

Telemedicine

Telehealth and telemedicine are rapidly growing methods of providing patient care by way of electronic communication in lieu of direct face-to-face patient encounters. Healthcare providers that offer patient encounters via telemedicine enjoy a variety of advantages over traditional healthcare delivery. Telehealth allow providers to retain existing patients, reach new patients, and grow their businesses by offering health care services via videoconference or store and forward rather than requiring patients to travel to an office or hospital. Telehealth services afford patients greater access to healthcare by alleviating obstacles such as transportation to healthcare providers and scheduling. While telehealth may present significant opportunity for every party to a telehealth transaction, each party must evaluate the risk of the model, including the treating provider, technology company, and ancillary provider, such as a pharmacy or laboratory.

Frier Levitt has developed, reviewed and restructured an array of diverse business models that contemplate the provision of telehealth. Each arrangement presents its own challenges and must be structured to ensure compliance with the various laws and regulations including, but not limited to, the False Claims Act, Anti-Kickback Statute, Stark Law, Health Insurance Portability and Accountability Act (HIPAA), Patient Choice laws, state insurance laws, and state professional board regulations which typically establish the requirements for engaging in the Telehealth.

Opportunities in telehealth exist in many areas of medicine, including:

Solo Practitioners

Improving patients' access to care can eliminate many unnecessary emergency or urgent care visits and enhance patients' interaction and loyalty to a particular physician or practice. By utilizing telemedicine technology, solo practitioners are able to provide a greater continuity of care to their patients, which results in increased patient outcomes and reduced overall cost. Additionally, primary care physicians can more effectively triage their own patients, having full knowledge of the patient's applicable conditions, in order to recommend appropriate follow up or avoid.

Rural Health Facilities

Telemedicine can significantly increase the level and scope of services provided at rural health facilities. Patients seeking care in rural areas can be connected remotely to specialists for convenient and efficient consultations that may otherwise be inaccessible. Pursuant to Medicare reimbursement guidelines, beneficiaries must be located at a "designated originating site," which includes rural health clinics, in order to qualify for a reimbursable encounter. Rural health facilities can take advantage of this billable service in order to expand specialized services offered to patients.

Mental Health

Mental Health providers will find significant opportunity by expanding their practices to include telehealth. Telemental health can not only increase the potential to lower a provider's operating expenses, but clinicians can be more easily accessible to patients in crisis. Often, care provided by these practitioners does not require physical presence in order to effectively treat a patient's condition. Therefore, mental healthcare providers can provide a comprehensive scope of services through virtual encounters while complying with the applicable standard of care. While all providers must review any software and third-party platforms to ensure compliance with the requirements of HIPAA, mental health providers should consider the sensitive protected health information in their possession, which may subject them to greater scrutiny.

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Urgent Care Centers

Many patients seek medical care at urgent care centers as an alternative to emergency department visits or for purposes of convenience. Urgent care centers that make telehealth available to patients are able to reduce operating expenses and potentially treat a greater number of patients. By implementing telehealth modalities, these centers can reduce wait times and more efficiently triage patients who may require additional or alternative care. However, like all other providers, physicians practicing in urgent care centers should be aware of the applicable standards of care and thoroughly review their professional liability insurance policies. In the event that a virtual patient visit does not result in a billable encounter, clinicians will remain responsible for the any medical advice provided.

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Marketing Agents

Marketing agents that leverage the services of telehealth platforms in order to assist patients in obtaining particular items or services must ensure that their business relationships with these companies do not implicate or violate the Anti-Kickback Statute, HIPAA, or state fee splitting and patient steering prohibitions. Marketing agents must perform proper due diligence for any telehealth company with whom the marketer seeks to do business. An improper arrangement between a telehealth company and a treating provider can frequently interfere with the validity of a practitioner-patient relationship, and subsequently invalidate any resulting order that may be issued pursuant to the telemedicine encounter. Additionally, providers who perform encounters on telehealth platforms that do not comply with state laws regarding the modality of the encounter likewise may result in invalid orders. Due diligence of the telehealth company and its business model is always necessary.

Healthcare Technology

In many ways, healthcare technology companies' developments are charting the course for virtual healthcare legislation. Functionalities that were not possible ten years ago are now in their third and fourth iterations. As a result, telehealth platforms and software products have the capability of being comprehensive and sophisticated in order to support the needs of practitioners who will use the technology. However, technology companies that build virtual platforms, software, and other services for providers engaged in telehealth must ensure that their technology comports with applicable federal and state patient privacy laws. Moreover, these companies must evaluate and properly structure their relationships with their respective clients, such as the health care providers utilizing their services. Regulatory analyses are particularly pertinent in circumstances whereby technology companies do more than offer their stand-alone technology products. For example, if a technology company also offers a marketing services that drives patients to the users of its platform, the arrangement must be evaluated for compliance with the Anti-Kickback Statute, patient steering laws, and professional fee splitting prohibitions.



How Frier Levitt Can Help

Contact Frier Levitt for assistance with the development of a compliant telehealth strategy and business model.

Please note that with the official declaration of a nationwide public health emergency due to COVID-19, many federal and state agencies have released notifications regarding temporary waivers and modifications to the enforcement of certain laws, and the expansion of coverage for virtual health care services, in order to minimize public interaction and contain the spread of the virus. It is currently unclear which, if any, of these changes will be permanent in the wake of the pandemic.