The Changing Landscape of Telepsychology

*There’s no comprehensive road map to guide psychologists as new laws are passed and reimbursement policies evolve.*

Over the past several years, heightened legislative and regulatory activity at both the federal and state level has removed barriers and increased patient access to telehealth services. Some of the activity has involved telehealth more broadly, while certain developments pertain to specific areas of health care services such as radiology, remote home monitoring or mental health.

Despite the growing demand for telehealth services, there is still no comprehensive road map guiding health care providers in how to incorporate technology into the remote delivery of health care services to patients – whether the patient is located in the same city or county, in another part of the same state or in another state, or even outside of the U.S. As a result, providers are still navigating a patchwork of federal, state, organizational and/or professional policies to determine how to provide telehealth services appropriately and lawfully.

Nevertheless, there has been notable progress in the area of telepsychology practice. This article outlines developments at the federal and state levels governing the delivery of telepsychological or telemental health services and includes an overview of current public and private payer reimbursement policies.

**What is telehealth?**

Telehealth practice is often addressed in state licensing laws and regulations insofar as scope of practice for licensed health professionals is traditionally determined by states. State laws governing telehealth typically fall into one of two categories: general telehealth law broadly applied to various health care disciplines; or a telehealth provision included in the licensing laws for a specific health care discipline.

A majority of states address telehealth in some capacity. They may focus on defining telehealth and address how telehealth services are delivered. State-level provisions may also address whether a separate telehealth license or credential is required and may also specify which health care disciplines are covered under the provision.

It is important to note how a particular state law defines telehealth. Some laws use the term “telemedicine.” While there is no universal definition, “telehealth” is often defined as the practice of health care delivery, diagnosis, or the transfer of medical data using interactive audio, video or data communications in providing services to a patient at another location. Consultation by telephone, fax or email is often specifically excluded from the definition.

**How states regulate telehealth**

While most state telehealth issues focus on medicine or particular medical disciplines, an increasing number of states cover telepsychology or telemental health services under telehealth laws. Several states including Arizona, California, Georgia, Oklahoma and Texas have enacted telehealth or telemedicine laws that include telepsychological services.

But these state laws vary in detail. For example, Arizona’s law does not apply to telehealth consultations between two providers where the patient is not physically present. California includes both synchronous (“real-time”) and asynchronous (“store and forward”) interactions as well as services provided by telephone or email. Arizona, California, Oklahoma and Texas specify that patient consent for telehealth services must be obtained prior to engaging in telehealth. California allows for patient consent to be either written or verbal but must be documented in the patient record. Arizona and Oklahoma require that patient consent must be provided both verbally and in writing.
Some states including Delaware, Idaho, Kentucky, New Hampshire, Ohio, Utah and Vermont have specific telepsychology provisions included in the psychology licensing laws. As in California, Ohio’s definition is broad – it includes telephone, email and Internet-based communications as well as videoconferencing under the definition of telepsychology, and includes supervision in its definition. Vermont’s telepractice provision specifies disclosure requirements for psychologists who engage in telepractice: name and contact information, area of practice and limitations of telepractice. Delaware and Kentucky both require psychologists to obtain patient consent for telepsychological services, develop a written emergency contingency plan, document a risk-benefit analysis for telepractice, and use secure communications when possible.

Some states broadly define the practice of psychology to include psychological services that are provided remotely or provided to individuals located within that state even if the psychologist is located elsewhere. For example, Kansas and North Dakota state that if a person, regardless of location, engages in any activities defined under state law as the practice of psychology, regardless of the means by which the service is provided, and provides services to individuals within the state, that person must be licensed by that state’s (Kansas or North Dakota) psychology board. Similarly, Mississippi defines the practice of psychology to include psychological services provided in-person, by phone, Internet or via telehealth. Montana includes real-time audio-video conferencing in the definition of a professional relationship between a licensed psychologist and the client. Likewise, South Carolina and Wisconsin include psychological services provided by electronic or telephonic means in the definition of the practice of psychology as regulated by the psychology board.

**Licensing boards weigh in**

In nearly a dozen states, the psychology licensing board has issued declaratory statements or advisory opinions indicating how the board would view telepractice in the context of a licensing board complaint.

These opinions are particularly useful in those jurisdictions with no law or regulation governing telehealth practice. Practitioners in these states are encouraged to check with their licensing board for any guidance the board may have developed.

Massachusetts, Nevada, New Hampshire, New York, North Carolina, Pennsylvania and West Virginia have published board policy statements on telepsychology that are available on the psychology licensing board’s web site. Psychology licensing boards in the District of Columbia, Louisiana, Maryland, New Jersey, Texas and Wyoming have published guidance about telepsychology in their newsletter, which may be available online.

In many of these board statements, the board defines telepractice broadly to include a wide array of technologies, including telephone, fax, email, Internet-based applications and videoconferencing. Although board opinions do not have the same force and effect as a state statute or regulation, many of the licensing boards expect psychologists to obtain appropriate informed consent and to discuss the potential risks and benefits of telehealth with patients.

Notably, licensing boards seem to share a common perspective about interjurisdictional telehealth practice. In nearly all instances, the licensing board views the delivery of health services as occurring where the patient is located. As a result, the provider, regardless of his or her location, is expected to be licensed in the jurisdiction where the patient is located.

**Florida has issued two declaratory opinions confirming its view that delivery of psychological services occurs both where the psychologist is located and where the patient is located. Therefore, whether the patient or the psychologist is in Florida, the Florida board has jurisdiction and the psychologist must be licensed to practice psychology in Florida.**

Though psychology licensing laws generally require licensure in both the jurisdiction where the psychologist is located and the jurisdiction where the patient is located, psychologists may be able to provide telehealth services to patients in another jurisdiction on a temporary basis through temporary or guest licensure provisions. Under these provisions, states permit psychologists who are licensed in good standing in another state to practice for some fixed number of days per year in their state without obtaining licensure. Additional requirements may apply, such as advance notification and/or approval of temporary practice by the psychology board. State provisions vary considerably and any psychologist relying on these provisions must understand them well.
Private payer reimbursement

While reimbursement for telehealth services has increased over the past decade, coverage for telehealth services is still inconsistent and varies by payer. In determining whether telehealth services are covered, it is important to consider who the payer is, where telehealth services are provided and what service is provided via telehealth.

As of November 2013, 21 states have enacted legislation requiring private insurance companies to cover services delivered through telehealth. This means that insurers cannot refuse to cover a health care service simply because it was provided using telehealth. These state laws mandate coverage for telehealth services, if medically necessary, subject to the same terms and conditions that apply to coverage for those services provided in-person. However, the states vary as to what technologies are acceptable for coverage and reimbursement rates as compared to in-person services.

For example, some states – such as Arizona, Georgia, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, Montana, New Hampshire, New Mexico, Oklahoma, Oregon, Texas, Vermont and Virginia – require coverage for telehealth services provided using interactive audio, video or data communications. But telephone, fax or email messaging is specifically excluded so payers are not required to reimburse for consultations provided by these modalities. Certain states including Montana, New Mexico and Vermont specify that the communications must be encrypted (see sidebar on page 11) and comply with relevant state and federal privacy laws, such as the Health Insurance Portability and Accountability

INTERSTATE PRACTICE

While interest in telehealth service delivery is increasing as more states enact legislation governing the provision of telehealth services, the rules of telepsychology practice are not yet uniform or comprehensive. Requirements vary by state and practitioners are not yet able to deliver telepsychology services regularly across state lines without obtaining additional licensure. Psychologists often cite work travel, vacation or an upcoming move by their patients as a reason to engage in telepsychology. Generally, the circumstances involve the psychologist being in one jurisdiction and the patient being in another.

Many state psychology licensing boards take the position that when health care professionals provide services to patients located in another state the professional must be licensed in the state where the patient is located. So in many instances where the psychologist might be providing telehealth services across state lines, he or she may be viewed as engaging in psychology practice without a license.

These concerns regarding interstate practice are not unique to psychology. Organized medicine and nursing have both grappled with how to establish a licensing/regulatory structure that promotes telehealth while ensuring public health and safety. The Federation of State Medical Boards (FSMB) has developed a model uniform licensing application and improved its credential verification system as part of its long-term effort to improve the expedited licensing process for physicians. Similarly, the National Council of State Boards of Nursing (NCSBN) has examined licensure portability for nurses and has developed a mutual recognition model for licensing nurses.

Having taken note of efforts by organized medicine and nursing to enhance licensure portability, psychology is attempting to remove barriers that currently impede the growth of telehealth. The Association of State and Provincial Psychology Boards (ASPPB), which consists of psychology regulatory boards for every jurisdiction in Canada and the United States, is playing an instrumental role. ASPPB received federal grant funding to develop a proposal to promote licensure mobility for telepsychology.

Part of ASPPB’s efforts includes implementation of its universal application and credentials verification service to streamline the process through which applicants for licensure will obtain their first and all subsequent licenses to practice psychology. In addition, ASPPB has been developing a proposed regulatory mechanism – the E.Passport – that would allow licensed psychologists to practice telepsychology across state lines under specified conditions without obtaining an additional license.

The proposal is still being developed. Once finalized by ASPPB and approved by states that elect to participate, the jurisdictions would have a process by which a psychologist could provide telepsychology services across state lines more easily. Licensing boards could better monitor who is engaging in psychological practice either in-person or virtually within a jurisdiction. And patients could benefit from greater access to psychologists.
According to the Department of Health and Human Services, encryption is defined as “a method of converting an original message of regular text into encoded text. The text is encrypted by means of an algorithm. If information is encrypted, there would be a low probability that anyone other than the receiving party who has the key to the code or access to another confidential process would be able to decrypt (translate) the text and convert it into plain, comprehensible text.”

WHAT IS ENCRYPTION?

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States with Telehealth Coverage Mandates

States shown in blue have enacted laws requiring insurance coverage of telehealth services.

Act (HIPAA). A few states specifically exclude consultations between providers where the patient is not present.

Other states are more expansive in the types of telehealth technologies that may be reimbursable by insurance companies. California, Colorado, Hawaii, Mississippi, Montana, New Mexico and Texas appear to allow for the use of store-and-forward technology as well as real-time audio-video conferencing under the state telehealth coverage laws.

Some of the states have geographic restrictions for reimbursable telehealth consultations. For example, Arizona requires health insurance policies issued on or after January 1, 2015 to cover health care services provided through telemedicine if: the health care service would be covered if provided through in-person consultation between the patient and a health care provider; and the patient is located in a rural region of the state. Arizona’s law also specifies mental health disorders and neurological diseases among those health care services covered under its telemedicine mandate and defines what constitutes a “rural region.”

Certain states’ laws do not mandate coverage for telehealth services by providers who are not part of an insurer’s approved telehealth network. Arizona, Kentucky, Massachusetts, Mississippi, Missouri and Vermont allow insurers to limit coverage to their in-network providers.

Most of the states require payers to provide coverage for health services provided via telehealth subject to the contract terms and conditions applicable to covered in-person services. Interestingly, however, Louisiana’s law appears to require reimbursement only for physicians and mandates reimbursement to be at least 75 percent of the “reasonable and customary amount” paid for in-person physician office visits. All other types of providers, including psychologists,
apparently are not eligible for reimbursement under the Louisiana telemedicine coverage mandate.

Medicare reimbursement

Over the past decade, the Centers for Medicare and Medicaid Services (CMS) has provided reimbursement for certain health care services delivered to Medicare beneficiaries using telehealth. Clinical psychologists are among the categories of health care providers participating in Medicare who are eligible to furnish services via telehealth covered by the federal program.

The federal agency has approved the use of telehealth in lieu of an in-person encounter for professional consultations, office visits, office psychiatry visits and several other types of services. However, CMS specifies certain conditions that must be met for telehealth services to be reimbursed under Medicare.

First, the Medicare beneficiary receiving services via telehealth must be at an eligible originating site located in a rural Health Professional Shortage area or in a county outside of a Metropolitan Statistical Area (as defined by federal law). An originating site is the site where the Medicare patient is receiving services via telehealth. Examples of an originating site may include a provider’s office, hospital, federally qualified health center, community mental health center, or skilled nursing facility.

It is important to note that a patient’s home or other non-medical sites (such as a coffee shop) are not included in the list of eligible originating sites. So a psychotherapy session conducted via Skype to a patient at home would be ineligible for reimbursement under Medicare.

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Currently, Medicare only reimburses for real-time, interactive audio-video telecommunications used to furnish services by the provider at the distant site and the patient at the originating site. Reimbursement for services using asynchronous technology is only permitted for federal telemedicine demonstration projects in Alaska and Hawaii.

It appears that reimbursement for eligible telehealth services is on par with that for in-person services. For billing purposes, the provider at the distant site would submit a claim for telehealth services using the appropriate procedural billing code identifying the professional service furnished along with an appropriate billing modifier. The “GT” modifier indicates that the service identified by the appropriate CPT code was provided “via interactive audio and video telecommunications systems.” This confirms that the telehealth service was provided consistent with CMS requirements – that is, the Medicare patient received services at an eligible originating site in an HPSA or non-MSA area.

Along with increasing activity at the state level, there is growing interest in telehealth services on Capitol Hill. In 2011, Congress enacted HR 1832 – the Service Members Telemedicine & E-Health Portability (STEP) Act – allowing credentialed health care providers in the Department of Defense to treat members of the Armed Forces at any location regardless of where the provider or patient are located, so long as the practice is within the scope of authorized federal duties.

Between 2011 and November 2013, nearly half a dozen federal telehealth bills have been proposed – four of them in 2013 alone.

The common theme for all of these legislative initiatives relates to licensure for health care providers and promoting delivery of telehealth services across state lines. Many telehealth proponents claim that provider licensure at the state level restricts telehealth practice and that federal or national licensure is needed. The congressional proposals seek to expand the ability of licensed or credentialed health care providers to treat patients via telehealth regardless of the jurisdiction where the provider or the patient is located.

The thrust of these federal legislative efforts is to move toward a nationally based system of licensure for health care providers to allow providers to treat patients throughout the U.S. via telehealth so that providers need not be licensed in multiple jurisdictions to engage in telehealth practice. However, the intent clearly runs counter to the prevailing view that the regulation of health care providers falls within the states’ authority to ensure the public health, welfare and safety. State licensing boards are reluctant to concede this authority.
Approved Medicare telehealth services include a wide array of services. Each year, as part of the process whereby CMS updates the Medicare fee schedule, stakeholders may propose changes to the list of approved Medicare telehealth services. So the number of services eligible for telehealth reimbursement expands nearly every year. With regard to services provided by psychologists, the following are approved telehealth services for Medicare: individual psychotherapy, neurobehavioral status exam, psychiatric diagnostic interview exam, health and behavioral assessment and intervention (HBAI) services, brief face-to-face counseling for alcohol misuse, behavioral counseling for obesity, alcohol/substance abuse structured assessment and smoking cessation.

**Medicaid reimbursement**

To date, approximately 44 Medicaid programs, including the District of Columbia, allow for at least some reimbursement of telehealth services. Connecticut, Iowa, Massachusetts, New Hampshire, New Jersey and Rhode Island do not cover services provided via telehealth under Medicaid. Most Medicaid programs limit reimbursement to live videoconferencing. A few state Medicaid programs allow for store-and-forward but typically limit services to teleradiology or teledermatology.

Of the 44 programs allowing for Medicaid coverage of telehealth services, approximately 36 programs appear to cover telemental health services. However, that does not necessarily mean that psychologists can bill Medicaid for telepsychology. Only about a dozen of these states specifically include psychologists in the list of providers eligible for telehealth reimbursement under Medicaid. The majority of those states appear to either limit coverage of telemental health services to psychiatric services (for example, pharmacological medication management), or do not include psychologists among approved Medicaid providers.

Even where psychologists are eligible to receive reimbursement for telepsychological services, Medicaid programs may apply certain requirements. For example, a patient’s home is generally not considered an eligible originating (patient) site for telehealth services. Typically, patients would need to receive services at a provider’s office, a hospital, a federally qualified health center or community mental health center, or other similar facility. Some states require preauthorization for telehealth services while a few states only allow telehealth services if there are no available providers within a reasonable proximity for a patient to see in person. There may also be billing requirements for telehealth reimbursement under Medicaid.

It is important to contact your state’s Medicaid office to determine whether psychologists are eligible providers for telehealth services under Medicaid and if so, what restrictions or requirements need to be followed for coverage under Medicaid.

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