly disillusioned
  - **Looming** nursing shortage



# TELEMEDICINE: WRAP-UP

- **Question: Does the solution contribute to the problem??**



# TELEMEDICINE: QUESTIONS?

Thank you!

