CHART

Mitigating Risks Associated with Telehealth Services

by Cathy Kenny, MT (ASCP), MS, CPHRM, Risk and Patient Safety Consultant, CHART

In the first quarter of 2020, it was projected that telehealth services in the United States would experience an annual growth rate of nearly 20% through 2025 due to growth in chronic diseases and technological expansion[1]. Since then, the coronavirus pandemic has resulted in substantial increases in telehealth visits[2]. It is expected that current and future service expansion may increase the incidence of medical malpractice claims related to telehealth services.

Although telehealth offers many benefits for patients, including improved access and cost savings, it also presents liability risks[3]. Understanding the risks associated with telehealth services will enable health care entities to develop and monitor telehealth policies, processes, and risk control strategies. According to the 2020 Aon/ASHRM Hospital and Physician Professional Liability Benchmark Analysis (Click HERE to purchase report online), "Health care systems should proactively assess their controls, i.e. policies, procedures and practices, around their telemedicine services to ensure that there are no gaps that could expose the organization to litigation."

Risk control opportunities and related mitigation strategies[4] include, but are not limited to, the following:

Errors, failures, and delays in diagnosis – Telehealth may compound diagnostic risks associated with in-person care by making it more difficult to recognize and monitor minimal or subtle symptoms, take effective histories and perform physical exams[5]. To control these risks, providers can utilize decision support tools and implement safety practices (e.g., use pending logs to track follow-up visits and test results, and conduct patient surveys to ensure that symptoms and concerns have been addressed). In addition, reliance on home-monitoring devices may further exacerbate diagnostic risks, therefore, training patients, clinicians and staff on proper use and limitations of technology and equipment is an important risk mitigation strategy (Click HERE for a sample patient educational brochure).

Failure to establish an appropriate practitioner-patient relationship – Establishment of a practitioner-patient relationship does not require an in-person visit. However, many practitioners are not proficient in the use of video equipment and technology. Training clinicians on web-side manner can prepare them to establish an appropriate practitioner-patient relationship during a virtual encounter (Click HERE for information on web-side manner). Additional training may be needed to ensure that practitioners understand their roles and responsibilities and recognize patient's rights when participating in telehealth visits.

Communication failures – Telehealth can present challenges and barriers to verbal and nonverbal communication by influencing perceptions of tone, facial expressions, body language and eye contact (Click HERE to access a short provider training video on preparing for and conducting a

telehealth visit). Successful risk control strategies can be as simple as encouraging patients to ask questions, using the teach-back communication method to verify patient understanding, and ensuring that patients know how to contact their provider with post-visit questions and concerns. Like in-person visits, complete and accurate documentation in the medical record is essential to mitigating risks associated with communication failures during telehealth visits. The medical record must include documentation of informed consent that contains information, limitations, risks, and benefits of telehealth services and the specific issue being addressed during the visit (Click HERE for a sample informed consent form). The American Telemedicine Association (ATA) recommends discussing and documenting all verbal, audiovisual and written communication, as well as any linked sites, the mode of service delivery or technology used, any technical difficulties experienced during the visit, and all patient-related electronic communications, such as lab and imaging results (Click HERE to access the ATA website).

Inappropriate use of telehealth services – Providers must recognize and address the limitations of telehealth services. Developing guidelines regarding which conditions can be treated remotely (e.g., review of test results, referrals, discussion of treatment options) and which require in-person visits (e.g., patients presenting with severe symptoms, cognitively impaired and/or intoxicated patients) and having a plan for escalating a telehealth visit to an in-person visit can mitigate risks related to inappropriate use of telehealth services and ensure continuity of care.

Privacy, security, and cybersecurity breaches – Privacy and security concerns may be based on technological issues (e.g., secure technological interfaces) or situational issues (e.g., maintaining a confidential setting in the practitioner's home). Health care providers can guard against privacy and security risks by conducting visits in a quiet, secure location, utilizing password-protected screensavers and encryption, avoiding unsecured devices and systems (e.g., cell phones, laptops, and email), and adhering to the HIPAA Security Rule (Click HERE to access CHART resources for securing e-information).

Disruptions due to power and technological failures – Although power and equipment failures may be unavoidable, providers can mitigate the risks of disruptions to telehealth services by selecting the appropriate technology and equipment, having a back-up plan that is shared with patients, and ensuring suitable resources are in place to secure, manage, and maintain networks, hardware, and software.

Care deferrals due to access constraints – During the pandemic, cases of care deferrals have occurred in specialties and/or communities unable to utilize telehealth services[6]. According to one study, there has been a significant decline in visit volume for the specialties of ophthalmology, otolaryngology and dermatology as well as for disadvantaged populations and some chronic conditions (e.g., hypertension and diabetes without complication)[7]. To target areas of deferred care, the study's authors suggest, "Health systems could allocate resources to patient outreach efforts such as telephone calls or reminder messages, prioritizing patients whose conditions saw the largest drop in visit volume. Furthermore, additional clinical capacity could be allocated to specialties with the largest backlogs of deferred care. Finally, health systems could prioritize chronic illness populations, who were more likely to have deferred care, for targeted population management."

Legal risks – Telehealth services also pose legal risks (e.g., scope of practice, medical billing, licensing, contracting and geographic restrictions) under federal and state laws that continue to evolve and include emergency orders related to the COVID-19 pandemic. Therefore, you may wish to obtain a

legal opinion as part of your telehealth services development plan (Click HERE to access the CHART Legal Services Hotline brochure).

After developing and implementing telehealth policies, processes and risk control strategies, health care organizations should monitor and evaluate their systems[8] (Click HERE to download a guidance document for managing risks in the virtual environment). Routine monitoring enables ongoing identification of process gaps and performance improvement opportunities. Both inhouse and contracted telehealth services should be included in your Quality Assurance/Performance Improvement (QAPI) and Peer Review programs (Click HERE for more information on QAPI and HERE for more information on Peer Review).

With the expectation of vast increases in telehealth services, health care organizations should act now by identifying potential risks and developing/updating telehealth policies, processes, and risk mitigation efforts (Click HERE to access the AMA telehealth implementation playbook and HERE to access the CHART telehealth resources).

[1] https://www.globaltrademag.com/u-s-telemedicine-market-trends-size-share-and-growth-until-2025/

[2] https://www.ama-assn.org/practice-management/digital/5-huge-ways-pandemic-has-changed-telemedicine?gclid=Cj0KCQiA34OBBhCcARIsAG32uvPMwHxVlGncd8Ywi4kaGg02Z1FGu9JwLwFvCEobp2DvJgMFpIgQEksaAhA8EALw_wcB

[3] https://customers.coverys.com/apex/f?p=120:47:6081222491135::NO:RP:P47_DOCUMENT_ID:4071

[4] https://customers.coverys.com/apex/f?p=120:47:12227651375878::NO:RP:P47_DOCUMENT_ID:5001

[5] *J. Hosp. Med*. 2020 June;15(6):363-366. Published Online First May 18, 2020 | 10.12788/jhm.3461

[6] https://www.healthleadersmedia.com/clinical-care/study-telehealth-use-and-person-visits-during-pandemic-provides-insight-deferred-care

[7] https://www.healthaffairs.org/doi/abs/10.1377/hlthaff.2020.01786

[8] https://www.rmf.harvard.edu/Clinician-Resources/Guidelines-Algorithms/2021/Patient-Safety-Guidance-for-the-Virtual-Visit-AMC-PSO