Electronic Healthcare Delivery:
The Future is Near

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Presentation Goals

- Discuss the effects of major federal legislation on evolving issues related to the healthcare system and healthcare providers
- Understand the escalating use and role of social media in the healthcare industry
- Develop strategies to minimize potential medical litigation and compliance risks when using social media in the healthcare arena
- Understand the current status and risks of Telemedicine and emerging healthcare technologies
- Understand the future and implications of healthcare delivery in the electronic and Internet ages

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Overview

- Background ☞ Driving Change
- Social Media
- Telemedicine
- The Convergence
- Summary & Conclusions

PLICO
a MedPro Group/Berkshire Hathaway company

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BACKGROUND

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Health Care Reform

- Health Care Reform Goals
  - Improve Access
  - Universal Coverage
  - Increase quality reporting to include outcomes
  - Increase integration of care through partnerships of physician networks and hospitals
  - Cost control and cost reduction

Former President Obama Signs PPACA March 23, 2010

www.dol.gov/ebsa/pdf/affordablecareact.pdf

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From Fee-Based to Quality-Based

- Fee-for-service → Value-based/Quality-based reimbursement system
  - Reward doctors and hospitals for improving quality of care
  - Lower demand for inpatient hospital services, greater demand for outpatient services
  - Increased number of insured patients
  - Improving patient experience key to preserving reimbursement
  - Public outcomes reports = hospital competition on outcomes and total value
  - Clinically Integrated Networks and Population Health Initiatives

Health Affairs October 11, 2012   7

Health Care Reform II

Former President Obama Signs MACRA
April 16, 2015

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Quality Payment Program (QPP)

- Rulemaking enacted by CMS under MACRA
- MACRA repealed the Sustainable Growth Rate (SGR) formula
- Streamlines multiple quality reporting programs into the new
  - Physician Quality Reporting Program (PQRS)
  - Value Based Modifier (VBM)
  - Medicare Electronic Health Records (EHR) Incentive Program
- Provides incentive payments for participation in Alternative Payment Models (APMs)

https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Value-Based-Programs/MACRA-MIPS-and-APMs/Quality-Payment-Program_MACRA-NPRM-Slides.pdf   9

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MACRA
Pub.L. No. 114-10

- Medicare Access and CHIP Reauthorization Act of 2015 (MACRA)
- Bipartisan support → signed into law April 16, 2015
- Encourages adoption of Alternative Payment Models (APMs)
  - Retains Fee-for-Service Model participation
- Telehealth: Section 106(c)
  - Requires General Accounting Office (GAO) to draft 2 reports & submit to Congress within 2 years of MACRA's enactment

https://www.congress.gov/bill/114th-congress/house-bill/2/text

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Health Care Reform

TRUMP
MAKE AMERICA GREAT AGAIN!

? ? ?

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SOCIAL MEDIA

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Background

- Social Media
  - Market & brand services, manage public relations, communicate during public health crisis
- "E-patients"
  - Patients who use the Internet as a health resource to learn about their own diseases, seek out treatment centers, and provide other patients with medical assistance and support
    - 42% have used social media to access consumer reviews on health topics
    - 25% have posted their views of healthcare experience
    - 20% have joined on-line healthcare "communities"

www.med.umich.edu/prmc/socialmedia/downloads/MHA_Webinar_Slides_-_Social_Media_and_Health_Care.pdf
http://pwchealth.com/cgi-local/hregister.cgi/reg/health-care-social-media-report.pdf
Merchant RM, et al. N Engl J Med 2011;365:289-291.

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Background

- 3,351 out of 3,371 (99.4%) of U.S. hospitals identified use of some variety of social media
- On-line communities
  - Medically-oriented site allowing patients to share stories and seek emotional support and clinical knowledge
- On-line educational sites
- Doctor-to-doctor networks
- Many others…

Moses RE, et al. Am J Gastroenterol 2014;109:1128-1132.
www.healthcaresuccess.com/blog/hospital-marketing/nearly-us-hospitals-use-social-media-now.html

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Background

- **Sites frequently used by medical professionals**
  - LinkedIn
  - Facebook
  - Twitter
  - Yelp
  - YouTube
  - MySpace
  - Flickr
  - Google Plus
  - Vimeo
  - Instagram
- **Thousands of social media websites exist**

www.med.umich.edu/prmc/services/socialmedia/downloads/MHA_Webinar_Slides_-_Social_Media_and_Health_Care.pdf

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Background

- **Digital Health Movement**
  - mHealth → Mobile Health
  - Electronic health record (EHR) portals
  - Social media
  - Smartphone applications
  - Wearable biosensors
- **Goals:**
  - Monitor patients remotely
  - Improve face-to-face care
  - Drive clinical decisions
  - Offer value to health-care organizations, their patients, & their staff

Spiegel B. Am J Gastroenterol 2016;111:624-630.

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Telehealth Remote Patient Monitoring
5 Year mHealth App Growth Potential
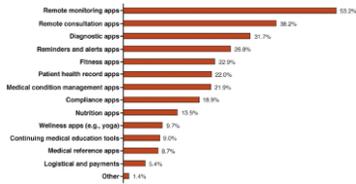
Riaz MS, Abreja A. Clin Gastroenterol Hepatol 2016;14:1697-1705.

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LAWS, REGULATIONS, & RISKS

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Laws & Regulations

- Federal legislation
- Medical malpractice
- Professional ethics
- Employment issues

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Laws & Regulations

- **Federal Legislation**
  - Health Insurance Portability & Accountability Act (HIPAA)
    - Most apparent issue regarding social media in health care
    - Protects information healthcare providers put into patient's medical records
    - Protects conversations about patient care and treatment
    - Standardized electronic processing of PHI
      - Privacy Rule
      - Security Rule
    - DHHS Office of Civil Rights enforces compliance with both rules

www.hhs.gov

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Laws & Regulations

- **Federal Legislation**
  - HIPAA violations via social media
    - **Do not disclose:**
      - Names, geographic subdivisions smaller than a state, date of birth, date of death, social security numbers, telephone numbers, e-mail addresses
  - Health Information Technology for Economic & Clinical Health Act (HITECH)
    - Created uniform standards for electronic transmission of clinical data
    - Imposes rigid violation & reporting requirements for HIPAA breaches/violations

www.hhs.gov/ocr/privacy/hipaa/administrative/enforcementrule/hitchenforcementifr.html

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Laws & Regulations
HIPAA

- Violations via social media → varied & rampant
  - University Medical Center case
    - Governor Barbour of Mississippi tweets about Legislature recognizing fiscal situation
    - Employee Carter tweets Governor should schedule his routine appointments during the week when UMC is open instead of paying overtime to 15-20 staff on a weekend
    - **ISSUE:** PHI breach v. exercise of right to free speech
    - **OUTCOME:** Employee Carter resigns
  - Innovis Health case (Fargo, SD)
    - Nurses post shift change updates to co-workers on personal Facebook pages
      - Patient names not posted but enough patient specifics identifies patients
    - PHI breach

www.msnewsnow.com/story/11713360/woman-out-of-a-job-after-sending-tweet-to-governor-barbour
http://journal.ahima.org/2010/01/06/social-media-policies

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Laws & Regulations
Medical Malpractice

- Use of social media by health care professionals affects course of litigation
- Federal Rules of Evidence 401 & 402
  - Deal with Admissibility of Evidence→ includes social media
  - Must be "relevant" & "authenticated"
- State governments have specific evidentiary rules
- Generally, relevant social media communications & other electronic stored data must be produced

www.americanbar.org/publications/litigation_journal/2012_13/winter/the_admissibility_social_media_evidence.html

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Laws & Regulations
Medical Malpractice

- Hearsay
  - Out-of-court statement → excluded from evidence
- Surgeon uses social media (Twitter) for patient education updates
  - Plaintiff uses Tweets as "statement against interest" → hearsay comes in as evidence
  - Educational video used as evidence that surgeon did not meet the standard of care

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Laws & Regulations
Professional Ethics

- AMA & AOA Codes of Ethics
  - Physician must place patient welfare above self interest
  - Physician should not "friend" patients & should "pause before posting"
  - Tweets, posts, & other forms of communication can veer into forbidden territory
- On-line colleague relationships
  - **Hypo:** physician learns from Facebook post that colleague on-call was inebriated while performing an endoscopy
    - Obligation to report impaired, incompetent, and/or unethical behavior

Farnan J, et al. Ann Intern Med 2013;158:620-627
www.ama-assn.org/ama/pub/physician-resources/medical-ethics/code-medical-ethics/opinion9031.

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Laws & Regulations
Professional Ethics

- Employed physicians of health care organizations
  - Need to comply with laws and ethics rules of those organizations
  - Subject to additional levels of discipline internally
- Most state Medical Boards have found violations of on-line professionalism
  - Inappropriate contact with patients
  - Inappropriate prescribing
  - Misrepresentation of credentials
  - Misrepresentation of clinical outcomes

Bottles K, Kim J. Physician Exec 2013;39:94-96.

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Laws & Regulations
The Housestaff

- Medical student & young physician perspective on social media
  - Medical students are heavier users of social media than older physicians
    - Way of life
  - Employed by health system/teaching institution → internal rules & risks
- Challenge: Requisite level of professionalism v. constitutional rights
  - 2013: Temple University med students openly posted Twitter Vine videos (6 seconds or less) from match day sharing tears & frustrations
  - 2009: 60% U.S. medical schools reported medical students posting inappropriate unprofessional content on-line

www.ama-assn.org/ama/pub/physician-resources/medical-ethics/code-medical-ethics/opinion10015.page
Bottles K, Kim J. PEJ 2013:September-October 96-98.

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Laws & Regulations
The Housestaff

- Survey of 78 Medical Program Directors
  - 60% reported unprofessional social media posts by trainees
    - 43% related to confidentiality
- University of Florida cross-sectional study of medical student & resident Facebook pages
  - 12 instances of potential breaches of privacy
  - NB: All occurred during medical missions

Christian KC, et al. JAMA 2009;302:1309-1315.
Thompson LA et al. J Med Internet Res 2011;13:e8.

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Laws & Regulations
The Housestaff

- Issues:
  - What is appropriate Internet search re: patient/case?
  - What if an "unprofessional" picture or comment posted by a friend without the student's permission is later discovered by the Dean of Students?
  - What is an appropriate blog and in what venue?
  - What is an appropriate statement or topic?
  - What is an appropriate online venue and what are the boundaries?

www.ama-assn.org/ama/pub/physician-resources/medical-ethics/code-medical-ethics/opinion10015.page

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Laws & Regulations
Attending Physicians: The Real Deal

- **SEXTING during surgery**
- Arthur Zilberstein, MD
  - Swedish Medical Center (Seattle, WA)
- **Allegations:**
  - During surgeries ☞ sent explicit "selfies," texted sexual messages, arranged meetings on hospital property during work hours for sex, ...
    - C–sections, pediatric appendectomies, epidurals, cardiac procedures, tubal ligations
  - License suspended indefinitely (March 2015)

www.dailymail.co.uk/news/article-2977727/Anesthesiologist-s-licence-suspended-indefinately-sexted-surgery-sex-patients-work-irresponsibly-prescribed-oxycodone.html

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Social Media Behavior/Misbehavior
Explanations

- **Ignorance:** might not realize that off-duty behavior on a social-networking site may raise questions from public about unprofessional behavior
- **On-line Disinhibition Effect**
  - Dissociative anonymity → You do not know me
  - Invisibility → You cannot see me
  - Asynchrony → See you later
  - Solipsistic introjection → It is all in my head
  - Dissociative imagination → It is just a game
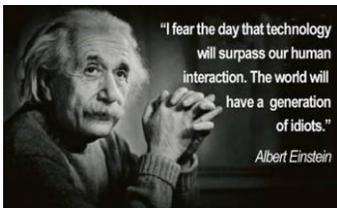 - Minimizing authority → We are all equals
  - Altering self boundary

Greysen S, et al. J Gen Intern Med 2010;25:1227-1229.
Suler J. Cyberpsychol Behav 2004;7:321-326.

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Social Media Behavior/Misbehavior
Unrealized Risk Areas: Volunteering

- Medical Missions ☛ Doctors without Borders & others
- Philanthropic Volunteering ☛ National & international catastrophes
- Risky postings → photos & comments involving:
  - Identification of individuals being treated
  - Identification of same individuals in social situations
  - Alcohol with/without intoxication
  - Laughing, grinning, partying, nudity
  - Guns
  - Political statements
  - Recall 2010 Haiti earthquake
  - Et cetera

Greysen S et al. J Gen Intern Med 2010;25:1227-1229.

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Albert Einstein on Technology

"I fear the day that technology will surpass our human interaction. The world will have a generation of idiots." *Albert Einstein*

Unsubstantiated

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RISK
PREVENTION
STRATEGIES

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Risk Prevention Strategies

- Social media risk prevention strategies in health care
- 5 key position policy statements developed re: online medical professionalism
  - Collaborative effort:
    - ACP Council of Associates
    - ACP Ethics, Professionalism, & Human Rights Committee
    - Federation of State Medical Boards Special Committee on Ethics & Professionalism
- Published 2013

Farnan J, Sulmasy L, et al. Ann Intern Med 2013;158:620-7.   35

Risk Prevention Strategies

- Social Media Policy Statements
  1. Use of on-line media can bring significant educational benefits to patients and physicians, but may also pose ethical challenges. Maintaining trust in the profession and in patient-physician relationships requires that physicians **consistently apply ethical principles** for preserving the relationship, confidentiality, privacy, and respect for persons to online settings and communications.
  2. The boundaries between **professional and social spheres** can blur online. Physicians should keep the 2 spheres separate and comport themselves professionally in both.

Farnan J, Sulmasy L, et al. Ann Intern Med 2013;158:620-7.   36

Risk Prevention Strategies

- Social Media Policy Statements
  3. E-mail or other electronic **communications** should only be used by physicians in an **established patient-physician relationship** and with patient consent. **Documentation** about patient care communications should be included in the patient's medical record.
  4. Physicians should consider periodically "**self-auditing**" to assess the accuracy of information available about themselves on physician-ranking websites and other sources online.
  5. The reach of the Internet and online communications is far and often permanent. Physicians, trainees, and medical students should **be aware** that **online postings** may have **future implications** for their professional lives.

  Farnan J, Sulmasy L, et al. Ann Intern Med 2013;158:620-7.   37

Risk Prevention Strategies

- Actively monitor your own & your practice/staff reputation on-line
- Reputation Management: When a negative comment is posted
  - Never respond online
  - Attempt to identify the patient and discuss with staff if allegations have any merit
  - Contact a health law attorney before reaching out to patient
  - Consider meeting with patient and demonstrate respect for patient's opinion
  - Investigate if negative comments could be removed depending on the source → may need professional input

  Belle JM et al. Clin J Gastroenterol 2013;11:883-886.   38

Risk Prevention Strategies

- Social media communications (SMC) should never disclose PHI
- SMC should never be confrontational
- SMC should be only professional with past or current patients
- SMC between trainee-faculty relationships should follow traditional boundaries

  Moses RE, et al. Am J Gastroenterol 2014;109:1128-1132.   39

Risk Prevention Strategies

- On-line advice should be avoided unless coupled with a patient visit
- Texting & non-Web based communications frequently do not provide adequate security → avoid these
- Self-audit and correct inaccurate online information
- Be careful when posting → institutions use social media to screen potential faculty and trainees

Moses RE, et al. Am J Gastroenterol 2014;109:1128-1132.

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Risk Prevention Strategies

- Establish written HIPAA compliant social media policy employment statement → implement it & track it
- Avoid texting and e-mailing PHI without appropriate safeguards
- Verify telephone numbers & e-mail addresses for accuracy before communicating with a patient
- Use appropriate encryption software
- Send the encryption password to recipient separately
- Understand your privacy settings

Moses RE, et al. Am J Gastroenterol 2014;109:1128-1132.

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TELEHEALTH
TELEMEDICINE

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Tales from the Crypt

- **March 1998**: FDA approves Viagra® to treat erectile dysfunction
- Requirement for prescription ☞ physician evaluation
- Need Internet prescription from "licensed" physician
- **July 26, 2007**: Pennsylvania Internist "agreed to the permanent, voluntary surrender of his license because he failed to carry out the minimal standards for prescribing…which included a physical examination of the patient."

www.dos.pa.gov/ProfessionalLicensing/VerifyaProfessional/DisciplinaryActions/Documents/2007/07-07_health_licensing_boards.pdf

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Telehealth: Evolution

- Teleradiology
- TeleICU
- Teledermatology
- Telepathology
- Telemental Health
- "TeleFUTURE"

www.americantelemed.org/resources/telemedicine-practice-guidelines/telemedicine-practice-guidelines#.Ve8f5DxFPIU

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Telehealth v. Telemedicine

- **Telehealth** → overall access to health information rather than provision of direct patient care
- **Telemedicine** → subset within Telehealth attributed specifically to patient care
- Definitions vary by state & organization

Field MJ, ed. Telemedicine: A Guide to Assessing Telecommunications in Health Care. Washington, DC: National Academies Press; 1996.

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Telehealth Sites

- **Distant site** → site(s) at which physician or other licensed practitioner delivering service is located
- **Originating site** → location of patient at time service is being furnished occurs via telecommunications system
- **Originating sites authorized by law:**
  - Physician offices, critical access hospitals, rural health clinics, federally qualified health centers, hospital-based renal dialysis centers, skilled nursing facilities, community health centers

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Telehealth

- **a/k/a: Telemonitoring**
- **Centers for Medicare & Medicaid Services (CMS)**
  - Use of telecommunications and information to provide access to health assessment, diagnosis, intervention, consultation, supervision, and information across distance
- **Applications:**
  - Telephones, Fax machines, E-mail systems, Remote patient monitoring devices that collect & transmit data

https://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNProducts/downloads/telehealthsrvcsfctsht.pdf   47

Telemedicine

- American Telemedicine Association
- **"Use of medical information from one site to another via electronic communications to improve a patient's clinical health status"**
- **Telemedicine applications are increasing:**
  - Two-way video
  - E-mail
  - Smart phones
  - Wireless tools
  - Other forms of telecommunicaton technology

American Telemedicine Association

www.americantelemed.org/about-telemedicine/what-is-telemedicine#.VdiM3TeFPIU   48

REGULATION

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MACRA

**Former President Obama Signs
MACRA
April 16, 2015**

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Federation of State Medical Boards

- Model Policy for the Appropriate Use of Telemedicine Technologies in the Practice of Medicine
  - Adopted April 2014
  - Guidance for State Medical Boards to create laws governing provision of care via Telemedicine

Federation of
STATE
MEDICAL
BOARDS

www.fsmb.org

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Interstate Licensure Compact

- Passed April 2017
- Agreement between 18 participating states & their MD/DO licensing boards
  - Compact legislation subsequently introduced in additional states
- Easier for physicians to obtain medical license in multiple states
- Interstate Medical Licensure Commission → accepts applications

www.medscape.com/viewarticle/878424_print

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Interstate Licensure Compact

- Eligible physicians expected to benefit
  - Practicing in rural areas
  - Practicing in underserved communities
  - Locum tenens
  - Metropolitan areas that include more than one state
  - Providing Telemedicine services to patients in other states

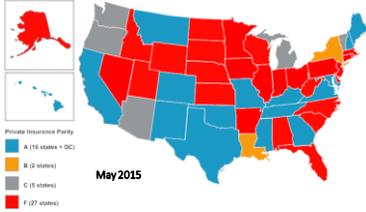www.medscape.com/viewarticle/878424_print

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Telehealth & Government

- PPACA & MACRA → support Telehealth
- CMS
  - Established list of reimbursable services → expanding
  - Currently limits originating site locations → expanding
- Populations currently under study for Telehealth expansion
  - Medicaid population
  - Rural America & isolated communities
- State Telemedicine Parity Laws
  - Require private insurers to cover Telemedicine services
  - Laws have doubled over past 5 years

www.dol.gov/ebsa/pdf/affordablecareact.pdf
https://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNProducts/downloads/telehealthsrvcsfctsht.pdf
www.americantelemed.org/docs/default-source/policy/50-state-telemedicine-gaps-analysis--physician-practice-standards-licensure.pdf?sfvrsn=14

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Parity Laws: Private Insurance Telemedicine Coverage

May 2015

Private Insurance Parity
- A (10 states + DC)
- B (2 states)
- C (5 states)
- F (27 states)

www.americantelemed.org/docs/default-source/policy/50-state-telemedicine-gaps-analysis---coverage-and-reimbursement.pdf

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RISKS

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Telemedicine Potential Risks

- Informed consent
- Documentation
- Credentialing & privileging
- Standards of care
- Continuity of care
- Medication prescribing

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Telemedicine Potential Risks

- Fraud & abuse
- Reimbursement
- Privacy
- Medical license jurisdiction
- Laws vary among states → State Medical Boards determine privileges and parameters

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Telemedicine Potential Risks

- **Mobile Medical Apps (MMAs)**
  - Potentially create more than product liability issues
  - Increasingly used by patients & providers
  - Examples:
    - Monitoring & controlling → insulin pump delivery
    - Stethoscope function
    - Patient analysis → radiation dose, BMI, vital signs
    - Reference apps → drug interaction, drug allergy
    - Communication → access health records & other data
- **Wearable Biosensors**
- **Smartphone applications**

Evolving areas:
Personal Health Technology

Spiegel B. Am J Gastroenterol 2016;111:624-630.

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Telemedicine Potential Risks
Personal Health Technology

- Fitbit users unknowingly published physical & sexual activities online ☞ searchable via standard search engines
- Open Effect Report
  - Canadian not-for-profit applied research organization focusing on digital privacy and security
  - 7 of 8 tracking devices failed to maintain security of user's information
    - Apple Watch was only device that did not fail
  - Same devices shared user's location with commercial Bluetooth "beacons" in the proximity

www.forbes.com/sites/kashmirhill/2011/07/05/fitbit-moves-quickly-after-users-sex-stats-exposed/#14034896f9e7
https://openeffect.ca/reports/Every_Step_You_Fake.pdf

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Telemedicine Potential Risks
Other Potential Risks

- **Technology quality**
  - Interference with accuracy of diagnosis
  - Interference with accuracy of treatment
- **Guidelines in Telehealth**
  - Already exist → more currently under development
  - NB: Standard of care issue
- **Quality measurement?**
- **Certification requirements?**
- **Training requirements?**

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Risk Prevention Concerns

- See me
- Feel me
- Touch me

GEFFEN Records (1989)

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RISK PREVENTION STRATEGIES

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Risk Prevention Strategies

- Know the State Licensing Board rules and licensing requirements for Telemedicine
- Do not practice Telemedicine across state lines
- Stay abreast of developing Federal laws regarding Telemedicine
- Document Telecommunication patient interactions in the chart

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Risk Prevention Strategies

- Standardize patient encounters → guidelines?
- Establish a disclaimer explaining the limitations → use it with all Telemedicine encounters
- Involve a physician &/or Healthcare attorney versed in Telemedicine
- Telemedicine and technology in health care delivery is rapidly evolving ☞ stay tuned...

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THE CONVERGENCE

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Telehealth & Future Evolution

- Telehealth → Digital Health
- Digital Health
  - Integrating digital technologies into a harmonized health delivery model to improve process and outcomes of health care
- Digitalist
  - Does not yet exist ☞ is this the new Hospitalist?
  - Remotely track data from biosensors, apps, portals, and social media & then combine the data with clinical parameters and knowledge about patient's medical history

Spiegel B. Am J Gastroenterol 2016;111:624-630.

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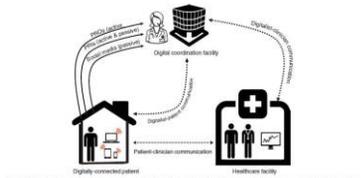## Telehealth → Digital Health
The Convergence

Figure 5. Model of digitally-enhanced health care delivery. In addition to traditional patient-provider communication and coordination, digital health affords new opportunities for remote monitoring of data, including patient-reported outcomes (PROs) actively reported through apps and portals, patient-reported informatics (PRIs) actively and passively collected by wearable biosensors and transmitted via wireless networks, and passive monitoring of social media data. The "Digitalist," residing in a coordination facility, monitors the data streams and directly communicates with patients via portals, telephone, or videoconferencing and then coordinates directly with clinicians as needed to manage patients.

Spiegel B. Am J Gastroenterol 2016;111:624-630.

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Digital Health Programs

- University of Pittsburgh Medical Center
- University of Maryland, Baltimore
- UCLA Medical Center
- Mt. Sinai, New York
- University of New Mexico
- Mayo Clinic
  - Plans to provide healthcare input to 200 million patients worldwide by 2020????
- Others…

Cross RK, Kane S. Clin Gastroenterol Hepatol 2017;15:175–181.

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SUMMARY
&
CONCLUSIONS

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NO GOOD DEED GOES
UNPUNISHED!!!

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Thank You

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