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The Future of Telehealth:
A Legal Discussion of Current Trends & Future Innovations

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Introduction

Telemedicine and digital health technology are among the most powerful tools to respond to the COVID-19 pandemic, and their users and advocates the greatest beneficiaries. A modality for the delivery of health care once viewed almost as niche, or even substandard compared to in-person services, quickly became a primary form of care delivery when personal encounters were discouraged and avoided. This paper provides a high-level overview and analysis of certain legal and regulatory items applicable to the delivery of telehealth services in the United States of America (U.S.) during the COVID-19 pandemic and policy trends intended to accelerate use and adoption of telehealth services in the future.

Terminology

The terms “telehealth” and “telemedicine” are not consistently defined at the federal and state level and often vary state-by-state or are used interchangeably. This is primarily due to the context in which the term is being defined (i.e., standards of practice vs. reimbursement) and the purpose (i.e., limit the applicable modality and technology – synchronous vs. asynchronous). This variability presents challenges when trying to discuss and address the various services, tools, technologies, and related issues with a universal application. This paper will not, therefore, hew to the federal, or any specific state’s, definitions of telehealth, telemedicine, or digital health. Instead, we use the term “telehealth” to encompass all forms of delivering medical and health care services from a remote setting using electronic information and telecommunications and interchangeably to describe all modalities (e.g., real-time, audio-video, two-way interactions; audio-only communications; asynchronous store-and-forward communications; text-based communications, etc.).

As such, for purposes of this paper, we offer the following definitions:

- ***Telemedicine*** refers to the use of electronic information and telecommunications or other technologies and devices by a licensed healthcare professional (i.e., physician or other advanced practitioner) to conduct a synchronous encounter (real-time, two-way audio and/or video) with a patient or other provider to diagnose, treat or consult.
- ***Digital Health*** refers to the technology, software, devices, systems and other tools used in the remote delivery of healthcare services by providers, as well as consumer products used for personal health and wellness. For example, artificial intelligence (AI) and clinical decision support (CDS) systems are designed to assist professionals in clinical decision-making and diagnosis of a patient’s condition and the clinical management of that patient. The term “Digital Health” also includes mobile medical applications and wearable devices used for remote health monitoring and virtual clinical trials.
- ***Remote Patient Monitoring*** refers to the use of devices, technology, and software to remotely collect medical and other forms of health data (e.g., vital signs, weight, blood pressure, blood sugar) from patients and electronically transmit, synchronous or asynchronous, to a healthcare provider in a distant site.
- ***Remote Prescribing*** refers to the prescription of medication for a patient located at a distant site following a telehealth encounter. This is often also referred to as “online prescribing” -- but not to be confused with “e-prescribing” which is the term used to describe the issuance of a prescription electronically instead of in written form.

1. Telehealth Access and Digital Health Equity

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