

Health Care During and After COVID: The Continuous Rise of Telemedicine and Its Compliance Requirements



It was disclosed on the studies conducted by American Academy of Family Physicians (AAFP) that since the onset of Covid19 pandemic, the Telemedicine has boomed into prominence. It may be true that telemedicine isn't new, but the COVID-19 pandemic has really put the technology front and center, with clinics and even some hospitals closing for certain services after state and local governments issued stay-at-home orders to help prevent the spread of the virus.

Up to now, even when doctors' offices *have started to* open, some patients avoided in-person appointments due to COVID-19 fears.

Aside from the noticeable boost in telemedicine, Covid19 pandemic has also fostered the rise of innovative medical services, everything from getting prescriptions by mail to drive-through virus testing and pharmacy-based vaccinations.

Analysts further revealed that many of these innovative approaches to health care are likely to linger long even after the pandemic recedes.

Dr. Ada Stewart, a family physician, expressed her thoughts about the benefits of continuing use of telemedicine. According to her, "People were able to receive access to health care". More so, to continuously respond to the call of her duties, she said that doctors like her "were able to reach out to patients who were afraid to come into the office to be seen. It really afforded that opportunity to still take care of our patients and do so in a safe way."

Telemedicine gave physicians the ability to keep their practices, which might otherwise have been shuttered as patients stayed home.

"We had to pivot," Stewart explained. "We had always talked about telehealth and incorporating it into our practices," but 2020 brought the technology to the fore.

The American Academy of Family Physicians differentiates between telehealth and telemedicine. Telemedicine, the academy says, is using technology to deliver care from a distance, whereas telehealth is the technology and services to provide that distance care.

Prior to the pandemic, telemedicine was already growing in the United States, especially in mental health services. But it still only reached a small section of patients, about 4% of the population, according to Lori Uscher-Pines, a senior policy researcher at the non-profit RAND Corporation, which works to impact policy through research and analysis.

Restrictions on telemedicine delivery were a major barrier to growth. For example, many insurance providers would only reimburse telemedicine visits under specific circumstances.

Policy and Compliance Changes to Cater Telemedicine

Telemedicine entities engaging in and/or embarking on multi-state delivery models must be cognizant of, and compliant with, applicable state foreign entity qualification requirements and corporate practice prohibitions, and must ensure that their clinical services providers are duly licensed (or registered) and compliant with clinical practice requirements in the states in which they seek to treat patients.

The COVID-19 pandemic has highlighted health inequities, and the shift to a broader acceptance of telemedicine is an opportunity to improve health care in the United States, Stewart said. She would like to see telemedicine continue, along with the technology infrastructure to ensure that health care is equitable.

Uscher-Pines said that it may be difficult to return to the pre-pandemic status quo, with its focus on office visits, because providers and patients are now familiar with and appreciate the convenience of telemedicine.

She further disclosed that "what ultimately happens with telemedicine is dependent on how the policy environment evolves because there is a lot of action going on at both the state and federal level right now on telemedicine policy, and a lot of strategizing on what should stay permanent and what should go back.

Telemedicine and Texting: Telephone Consumer Protection Act

As presented in the National Law Review (Volume XI, Number 138), telemedicine and remote patient monitoring companies often want to maintain open communication channels with patients, whether it be scheduling, medication reminders, engagement pings, or even new product and service updates. Texting and push notifications are the current

avored communication methods to engage patient-users. Digital health entrepreneurs can use these tools, but should be aware of the Telephone Consumer Protection Act (TCPA). This article shares some TCPA ideas that telemedicine and remote patient monitoring companies can consider incorporating into their software product design and user interface development.

The TCPA is a federal law that restricts telephone calls and texting to residential lines and cell phones unless the user has agreed, in writing, to receive those messages. In addition to federal fines and penalties enforcement actions from the Federal Communications Commission (FCC), private plaintiffs have filed lawsuits (including class actions) under the TCPA, and statutory damages for violations range from \$500 and \$1,500 per text message.

If a company that wants to send text messages to the user's smartphone (whether marketing messages or not), best practice is to obtain the user's "prior express written consent." The written agreement should include a clear and conspicuous disclosure informing the user that:

1. By executing the agreement, such person authorizes the seller to deliver or cause to be delivered to the signatory telemarketing calls using an automatic telephone dialing system or an artificial or prerecorded voice; and
2. The person is not required to sign the agreement (directly or indirectly), or agree to enter into such an agreement as a condition of purchasing any property, goods, or services.

This user written consent can be provided electronically, provided it is recognized as a valid signature under the federal E-SIGN Act and state electronic signatures law. But there is some creativity and flexibility in product design, as the Federal Trade Commission (FTC) has allowed patient digital consent given via email, website click-sign form, texting, telephone keypress, and even voice recording.

Health Care Message Exception

There is an exception to the TCPA for health care messages. It allows health care providers to place artificial/prerecorded voice and text messages to cellphones, without the patient's prior express consent, in order to convey important informational "health care messages." Examples include appointment confirmations, prescription notifications, and exam reminders. But even under the "health care messages" exemption, there are restrictions (e.g., patient-users cannot be "charged" for the call or text message; no more than three messages initiated per week; content of messages must be strictly limited to allowed purposes and cannot include marketing, advertising, billing, etc.). All messaging must also comply with HIPAA privacy and security requirements and opt-out requests must be honored immediately.

Push Notifications

Many early stage telemedicine companies (particularly direct to consumer (DTC) telemedicine companies) prefer a browser-based patient dashboard with texting, rather than developing a downloadable dedicated app. Remote patient monitoring companies,

even early stage, are more likely to have downloadable apps linked to Bluetooth-enabled medical devices. For companies with a mobile app, one solution is to use push notifications instead of texting. This may avoid the TCPA's jurisdiction altogether. Push notifications are similar to texting in that they both pop-up on the individual's smartphone to deliver messages and/or prompt the user to take action. But because push notifications are controlled by the app user and not considered a text message or a phone call, they are not regulated by the TCPA. Apps and push notifications are still regulated by state privacy laws, and potentially (not always) HIPAA. A push notification also has the added benefit of being able to directly route the user to the mobile app so that content and information can be provided to the patient in an engaging and secure format.

Effective communication via a convenient user experience platform is critical to patient-user engagement regardless of the type of telemedicine or remote patient monitoring specialty. As more patients begin to rely on their smartphone as the single source for communications, digital health companies can take some simple but important steps to comply with TCPA (and other potentially applicable laws) when developing the product design.

As it appears that telemedicine is bound to stay, it is now critical that hospitals, clinics and all healthcare facilities maintain a contract and policy management structure that will ensure that they will remain compliant and prevent avoid losing an average of \$1 billion dollars a year due to an ineffective compliance program.

SOURCES:

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