

Telemedicine Interpretive Guidance for Hospitals

January 12, 2023

Background

In 2013, the PA Department of Health (Department) issued guidance titled “Final Telemedicine Survey Guidelines and Department of Health Survey Policy,” documenting the Department’s expectation for hospital’s utilizing telemedicine services. That guidance was updated in 2016, but since that update, use of telemedicine has increased exponentially and has solidified its role as an integral part of the health care delivery systems in the Commonwealth. Telemedicine plays a critical role in increasing access to high quality health care for many Pennsylvanians and was an invaluable tool for patients and providers during the COVID-19 pandemic. Given the importance and prevalence of telemedicine in hospital settings, the Department is putting forth this updated Interpretive Guidance to offer greater clarity about how telemedicine can be integrated in the hospital setting under the Department’s current regulations. Given the comprehensive update, this Interpretive Guidance will repeal and replace the 2016 guidance rather than update it. Some key changes include:

- Citations to regulations that are being interpreted in the context of telemedicine services.
- Updated definitions.
- Clarification on notification requirements and incorporation of attestation process for new services and equipment.
- Guidance on utilizing the Centers for Medicaid & Medicare Services (CMS) credentialing and privileging by proxy processes.
- Removal of certain administrative burdens that had been communicated in prior guidance, including maintenance of a lists of telemedicine providers.
- Guidance for offering outpatient telemedicine services.

Hospitals are required to maintain full or substantial compliance with all applicable regulations. The purpose of this document is to provide guidance to hospitals on compliance with the regulations in the context of a hospital utilizing telemedicine services and is not an exhaustive list of regulatory requirements. Please contact your Division of Acute and Ambulatory Care (DAAC) [Field Office](#) if you have questions that are not addressed by the guidance provided below.

Definitions

For purposes of this interpretive guidance document, the following terms will be defined as described in this section unless the context clearly indicates otherwise.

"Asynchronous interaction." The transmission of a patient's medical information from an originating site to the physician or practitioner at the distant site. The physician or other

qualified practitioner at the distant site can review the medical case without the patient being present.¹

“Distant site.” The site at which the physician or practitioner delivering the service is located at the time the service is provided via telemedicine.²

"Health Insurance Portability and Accountability Act of 1996" or “HIPAA.” The Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191, 110 Stat. 1936).

“Originating-site.” The location of the patient at the time the service being furnished via telecommunications.³

"Remote patient monitoring." The collection of physiological data from a patient in one location, which is transmitted via electronic communication technologies to a physician or other qualified practitioner in a different location for use in care and related support of the patient.⁴

"Synchronous interaction." A live, two-way exchange of information between a patient and a physician or other qualified practitioner that occurs in real time via audiovisual technology.⁵

"Telemedicine." The delivery of health care services to a patient by a health care provider who is at a different location, through synchronous interactions, asynchronous interactions or remote patient monitoring that meet the requirements of HIPAA, the Health Information Technology for Economic and Clinical Health Act (“HITECH”) or other applicable Federal or State law regarding the privacy and security of electronic transmission of health information.⁶

Notice to the Department

If a hospital adds or expands a telemedicine service or adds or replaces telemedicine equipment, the hospital must provide notice to the Department in accordance with Chapter 51 (relating to general information). Hospitals may use the [attestation process](#) to meet notice requirements for telemedicine services. Attestations forms are available on the Department’s [website](#) and can be submitted by e-mail to the DAAC Division Director at RA-DAAC@pa.gov with a copy to the facility’s Field Office Health Care Surveyor (HCS) and Health Care Surveyor Supervisor (HCS-Supervisor).

¹ 42 CFR § 410.78 (a)(1).

² 42 CFR § 410.78 (a)(2).

³ 42 CFR § 410.78 (a)(4).

⁴ Derived from CMS Telehealth toolkit definition of “remote patient monitoring” available at <https://www.cms.gov/files/document/telehealth-toolkit-providers.pdf>, p. 5.

⁵ Derived from the Center for Connected Health Policy telehealth resource, available at https://cchp.nyc3.digitaloceanspaces.com/2021/04/Telehealth-Definintion-Framework-for-TRCs_0.pdf.

⁶ SB 705, PN 949.

Scope of Telemedicine Services

A hospital may allow telemedicine services to be furnished to its patients if:

1. It has provided notice to and obtained approval from the Department for the health care service in accordance with § 51.3 (relating to notification).
2. It ensures the telemedicine services furnished to its patients maintain the same standard of care that would apply to the provision of the same health care services in an in-person setting.⁷
3. Provision of the service is consistent with applicable Federal and State laws.⁸
4. It has entered into an agreement with the telemedicine provider that indicates the provider will maintain compliance with applicable State regulations.⁹

Organization

Telemedicine services furnished in or by a hospital shall be integrated into the overall organizational structure of the hospital and the service of which it is a method of delivery.¹⁰

Practitioner Credentialing and Clinical Privileges

A hospital may allow telemedicine services to be furnished to its patients if the physician or other qualified practitioner delivering the telemedicine service has been credentialed and granted clinical privileges in accordance with Chapter 107 (relating to medical staff).

For hospitals that want to use the credentialing and privileging by proxy process, authorized by CMS at 42 CFR 482.22(a)(3) or (4), one or more exceptions may be necessary to implement the process.

Generally, a hospital can update their medical staff bylaws to reflect the procedures and standards the hospital will use to review credentials and those procedures and standards could reflect the credential by proxy process authorized by CMS.¹¹ However, the hospital's medical staff credential committee will still have to make a recommendation to the medical staff executive committee regarding an applicant in accordance with 28 Pa. Code §107.26(b)(1). The credential committee could base its recommendation on the distant site's credentialing and privileging decisions, as long as that process is authorized in the bylaws. If the hospital would want the credential committee review and recommendation process to be circumvented

⁷ 28 Pa. Code § 103.22 (b)(7).

⁸ 28 Pa. Code 103.4 (3).

⁹ 28 Pa. Code § 103.33(b)(11).

¹⁰ 28 Pa. Code § 103.33(b)(10).

¹¹ 28 Pa. Code § 107.12(3).

altogether for credentialing and privileging of telemedicine providers by proxy, an exception to Section 107.26(b)(1) would be necessary.

Further, hospitals will need an exception to 28 Pa. Code § 107.5 if the hospital wants to develop a streamlined clinical privileging by proxy process that does not include a formal application and summarized review of the applicant's qualifications, with appropriate documentation, by the medical staff. If a hospital maintains a formal application process for clinical privileges of telemedicine providers, an exception to 28 Pa. Code §107.5 would not be necessary.

Telemedicine Policies and Procedures

A hospital shall develop and implement telemedicine policies and procedures that govern the furnishing of telemedicine services in and by the hospital. The policies and procedures shall address:

1. Obtaining and documenting informed consent.¹²
2. Establishment of the practitioner-patient relationship, including verification of the location and the identity of the patient.¹³
3. Medical record storage, documentation, preservation, content, and security, which shall be consistent with Chapter 115 (relating to medical records services) and applicable State and Federal Law.
4. Patient privacy, including privacy and security of exchanges of information, in accordance with Federal and State laws and regulations.¹⁴

A hospital shall also develop, implement and maintain policies and procedures specific to telemedicine services for every service for which telemedicine is a method of delivery. The policies and procedures shall include the supervision, clinical duties, and responsibilities of all medical, nursing, and other hospital staff that participate in the delivery of telemedicine services and shall be consistent with medical staff bylaws.¹⁵

Telemedicine services policies and procedures may be integrated into existing policies and procedures of the service or department.

Outpatient Telemedicine Services

A hospital may offer outpatient telemedicine services under its license if:

1. The outpatient location or department is under the hospital license and operating as the distant-site and the originating-site is not under the license of the hospital.
2. The outpatient location or department is under the hospital license and operating as an originating site and the distant site is not under the license of the hospital.

¹² 28 Pa. Code §§ 103.22(b)(8),(9), (11)

¹³ 28 Pa. Code §§ 103.22(b)(1),(2) and (7).

¹⁴ 28 Pa. Code §§ 103.22(b)(3); 103.4(3); 115.27.

¹⁵ 28 Pa. Code § 107.12 (5), (11)

3. The outpatient location or department is under the hospital license and operating as either the originating site or distant site and both the originating site and distant site are under the license of the hospital.

Outpatient telemedicine services shall be offered in accordance with Chapter 119, Subchapter A (relating to outpatient services) and patients receiving telemedicine services from an outpatient distant-site hospital location shall be afforded the same rights as other patients treated by the hospital.¹⁶

Other Information

Nothing in this interpretive guidance should be construed as affecting or interpreting any Federal or State law outside of the Department's jurisdiction that may limit the ability of physicians, qualified practitioners or hospitals to offer telemedicine services, including but not limited to laws relating to scope of practice, cross-state licensure, prescribing of medication and treatment, privacy or security.

¹⁶ 28 Pa. Code 119.23 (a).