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Telemedicine Informed Consent: Requirements and Best Practices

Informed consent is an integral part of telemedicine. Telemedicine and telehealth are often used interchangeably but are technically different in scope. Telemedicine specifically refers to the practice of medicine or the delivery of clinical services using telecommunications technology when the clinician and the patient are in different locations. In contrast, telehealth generally refers to a broader scope of remote services, including non-clinical services such as education, administration, and public health. While consent to telemedicine may seem implied and documentation of consent unnecessary, obtaining and documenting informed consent are good professional medical liability risk management practices and, in some states, required. Nevada presently does not have a telemedicine informed consent law.

Whether required by statute or not, obtaining and documenting informed consent may prevent claims by patients who later allege they would not have engaged in telemedicine appointments had they known about certain risks or limitations. A good practice starts with a policy and procedure, so that everyone involved knows what to do and how to do it. The policy and procedure should include a comprehensive informed consent discussion prior to a telemedicine visit. Ideas for the policy include:

- Outline key points for the clinician-patient discussion and incorporate information required by state statute, Executive Order, licensing board policy, or Medicaid rule;
- Specify that clinicians should enter or write a detailed chart note documenting the elements of the discussion and noting the patient's verbalization of consent (or refusal);
- Develop a comprehensive telemedicine informed consent form for patients to sign before care and treatment begins. The form should include the information the clinician covers orally with the patient; and
- Integrate the discussion and documentation into the workflow.

Informed Consent Discussion

Telemedicine is new to many. The clinician should explain the risks, benefits, and limitations of telemedicine and address patient responsibilities and expectations. Present the information in terms the patient can understand, so the patient can make an informed decision. The consent discussion process also may increase the patient's comfort with new technology or the change from in-person to telemedicine appointments. Prior to providing telemedical care, physicians and other clinicians should present the following information[1]:

- Basic explanation of telemedicine and the platform being used;
- Benefits – including accessibility, cost savings, and efficiency;
- Risk that a technical interruption could delay evaluation or treatment[2];
- Risk that the clinician's medical decision-making and diagnostic ability may be compromised by the inability to conduct a comprehensive physical exam, lack of access to complete medical records, and/or inadequate image quality;
- Risk of data breach even with the use of security protocols[3];
- Alternatives, such as in-person care;
- Option to decline telemedicine or stop the visit at any time;
- Patient responsibilities, which may include providing complete and accurate information, using a secure network and a private location, and complying with clinician recommendations such as follow up labs, diagnostic tests, referrals, or in-person visit;
- Federal laws governing privacy and security of health information, as well as patient access to that information, apply equally to in-person and telemedicine care;
- Confirmation of the state where the patient is located during the appointment;
- Billing – confirm there will be a charge for the visit and that patient's share of cost will be governed by their individual insurance coverage,
- Discussion of the practice's telemedicine no-show or cancellation policies; and
- Opportunity for the patient to ask questions.

Documentation

Document the informed consent discussion and the patient's consent or refusal:

- in the patient's medical record; and
- through a signed consent form (see Workflow, below), which may serve as additional contemporaneous evidence of the discussion and consent should there be resulting litigation or a medical board complaint.

Workflow

Build the consent process into your telemedicine workflow. One idea is to develop a telemedicine consent package to send patients at the time of scheduling. The package could include the consent form and an information sheet explaining telemedicine and the practice's telemedicine process in patient-friendly terms. An explanation before the appointment gives patients time to consider the information and think of questions to ask the clinician during the consent discussion. Providing information for a patient to digest ahead of time also can reduce the risk that a patient could later credibly allege that the physician "rushed" the patient through the consent process.

[1] For more information about what to include in the consent discussion, consult the American Telemedicine Association's *Core Operational Guidelines for Telehealth Services Involving Provider-Patient Interaction* (p. 7, numbers 6-8); s*ee also* American Medical Association Ethics Opinion 1.2.12, *Ethical Practice in Telemedicine*, and Federation of State Medical Boards *Model Policy for the Appropriate Use of Telemedicine Technologies in the Practice of Medicine*

[2] Clinicians should explain the procedure to follow if a technical interruption occurs.

[3] Always inform patients whether the platform the practice is using meets HIPAA standards.

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