OFFICE OF THE
HEALTH INSURANCE COMMISSIONER
STATE OF RHODE ISLAND
AND PROVIDENCE PLANTATIONS

OHIC Payment and Care Delivery Advisory Committee Telemedicine Subcommittee

OCTOBER 22, 2020

Agenda

Welcome and Agenda Review	10:00am – 10:05am
Goals and Process for Developing Consensus-Based Recommendations & Developing Guiding Principles for Future Discussions	10:05am – 10:10am
Payment Parity Follow-Up	10:10am – 10:40am
Discussion of Program Integrity	10:40am – 10:55am
Discussion of Security, Privacy and Confidentiality	10:55am – 11:30am
Discussion of Performance Measurement	11:30am – 11:50am
Public Comment	11:50am – 11:55am
Next Steps and Adjournment	11:55am – 12:00pm

Reminder of Zoom Meeting Procedures

Please stay muted to reduce background noise and use the "raise hand" feature if you wish to speak. We will keep track of raised hands and call on individuals as time permits.

- Due to the large number of participants, we may not get to every individual who raises their hand, but will prioritize a diverse sampling of stakeholders.
- There will also be a public comment period at the end of each topic area.
- When called on to speak, *please slowly state your name and the organization you represent* prior to commenting or asking a question.
- You may also use the chat function for general questions to the group.

Goals and Process for Developing Consensus-Based Recommendations & Developing Guiding Principles for Future Discussions

Reminder of the Telemedicine Advisory Group Goals

Since COVID-19 will continue to be a concern in the coming months, and the need to facilitate access to services through telemedicine persists throughout the duration of the PHE, this group will provide recommendations to Governor Raimondo, Commissioner Ganim and Director Shaffer on potential revisions to emergency telemedicine policies.

At the same time, we want to be forward-looking and address:

- which temporary emergency policies should or should not be carried forward on a more permanent basis; and
- how to improve telemedicine as a convenient, cost-effective, accessible and equitable option for providers and patients in Rhode Island.

Reminder of Process for Developing Consensus-Based Recommendations

For each policy issue up to and including the discussion on payment parity, project staff will share context about the policy choices - both internal and external to Rhode Island - including a list of pros and cons.

The group will discuss each issue, including exploring the pros and cons of policy choices, and identifying key concerns, needs and objectives.

All participants are welcome to provide input.

All draft recommendations will be recorded and emailed to the group in advance of each meeting.

Approach for Discussing Other Upcoming Topics

- Up to now, this group has discussed specific policy proposals or legislative language around telemedicine coverage and payment issues.

- After the conclusion of the discussion on payment parity we will shift this approach, since there are no specific proposals to discuss or react to, and some of the actions to address these issues may not be as appropriate for legislation or regulation.

- For the remaining issue areas (programt integrity; security, privacy, and confidentiality; and performance measurement), we will focus on developing high level principles that will help guide future policy.

What Are Principles for Policy?

- Areas of agreement that should be followed in the development of future State policies
- Focus on telemedicine policies for which the state has authority to govern (e.g., not HIPAA)
- Support the safe, equitable, and cost-effective use of high-quality telemedicine

Payment Parity

SUMMARY OF KEY AREAS OF AGREEMENT FROM THE OCTOBER 8, 2020 MEETING

Areas of Agreement Around Telemedicine Parity

1. Telemedicine fills an important need during the public health emergency when social distancing requires fewer in person interactions, allowing some patients to continue to receive care via telemedicine.
2. Telemedicine should be integrated into the existing delivery system infrastructure that emphasizes coordination between primary, behavioral health and specialty care, rather than be developed as a separate system.
3. A value-based health care system that moves away from FFS payments will allow for providers to deliver care using any care modality that is most appropriate for the patient.
4. The value of telemedicine is still being defined and how telemedicine adds value varies by stakeholder. Additional study of the use and use cases of telemedicine would provide further input into its value proposition.

Areas of Agreement Around Telemedicine Parity

5. Telemedicine behavioral health services should be paid at the same rate as in person regardless of modality, so long as the service and the modality by which the service is provided is medically necessary and clinically appropriate.
6. Telemedicine can provide access to services or provider types that are scarce in Rhode Island and special consideration in payment rates be given when telemedicine can fulfill a need for access.
7. The use of telemedicine should support existing patient-provider relationships to support continuity of care, but some clinical expertise is only available by providers outside of those existing relationships.

Payment Parity for Primary Care Services?

During our last meeting, the idea of payment parity for primary care services was not fully discussed.

Does the Subcommittee support payment parity for primary care services, in a similar manner as it supported behavioral health parity?

Framework: Four Issue Areas

Coverage and Access

Increasing the coverage of telemedicine services and removing barriers to access.

Payment and Program Integrity

Payment parity and safeguards against waste fraud and abuse.

Security, Privacy and Confidentiality

Security, privacy and confidentiality of telemedicine.

Performance Measurement

Ways to measure quality, outcomes and the cost of telemedicine now and in the future.

Recommendations Focused on Two Topic Areas

Coverage and Access

Increasing the coverage of telemedicine services and removing barriers to access.

Payment

Payment parity

Subcommittee's Remaining Tasks

Develop principles for future legislation on the following issue areas.

Program Integrity

Safeguards against waste fraud and abuse.

Security, Privacy and Confidentiality

Security, privacy and confidentiality of telemedicine.

Performance Measurement

Ways to measure quality, outcomes and the cost of telemedicine now and in the future.

Program Integrity

Fraud, Waste and Abuse (FWA)

Review of Definitions (adapted from CMS):

- **Fraud**: knowingly and willfully executing a scheme to defraud a health care benefit program; or making false representations to obtain money or a benefit from a health care benefit program
  - Ex: billing for services or supplies that were not provided
- **Waste**: overutilization of services, or other practices that directly or indirectly result in unnecessary costs to the payer
  - Ex: duplication of tests when providers do not share information
- **Abuse**: practices that are inconsistent with sound fiscal, business or medical practices and result in unnecessary costs, or in payments for services that are not medically necessary or that fail to meet professionally recognized standards of care
  - Ex: upcoding

Collectively, FWA are negligent actions by an individual or entity that directly or indirectly result in unnecessary costs.

Types of Actions Taken to Safeguard Against FWA

- **Commercial payers take action to safeguard against FWA within the normal course of operating an insurance company. Such actions might include:**
  - Prior authorization for high cost specialty services
  - Retrospective review of documentation to justify a service rendered
  - Sophisticated claims analysis to identify patterns of billing that may reflect FWA

- **Medicaid managed care organizations take the same actions as commercial payers to guard against FWA. Additional safeguards Medicaid may take include:**
  - Screening and enrollment of network providers, and cross-checking eligibility against other databases
  - Data mining to identify possible fraud and abuse for further examination
  - Audits to determine compliance with federal and state rules and regulations
  - Investigations of suspected fraud and abuse

FWA in the Context of Telemedicine

Telehealth services are vulnerable to the same fraudulent or wasteful practices that have existed for decades, such as overtreating patients or upcoding.

At the same time, given that telehealth is a new medium for delivering health care, the areas more susceptible to fraud may be unique and unknown.

In addition, expanding what types of telehealth services are being covered, where those services can be provided, and which types of providers can be paid for the services increases risk for fraud and abuse.

Taskforce on Telehealth Policy

Summary of Taskforce on Telehealth Policy recommendations for FWA:

1. Telehealth should be integrated into existing FWA efforts.

2. Agencies tasked with protecting [Medicaid], and ultimately patients and taxpayers, must be appropriately resourced to maximize and incorporate technologies and strategies to uncover aberrations through claims audits and enhance investigations with digital forensics tools.

3. Policy makers must protect patient privacy in every telehealth FWA mitigation effort

Does the Subcommittee support these principles to guide future policies on FWA that follow the Taskforce on Telehealth Policy recommendations?

Other Suggested Safeguards Against Telemedicine FWA for State Policy Making?

What other policies to safeguard against FWA specific to telemedicine do Subcommittee members wish to bring up for consideration for State policy making?

Security, Privacy and Confidentiality

Health Insurance Portability and Accountability Act

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) is a federal law that requires the protection and confidential handling of protected health information (PHI).

HIPAA applies to “covered entities,” which include health plans, health care providers, health care clearing houses, and business associates

HIPAA Privacy Rule

- Dictates how, when, and under what circumstances PHI can be used and disclosed.
- Sets limits regarding the use of patient information when no prior authorization has been given by the patient.
- Mandates that patients and their representatives have the right to obtain a copy of their health records and request correction to errors.
- Applies not only to data in written format. Videos and images containing any individually identifiable health information are also protected.

HIPAA Security Rule

- Deals with electronic protected health information (ePHI), a subset of what the HIPAA Privacy Rule encompasses.
- Requires only authorized users to have access to ePHI.
- Requires implementation of a system of secure communication to protect the integrity of ePHI.
- Stipulates that a system of monitoring communications containing ePHI should be implemented to prevent accidental or malicious breaches.

HIPAA's Application to Telehealth

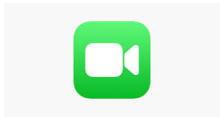
"Telehealth provision or use does not alter a covered entity's obligations under HIPAA, nor does HIPAA contain any special section devoted to telehealth. Therefore, if a covered entity utilizes telehealth that involves PHI, the entity *must meet the same HIPAA requirements that it would for a service provided in person*."

- Center for Connected Health Policy

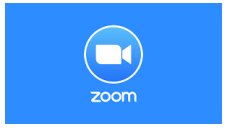
HIPAA Requirements During the Pandemic

During the public health emergency, the federal government (specifically, Office for Civil Rights) is not imposing penalties for noncompliance with HIPAA security requirements

This allowed for the immediate use of non-public facing technology to facilitate connection between patients and providers, including, but not limited to:



Apple FaceTime



Zoom

FaceBook Messenger

Google Hangouts

Skype

Healthcare providers must still take steps to ensure that telehealth services are conducted in a private setting.

Goals for Discussion of Security, Privacy and Confidentiality of Telemedicine

Our goals for discussing security, privacy and confidentiality of telemedicine are two-fold:

1. NAIC is developing recommendations on OCR's enforcement discretion of the HIPAA Security Rule as it relates to telemedicine. Commissioner Ganim has requested the Subcommittee's input to inform those conversations.

2. Building on the discussion in #1 above, identify some strategies that the State could pursue to ensure that security, privacy and confidentiality are maintained, and promote the use of HIPAA compliant technologies.

Feedback on OCR Enforcement Discretion

Discussion Questions:

- Recognizing that there will not be a clear end date to the pandemic, what principles should guide HHS' decision on when it makes sense to restart OCR enforcement?
- What is an appropriate timeline for the transition from use of non-public facing technology to the use of HIPAA compliant technology?
- As OCR transitions back to enforcing HIPAA Security Rules around the use of certain technology platforms, should OCR consider granting exceptions? If so, what should the criteria be for such exceptions?

Efforts to Promote HIPAA-Compliant Provision of Telehealth Services

1. Telehealth Technology Assessment Resource Center (TTAC). TTAC has developed a framework for assessing telemedicine technology, along with many resources on issues such as how to review and select an online video platform.

2. Health Information Technology (HIT) Survey. Every other year, the Rhode Island Department of Health surveys licensed providers in the State on the distribution and use of HIT. The 2021 survey is in development but will include questions on telehealth, and could provide information on level of adoption and barriers to adoption to inform future policy.

3. The Care Transformation Collaborative of RI/PCMH Kids is a conducting practice needs assessments on telehealth and telehealth patient engagement surveys as part of developing a webinar series and learning collaborative for using telehealth in primary care practices.

Strategies to Ensure that Security, Privacy and Confidentiality Are Maintained

Assuming a return to pre-pandemic enforcement of HIPAA security requirements, what actions could the State pursue to promote HIPAA-compliant provision of telemedicine services?

What are some special considerations for smaller providers that may not have the resources to invest in the necessary technology?

Input on OCR HIPAA Security Rule Enforcement Discretion

Please send feedback to Marea Tumber at marea.tumber@ohic.ri.gov by COB on Oct 23.

Performance Measurement

Measurement of Quality, Outcomes and Cost

There is no doubt that telemedicine usage increased as a result of the public health emergency, but predictions about its future usage are not clear.

The rise in telemedicine usage during this time gives policy makers, payers and providers an opportunity to look at its effectiveness on:

- overall quality of care
- patient outcomes
- cost of care

State Quality Measurement Efforts

Currently, Rhode Island is engaged in the development of the following quality programs:

1. OHIC Aligned Measure Sets (ACO, hospital, primary care, behavioral health and maternity care)
2. OHIC PCMH recognition measure set (allows for optional use of telehealth for 2019-2020 reporting period)
3. EOHHS Medicaid Accountable Entity incentive measure set (includes a few homegrown measures that were modified to incorporate telemedicine codes)

These measure sets draw from many sources, with NCQA's HEDIS being used most commonly for primary care, and for ACO/AE sets to a lesser extent.

Consideration of Telemedicine in National Quality Measurement Efforts

NCQA updated 40 commonly used HEDIS measures to account for the rise in usage of telemedicine and for the most part to allow for telemedicine visits to be treated as equivalent to in-person visits.

This allows telemedicine to be incorporated into existing quality measurement efforts, rather than developing new quality measures specifically for telemedicine.

This action supports the Taskforce on Telehealth Policy recommendation that priority should be given to the use of existing standards and measures when evaluating telehealth quality of care to the extent possible.

Additional Considerations for Evaluating Telemedicine's Impact

However, it is important to also measure ways in which telemedicine may benefit the patient in non-traditional ways. For example:

- Reduce missed appointment rates ("no show")
- Time saved in travel, childcare, missed work
- Patient preference in care modality

Measurement of Quality, Outcomes and Cost

Does the Subcommittee support the following policies?

- Telemedicine should be incorporated into existing OHIC and Medicaid efforts to measure quality, outcomes and cost.
- When considering future policies to expand telemedicine, estimates of its impact should consider:
  - patient or caregiver costs that are not always quantified in monetary terms;
  - the financial impact on the individual clinical provider, hospital or health care system;
  - the costs for payers; and
  - patient preferences for modality of care.

Are there any other principles to guide future policy on measuring telemedicine's quality, outcomes and cost Subcommittee members wish to bring up for consideration?

Public Comment

Next Steps

Meeting Schedule

Meeting Number	Meeting Date	Meeting Topics
6	November 12, 2020 9:00am – 12:00pm	Follow-up and review of policy considerations for reducing disparities
7	December 10, 2020 10:00am – 12:00pm	Review of Final Recommendations

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