Indiana Health Law Review 2021 Fall Symposium: Regulation of Telehealth

October 22, 2021

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Does Remote Patient Monitoring fall under the umbrella of “Telehealth”?

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Telehealth vs RPM and Virtual Care Services: What's the Difference?

Medicare Reimbursement for Telehealth Services in non-PHE/pre-COVID circumstances

"Telehealth" is a service provided via **live, interactive, synchronous audio and video technology** that otherwise would have been furnished/reimbursed in a face-to-face encounter

- Limited to designated rural or geographically underserved areas
- Patient must be at an "originating site" (e.g. clinic, CAH, SNF)

Medicare Reimbursement for RPM/e-Visits/Virtual Communications

RPM/VC is NOT the same thing as Telehealth! RPM/VC services are **inherently NOT face-to-face** and are therefore NOT subject to Medicare's rural/underserved and originating site restrictions.

RPM/VC is eligible for standalone reimbursement

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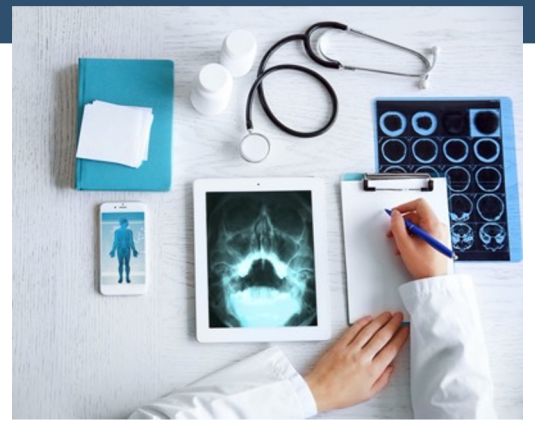
Remote Patient Monitoring and other Virtual Care Management Services



Virtual Care Management Services

- Remote Patient Monitoring ("RPM")
- Remote Therapeutic Monitoring ("RTM") *proposed in 2022 MPFS
- Chronic Care Management ("CCM")
- Principal Care Management ("CCM")
- Transitional Care Management ("TCM")
- Behavioral Health Integration ("BHI")
- Psychiatric Collaborative Care ("CoCM")

COVID-19

- **No** pre-existing practitioner/patient relationship required
- Providers may opt to **waive patient's Medicare Part B copay**

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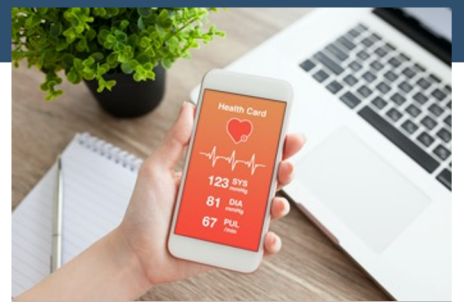
Remote Patient Monitoring Codes



- **CPT Code 99453** ($19): one-time reimbursement averaging $19 for initial setup and patient education by auxiliary staff on the RPM device(s)/technology
- **CPT Code 99454** ($62): for supply of the device(s) to be used in monitoring the patient, reimbursable on a monthly recurring basis for the duration of monitoring
- **CPT Code 99457** ($48): requires that a physician, QHCP, and/or clinical staff spend an aggregate of 20 minutes of time during a calendar month on care management services
- **CPT Code 99458** ($38): for subsequent 20-minute intervals above and beyond the initial 20 minutes in a calendar month indicated for CPT Code 99457
- **CPT Code 99091** ($53): for the collection and interpretation of physiologic data digitally stored and/or transmitted by the patient and/or caregiver to the physician or other QHCP qualified by education, training, licensure/regulation requiring a minimum of 30 minutes of time

Please note: the reimbursement amounts indicated in parentheses above represent Medicare's national averages. Actual reimbursement amounts may vary by geography and payer.

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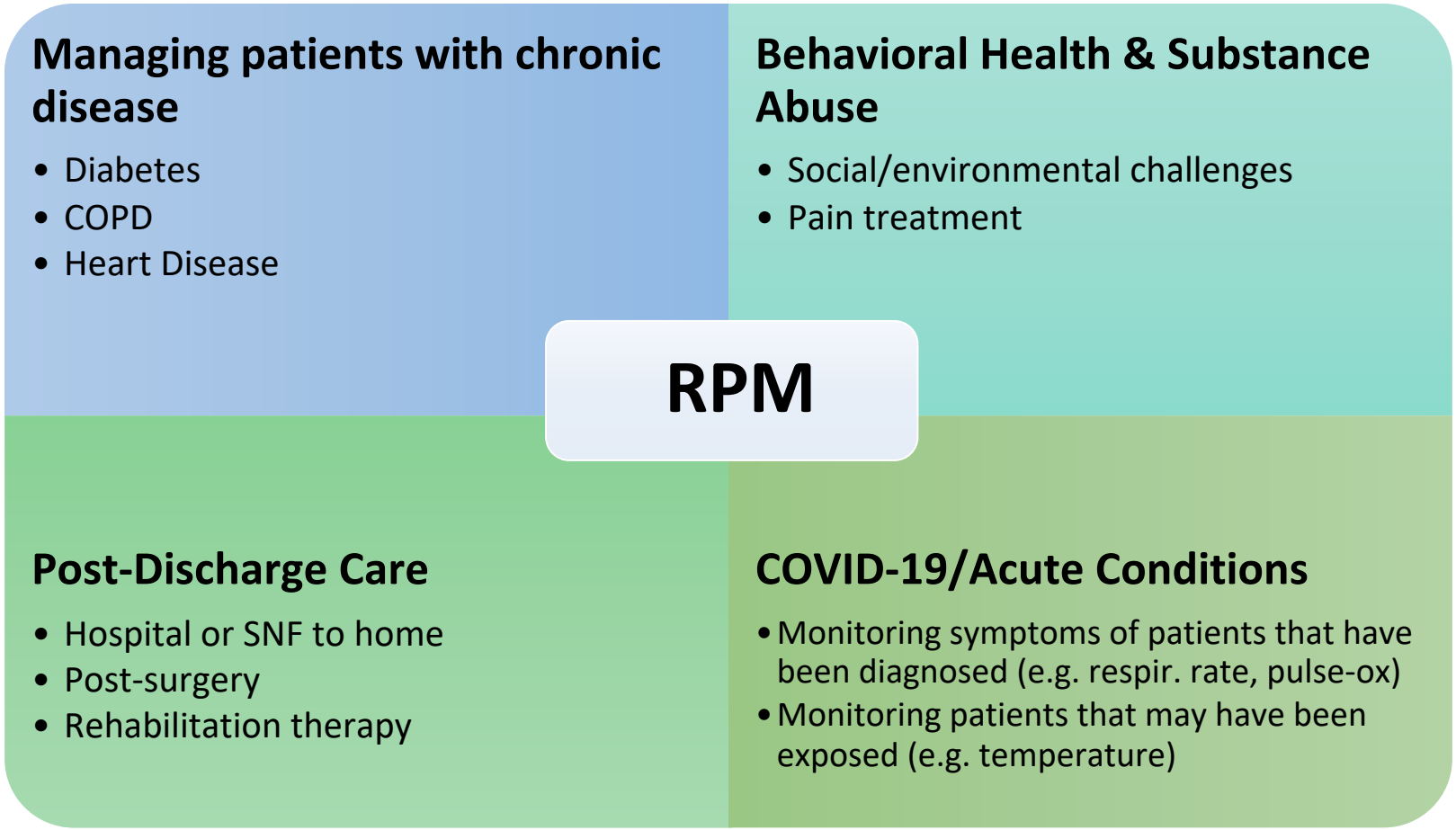
Common Use Cases for RPM



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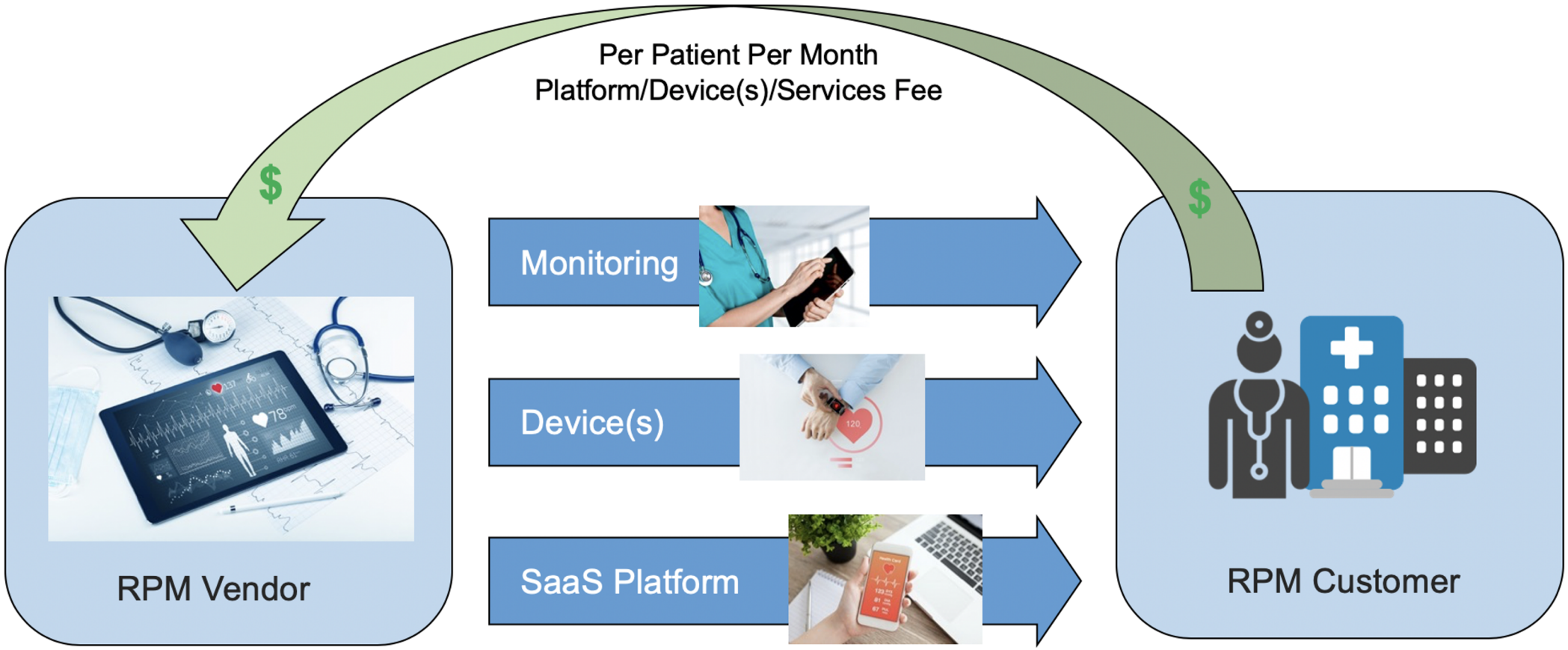
Market Trends: Turnkey RPM



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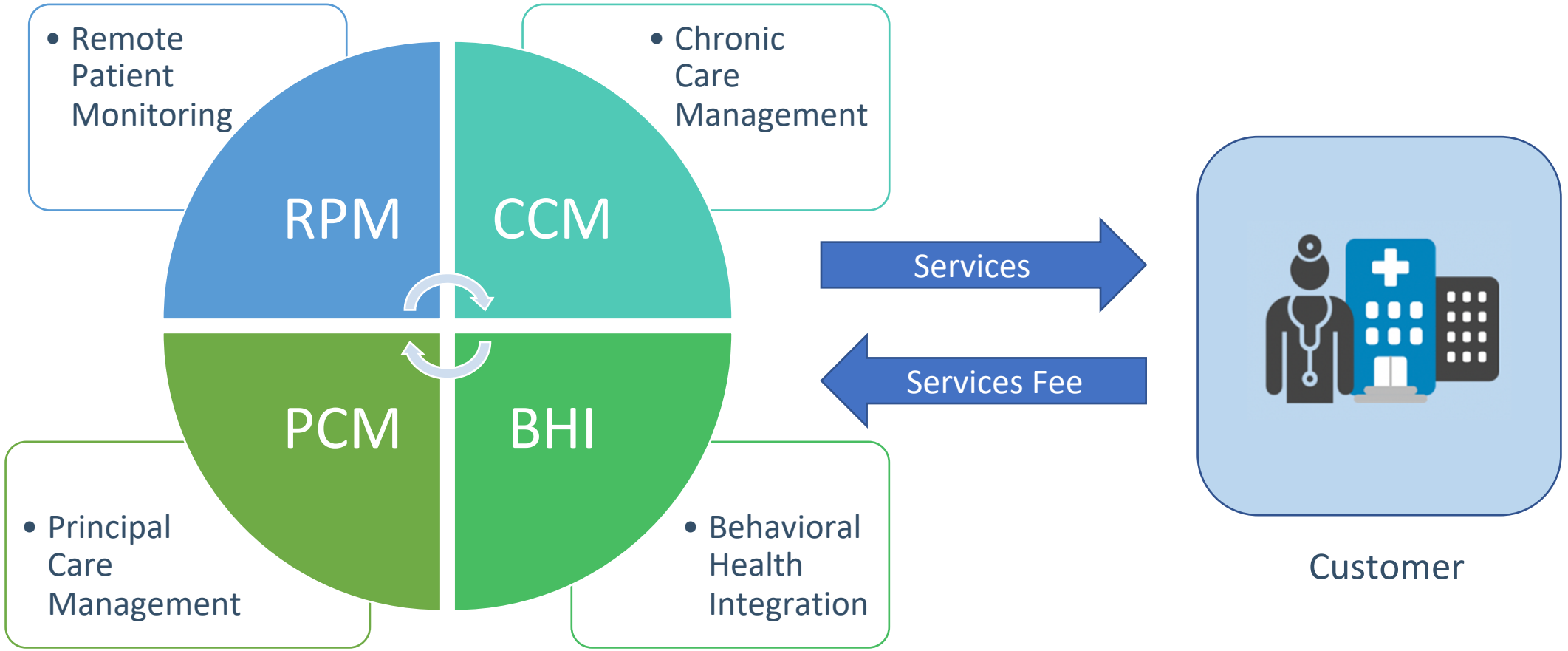
Market Trends: One-Stop Shop for Care Management



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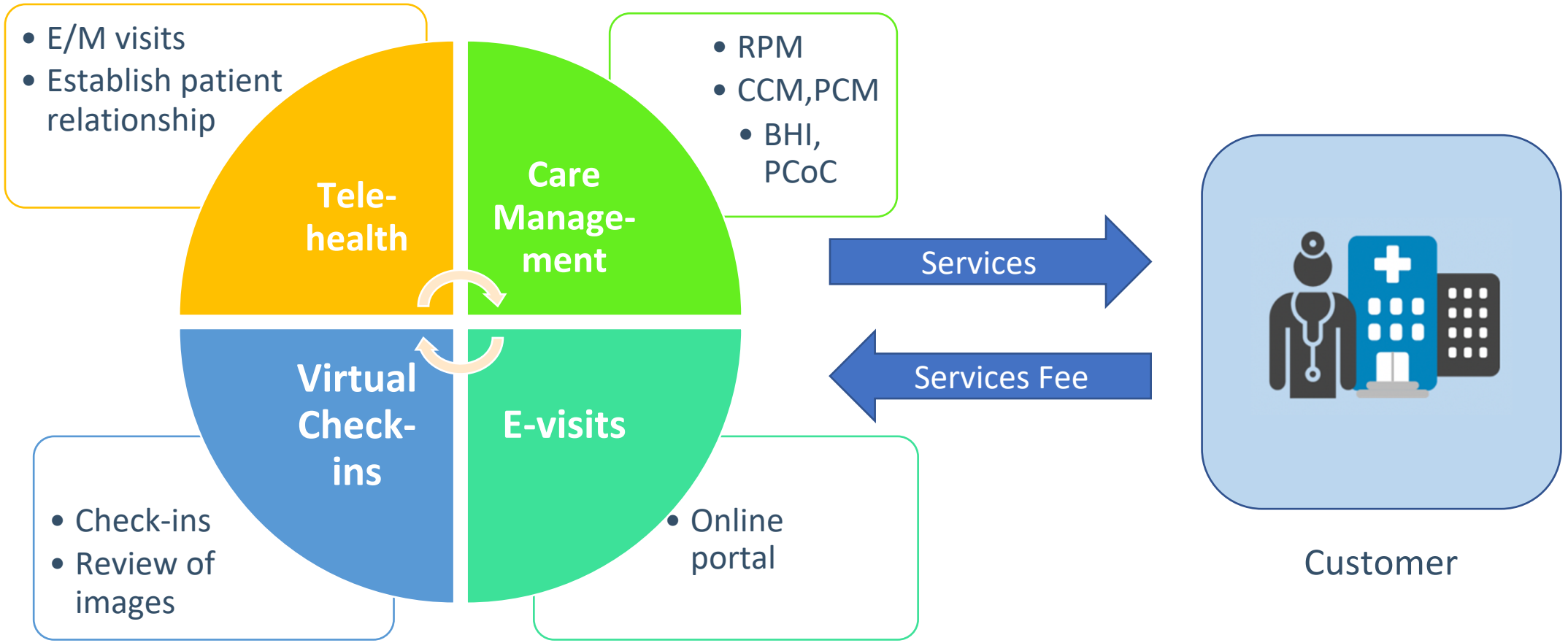
Virtual Communications Codes

- **Remote Evaluation of Image, HCPCS 2010:** Remote evaluation of recorded video and/or images submitted by an established patient by a physician or qualified health care professional who can report E/M services
- **Virtual Check-in, HCPCS 2012:** Brief communication technology-based service, e.g., virtual check-in, by a physician or other who can report evaluation and management services, provided to an established patient; 5-10 minutes of medical discussion (not originating from a related E/M service provided within the previous 7 days nor leading to an E/M service or procedure within the next 24 hours or soonest available appointment)
- **e-Visits:** "patient-initiated digital communications that require a clinical decision that otherwise typically would have been provided in the office."

Market Trends: Comprehensive Virtual Care Platforms



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New Business Models on the Horizon

Value-Based Enterprises

- Recent **changes to Anti-Kickback Statute and Stark** create aligned incentives for care coordination and patient engagement.
- Digital Health companies – including **Telehealth, RPM, and care management** companies – are eligible to be **Value-Based Participants** in Value-Based Enterprises

MSO – "Friendly Physician" 50-state expansions

- DTC telehealth accepting insurance
- DTC RPM and care management services
- Specialty Telehealth

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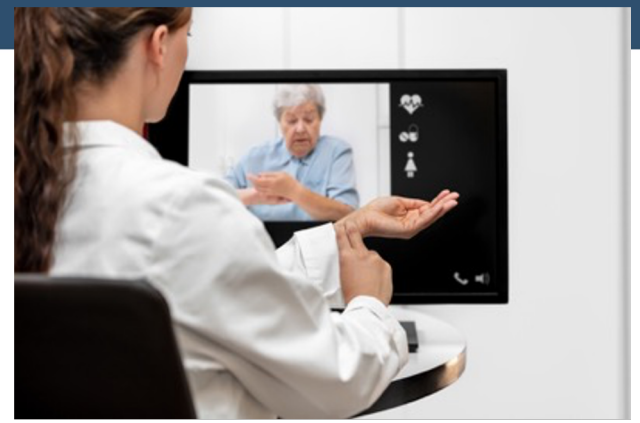
The Future of Telehealth



Near Certainty

- Continued and increasing consumer demand for telehealth
- Focus on telehealth as a supplement to – not a replacement for – in-person visits
- Expanded use cases and eligible providers
- Telehealth as a component of health equity
- User-friendly telehealth platforms
- Continued development of telehealth “best practices” (including use-case specific)

Uncertainty

- Pace of expansion
- Federal and State statutory and regulatory changes
- Payment Parity
- Cross-State Licensure

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Carrie Nixon, Esq. is the Co-Founder and Managing Partner of Nixon Gwilt Law, a healthcare innovation law firm. She also serves as Special Advisor to Empactful Capital, a healthcare venture capital firm based in Silicon Valley, and is an Ambassador for Digital Health Today. Carrie is an expert in healthcare law and policy issues relating to healthcare innovation, including Remote Patient Monitoring, telehealth, mHealth apps, healthcare predictive analytics, personalized medicine, and value-based delivery/reimbursement models such as Accountable Care Organizations (ACOs) and other Alternative Payment Models (APMs). She provides counseling in healthcare regulatory compliance matters and strategy advice regarding business models and healthcare transactions. Carrie represents health tech companies and healthcare startups, along with hospitals and health systems, individual practitioners and large medical groups, pharmacies, and post-acute care providers. Prior to starting her own firm, Carrie began her legal career as an attorney at Mintz Levin, an AmLaw 250 firm. She practiced in the firm's DC office as part of the Health Law section. Carrie later joined the DC office of Reed Smith, another AmLaw 250 firm, practicing in the litigation section with an emphasis on healthcare litigation. She received her J.D. from the University of Virginia School of Law.

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