

Telehealth in Florida: Where We Are and What is Next

MAY 2020

Telehealth is being practiced in Florida every day

pursuant to the standards of practice for telehealth adopted by the Board of Medicine and the Board of Osteopathic Medicine. These standards require a Florida license and provide that the standards of care shall remain the same regardless of whether healthcare services are provided in person or by telehealth. There is no shortage of licensed physicians willing to provide telehealth in Florida. Florida statute 456.47, enacted in 2019, is the governing language for the practice of telehealth in Florida. Currently, health insurance companies are not required to pay or reimburse telehealth services, they do so on a voluntary basis pursuant to Florida statutes.¹

Foley and Lardner LLP released a 50-State Survey of Telehealth Commercial Payer Statutes report in December 2019, predicting that, "2020 will yield more states enacting new telehealth insurance coverage and payment parity laws or amending current laws to better account for the current state of telehealth."²

The demand for telehealth services has grown rapidly in recent years as a venue of care. The American Telehealth Association (ATA) estimates that more than 50 percent of health care services will be consumed virtually by 2030.³ The ATA asked consumers about their expectations of how health care should be available, 50 to 75 percent of consumers said they are willing to have digital/virtual health interactions with health care.⁴ Closing the gap between citizen expectations and adoption of telehealth is a challenge that must be addressed.

Many states that provide telehealth services, including Florida face the same telehealth delivery and accessibility challenges. The Federal Communications Commission (FCC) released a report in 2019, produced by the Intergovernmental Advisory Committee (IAC) which focused on identifying and resolving barriers to telehealth.⁵ According to the IAC report, seamless telehealth delivery cannot be achieved unless broadband internet, digital readiness, and reimbursement and regulations are improved.

During a global pandemic, such as the Coronavirus, telehealth technology is needed now more than ever to protect people from contracting the virus and reducing exposure from those who are infected by going into a physician's office.

Challenges

Broadband Internet

The "Digital Divide" continues to plague rural and remote areas that could most benefit from virtual care resources. The lack of access to broadband internet splits these communities from not just healthcare resources but educational and employment opportunities as well, creating impoverished towns with dismal economies.

In Florida, there 464,000 people without access to wired connection capable of 25 megabits per second (mbps) download speeds.⁶ Another 280,000 people in Florida do not have any wired internet providers available where they live.⁷ Figure 1 displays the broadband coverage by county in Florida.

Solution

Each telehealth setting (whether an originating or distant site) requires both connectivity and equipment, with differences in

1 Subsections 627.42396 and 456.47, Florida Statutes.

2 Nathaniel M. Lacktman, Jacqueline N. Acosta, Sunny J. Levine, "New 50-State Telemedicine Survey Finds Significant Progress in Commercial Payer Laws Nationwide," Foley & Lardner LLP, December 2019.

3 American Telemedicine Association, "Health Care Consumerization," ATA Action Briefs, retrieved from https://info.americantelemed.org/ata-action-briefs_healthcare-consumerization, May 19, 2020.

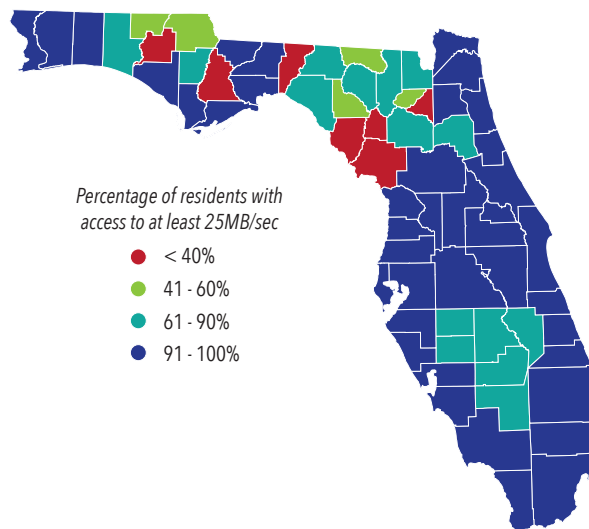
4 Ibid.

5 Intergovernmental Advisory Council to the Federal Communications Commission, "Advisory Recommendation No. 2019-2, In the Matter of State, Local Tribal, and Territorial Regulatory and Other Barriers and Incentives to Telemedicine," 2019.

6 BROADBANDNOW, "Broadband Service in Florida," retrieved from <https://broadbandnow.com/Florida>, May 19, 2020.

7 Ibid.

Fig. 1. Broadband Coverage by County in Florida



the type and acuity of the care delivered requiring varying levels of technology and support. Equipment and software must be interoperable, and ideally, equipment owned by one provider should be able to be accessed by other, authorized, providers.⁸ Accordingly, providers must also make sure that any equipment and software they purchase meets industry standards for interoperability and can be used to connect to multiple telehealth platforms.

Digital Readiness

Just as we see varying levels of technological sophistication in any community, healthcare organizations can be wildly uneven in their digital readiness.⁹ An urban hospital may feature state-of-the-art equipment and telehealth-trained clinicians, but that does not help the surrounding rural communities if their local clinics distrust telehealth or are unprepared to deploy it. Without top-down commitment to new care delivery models, telehealth adoption won't thrive where it's needed most.

Solution

Telehealth training should be integrated into medical school curriculum and expected professional development for all current clinicians. Patients today increasingly expect virtual options, which means telehealth is transforming from a luxury to a necessity for providers that want to keep their patient base. Military and first responder teams need to be proactive and create telehealth plans, so disaster relief chains can provide

care as soon as an event occurs. That includes coordinating Wi-Fi hot spots and other mobile connectivity and using the right telehealth equipment to stay responsive during evolving situations (e.g. Coronavirus pandemic).

Reimbursement and Regulation

Providers often complain that reimbursement rules have not caught up with telehealth popularity. Policies vary greatly, with restrictions controlling the facility or region of the virtual service, the type of service, the modality involved, the Current Procedural Terminology (CPT) code, the type of provider and other criteria.¹⁰ Medicare, Medicaid and commercial payers can pay the same service differently.

Licensing requirements can represent another barrier when it comes to providers caring for patients in other states. Because of these hurdles, and the uncertainty around Health Insurance Portability and Accountability Act (HIPAA) compliance, some providers have decided to steer clear of telehealth.

It is important to note that there have been swift changes made by the Centers for Medicare and Medicaid (CMS) and commercial insurance companies in response to COVID-19. CMS guidelines and commercial insurance reimbursement guidelines have been enacted as a response to the pandemic in order to allow for the delivery of telehealth services. Every level of government has been encouraging the use of telehealth to safely treat patients during the pandemic and have alleviated geographic, place of service, and technology requirements in order to keep patients in their home. Many commercial providers have implemented a 90-day provision for reimbursements and have allowed for the delivery of services to patients in their homes (direct-to-consumer services).

Solution

Providers can continue to lobby for more favorable payment policies, but many are also beginning to use telehealth to create new revenue streams. After-hours care, downstream referrals, patient acquisition and other strategies are helping healthcare systems make telehealth profitable.¹¹

While reimbursement has evolved for the better over the last few years, Florida is significantly behind in terms of providing and reimbursing for telehealth services. The CMS guidelines and commercial insurance reimbursement guidelines have

8 Joel E. Barthelemy, "2020 Roadmap: Overcoming Telemedicine Barriers," retrieved from <https://www.globalmed.com/2020-roadmap-overcoming-telemedicine-barriers/>, May 19, 2020.

9 Ibid.

10 Ibid.

11 Ibid.

already improved the state of telehealth delivery significantly in Florida and should remain in place and be expanded upon in the foreseeable future.

The 2020 COVID-19 Crisis

Telehealth and virtual care have quickly become important tools in caring for patients while keeping physicians and staff safe as the COVID-19 pandemic quickly evolves. Thankfully, there are many online resources providers can utilize to quickly gain access to telehealth tools to promptly start delivering services to patients remotely.

The CMS created a downloadable pdf toolkit with the intent of broadening access to Medicare telehealth services so that beneficiaries can receive a wider range of services from their doctors without having to travel to receive healthcare services.¹² These policy changes build on the regulatory flexibilities granted under the President's emergency declaration. Another great tool for providers to utilize is the American Medical Association's (AMA) Telehealth Quick Set-up Guide in response to the COVID-19 national emergency. The AMA designed this resource to support physicians and practices in expediting the implementation of telehealth, so care can continue to be provided to those heavily affected.¹³ The AMA's guide includes an overview of telehealth in the midst of COVID-19, how to implement telehealth technologies in a provider's current practice, how to implement policies and structure coding and payments for services, and other helpful resources.

More specifically on the state level, the Alliance for Connected Care created a State Telehealth Expansion COVID-19 Dashboard. This tool is a resource detailing state by state expansion of telehealth and licensing waivers during the COVID-19 pandemic.¹⁴ Under a disaster or emergency declaration and a public health emergency, the Health and Human Services (HHS) Secretary is authorized to take additional actions to provide programmatic flexibility in Medicare, Medicaid and the Children's Health Insurance Program through section 1135 waivers.¹⁵ To date, CMS has approved 49 state waivers, one of which was for Florida.

The Agency for Health Care Administration (AHCA) applied for a section 1135 waiver that expanded insurance coverage for telehealth services and the Department of Health applied for a section 1135 waiver that updated licensure language.^{16,17} The expanded insurance coverage component expands state employee health benefits to include telehealth at no additional cost, add telehealth employees to the employee pharmacy benefit plan, and ensure state employee access to telehealth through state's contracted HMO plans and PPO organization plan without cost sharing.¹⁸

The licensure language includes waived licensure requirements for out-of-state health care professionals who render services in Florida related to COVID-19 health care professionals, advanced life support professionals, and basic life support professionals holding a valid, unrestricted, and unencumbered license in any state, territory and/or district may render such services in Florida during a period not to exceed 30 days, suspending licensing and registration renewal requirements for existing professional licenses.¹⁹

Funding for Telehealth Services

On April 2, 2020 the FCC voted to adopt a \$200 million telehealth program to support healthcare providers responding to the ongoing coronavirus pandemic. The FCC COVID-19 Telehealth Program implements a provision of the CARES Act to ensure access to connected care services and devices in response to the ongoing COVID-19 pandemic.

The program is limited to nonprofit and public eligible health care providers that fall within the categories of health care providers in section 254(h)(7)(B) of the 1996 Act:

- (1) post-secondary educational institutions offering health care instruction, teaching hospitals, and medical schools;
- (2) community health centers or health centers providing health care to migrants;
- (3) local health departments or agencies;
- (4) community mental health centers;
- (5) not-for-profit hospitals;

12 U.S. Centers for Medicare & Medicaid Services, "General Provider Telehealth and Telemedicine Tool Kit," March 17, 2020.

13 American Medical Association, "AMA Quick Guide to Telemedicine in Practice," retrieved from <https://www.ama-assn.org/practice-management/digital/ama-quick-guide-telemedicine-practice>, May 19, 2020.

14 Alliance for Connected Care, "State Telehealth and Licensure Expansion COVID-19 Dashboard," retrieved from <http://connectwithcare.org/state-telehealth-and-licensure-expansion-covid-19-chart/>, May 19, 2020.

15 Ibid.

16 Alliance for Connected Care, "1135 State Waivers – Approvals, Current as of 9, April, 2020" retrieved from <http://connectwithcare.org/wp-content/uploads/2020/04/Approved-1135-State-Waivers-Chart-9-April-2020-1.pdf>, May 19, 2020.

17 A section 1135 Waiver is when the President declares a disaster or emergency under the Stafford Act or National Emergencies Act and the Health & Human Services Secretary declares a public health emergency under Section 319 of the Public Health Service Act. The Secretary is authorized to take certain actions in addition to his/her regular authorities.

18 Supra, see footnote 16.

19 Ibid.

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- (6) rural health clinics;
 - (7) skilled nursing facilities; or
 - (8) consortia of health care providers consisting of one or more entities falling into the first seven categories.²⁰

Conclusion

There is still a lot of work that needs to be done in the field of telehealth in Florida. It is important to address regulatory barriers such as reimbursements to providers; the establishment of clear guidelines for practicing telehealth as it relates to the HIPAA compliance; access to broadband internet access in rural areas; digital readiness for medical students; and other important issues now.

Due to the COVID-19 pandemic, states need telehealth technology now more than ever, and Foley & Lardner's prediction for 2020 has certainly been accurate. More states are enacting new telehealth insurance coverage and payment parity laws or amending current laws to better account for the current state of telehealth.

By addressing the current challenges to delivering and accessing telehealth services, Florida will have a robust telehealth system with the functionality to serve millions of Floridians who need it most.

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All Florida TaxWatch research done under the direction of Dominic M. Calabro, President, CEO, Publisher & Editor.

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²⁰ Jeff Scott, Esq., "FCC Adopts \$200 Million COVID-19 Telehealth Program," Florida Medical Association," April 8, 2020.