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# Telehealth: Changes In The Wake Of COVID-19

**Presented by Lara Compton**

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# Today's Speaker



**Lara Compton**

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- Lara is a trusted advisor to clients ranging from traditional health care providers to disrupter digital health platforms as they navigate the practical and regulatory challenges of health care innovation
- Advises health care providers, clinical trials companies, ancillary providers, technology start-ups, HMOs, insurance companies, and large technology companies on HIPAA and other health data privacy and security regulations, including developing and implementing HIPAA compliance programs
- Leveraging her prior in-house experience at two nonprofit health systems, she also advises health care providers on the incorporation of telehealth and other technology infrastructures, which has seen a vast uptick as a result of the COVID-19 pandemic

# Agenda

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- Telehealth prior to the COVID-19 pandemic
- Changes in response to COVID-19
- Current trends
- Future of telehealth



# TELEHEALTH BEFORE THE PANDEMIC

# Telehealth Prior to the Pandemic

- Generally physicians must be licensed in the state where patients are located
- The Ryan Haight Act requires practitioners prescribing controlled substances to conduct an in-person medical evaluation or conduct a video/audio communication in a DEA-registered facility at a minimum of once every 24 months
- Some states impose additional limitations on remote prescribing
- Some state medical boards are skeptical about meeting the standard of care using telehealth, particularly asynchronous
- Most states require consent to telehealth

# Telehealth Prior to the Pandemic

- HIPAA can apply
  - Security Rule applies to technologies used, including video conferencing
- State privacy and breach notification laws apply to consumer information
- Reimbursement relatively limited
  - Medicare
  - Medicaid
  - Commercial payors
- Fraud and abuse laws can apply
  - Federal Stark and Anti-Kickback laws apply to government reimbursement
  - State laws can apply regardless of payor

# RESPONSE TO COVID-19 PANDEMIC

# Key Changes During Public Health Emergency

- HIPAA flexibility
  - Allows use video conferencing technology, even if it does not meet HIPAA requirements
- Medicare and Medicaid policies
  - Recognizes a patient's home as an originating site
  - Expands eligibility to all Medicare recipients, not just those who live in rural areas
  - Allows telehealth visits for new patients, in addition to established patients
  - Expands recognized provider types, such as physical therapists
  - Recognizes Federally Qualified Health Centers and Rural Health Centers as the distant (provider) site in a telehealth encounter
  - Allowances for audio-only telehealth
  - Cost-sharing waivers



# Key Changes During Public Health Emergency

- Controlled substances
  - In person examination requirement waived
  - Qualified prescribers can initiate buprenorphine treatment for opiate use disorder via both audio-only or audiovisual telehealth visits
- Stark and Federal Anti-Kickback waivers
  - Blanket Stark waivers for certain referrals and financial relationships solely related COVID-19 related purposes for duration of PHE
  - Anti-Kickback waivers for certain forms of remuneration permitted under the Stark Law blanket waivers
  - Created some flexibility for telehealth arrangements
  - No protection for pharmaceutical or device manufacturers

# Key Changes During Public Health Emergency

- Increased reimbursement
  - Subject to certain limitations, providers reimbursed at the same rate for telehealth services, including telephonic visits, as they would for services provided in-person
  - Broader range of services reimbursed
- State licensure requirements
  - Multiple states have allowed temporary licenses to physicians licensed in other states to increase access to care via telehealth during the pandemic.
  - For licensed physicians providing specific COVID-19 countermeasures, licensure requirements have been waived.
- State health information privacy and security waivers
- Consent to telehealth waivers
- State prescribing requirement waivers
- State flexibility regarding modes of communication



**WHERE ARE WE NOW?**

# Pandemic Telehealth Trends

- Between March 2019 and March 2020, telehealth visits increased by more than 150% according to the Centers for Disease Control and Prevention
- Some studies show an increase in telehealth 38x the pre-COVID-19 baseline
- In June 2021, according to data from the U.S. Census Bureau
  - 23.8%, or more than 43 million households, had an adult who attended a virtual appointment with a doctor, nurse or other health professional via phone or video call during the last four weeks
  - Approximately 14 million households, or 21.3%, had a child who had a telehealth visit
- According to some recent reports, utilization levels have largely stabilized ranging from 13% to 17% across all specialties



# Telehealth Litigation/Enforcement Trends

- An increase in medical malpractice claims is anticipated due to the challenges that can be presented by virtual examinations
- According to the Doctor's Company, misdiagnosis is the most common malpractice claim against telemedicine providers, with the top misdiagnoses being cancer, stroke, infection, and orthopedic related conditions
- Commercial payor telehealth audits are underway, payment disputes are anticipated
- In 2021 the OIG is conducting at least seven national audits, evaluations, and inspections of telemedicine services under the Medicare and Medicaid programs
- In August 2021 the owner of multiple telemedicine companies was indicted in connection with allegedly billing \$784 million in false and fraudulent claims to Medicare
  - According to the DOJ, this is one of the largest Medicare fraud schemes ever charged by the department

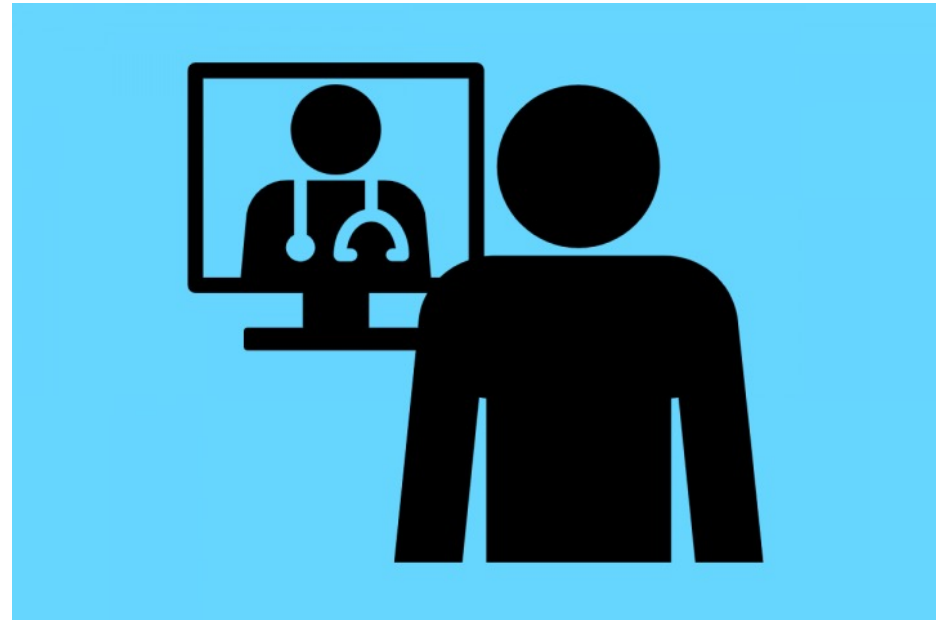
POLL

# Expired and Rescinded Telehealth Waivers



# Telehealth Access Obstacles

- Internet access
- Technology access (e.g. computers, smart phones)
- Language barriers
- Comfort with technology
- Patients lacking privacy for visits





The background consists of a series of overlapping triangles in various shades of teal and blue, creating a dynamic, geometric pattern. The triangles vary in size and orientation, with some pointing upwards and others downwards, creating a sense of movement and depth. The colors range from a deep, dark teal to a lighter, almost white-blue.

**MOVING FORWARD**

# Proposed Federal Legislation

- More than 30 bills have been introduced this year relating to telehealth
  - Studies, pilot programs, and demonstration projects
  - Changes to Medicare reimbursement
  - Technology infrastructure programs (e.g. broadband)
  - Private payor payment parity
  - Availability and reimbursement of mental health and substance use disorder treatment
  - Increase Medicaid funding
  - Availability of telehealth abortion services
  - Amendments for telehealth in the controlled substances act
  - Access to maternal health services

# State Legislation and Regulations

- Permanent payment parity requirements
- Changes to online prescribing requirements decreasing in person examination requirements
- Expansion of services that may be provided via telehealth
- Coverage for audio only and asynchronous visits
- Broadband program funding
- Cross-state licensing, licensing exemptions, and telehealth licenses
- Telehealth practice standards for many licensee types
- Changes to Medicaid requirements
- Allowing for provider supervision via telehealth
- Out of state telehealth discipline
- Access to mental health and substance use disorder treatment

# Looking Forward

- Fewer barriers to offering telehealth services
  - Increased reimbursement
  - Decreased prescribing requirements
  - Broader range of services available
  - Flexibility regarding communication
- Greater clarity for providers regarding telehealth standards
- Fewer obstacles for patients
  - Improved access to internet and technology
- Increased likelihood that patients will use telehealth
  - Familiarity with technology
  - Satisfaction with services received during pandemic
  - Convenience



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