Telehealth: Utilizing Adverse Event Data to Proactively Identify and Mitigate Risks

Paul Greve, JD, RPLU *Markel Specialty*
Mary C. Magee, MSN, RN, CPPS, CPHQ *ECRI*
Jeraldine S. Stoltzfus, MBA-HA, RN, BA *ECRI*

Speakers

Key Objectives

— At the end of this webinar, attendees will be able to:

- Identify potential adverse event hazards to care facilities using telehealth services
- Define the litigation risks for insurers and healthcare organizations
- Implement mitigation strategies to reduce the occurrence of telehealth-related adverse events

Telehealth has been in its adolescence for decades, but the COVID-19 crisis accelerated its maturation within a matter of weeks.

The terms "telehealth," "telemedicine," and "e-health" are often used interchangeably in the literature, but basically, they represent telecommunication used for healthcare, although the technology has clearly evolved. What started as simple telephone calls now includes video-enabled visits and consults.

Acute Care: Implications for the Quality and Safety of Diagnosis: Introduction | Agency for Healthcare Research and Quality (ahrq.gov)

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Telemedicine: A two-way, real-time interactive communication between a patient and a physician or practitioner at a distant site through telecommunications equipment that includes, at a minimum, audio and visual equipment.

Telemedicine, Medicaid.gov Telemedicine | Medicaid

Technology-enabled health and care management and delivery systems that extend capacity and access.

Source: The American Telemedicine Association, 2019

The Telehealth Spectrum

Telehealth goes far beyond patient-physician video encounters. It can also encompass:

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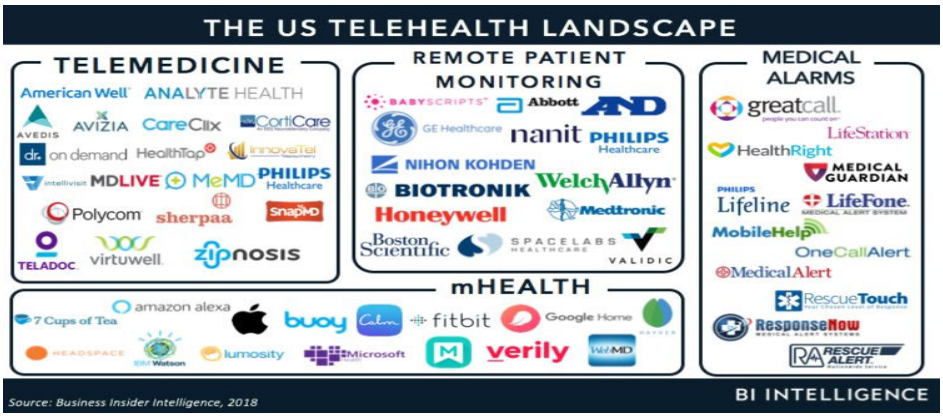
Telehealth Overview



Telehealth: Specialization

Examples

- Primary Care/Specialist Consultation
  - Skype Chat
  - Video Chat
- TeleStroke
- TelePsych/Behavioral Health = 70% Before COVID-19?
- Connected Otoscopes: Ear Exams
- Connected BP Monitors
- Remote Cardiac Monitoring
- Kiosks for Telemedicine in Retail Settings
- Remote ICU Monitoring

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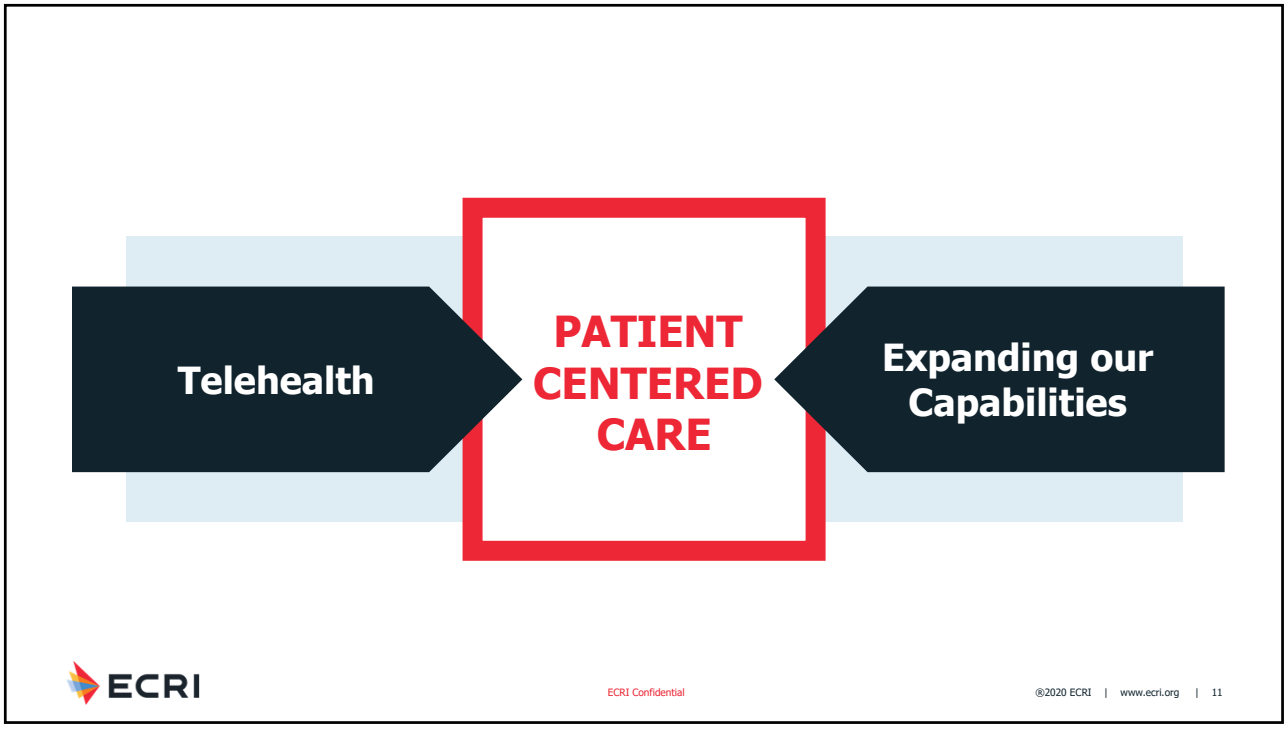
Telehealth/eHealth: Opportunity

- eHealth is evolving rapidly: use of data and electronics to support health care
  - Artificial intelligence (AI); Robotics; Others
- Telehealth and eHealth create a blend of new liability exposures
- mHealth is the use of mobile devices (phone) to support health care
- Insurance products needed: Tech E&O, Cyber, Product Liability, Medical Professional
- One policy?
- This is a brave new world: Underwriting challenges
- New insurance products needed to address the exposures
- Opportunity for premium growth but risk of the unknown


Telehealth
PATIENT CENTERED CARE
Expanding our Capabilities
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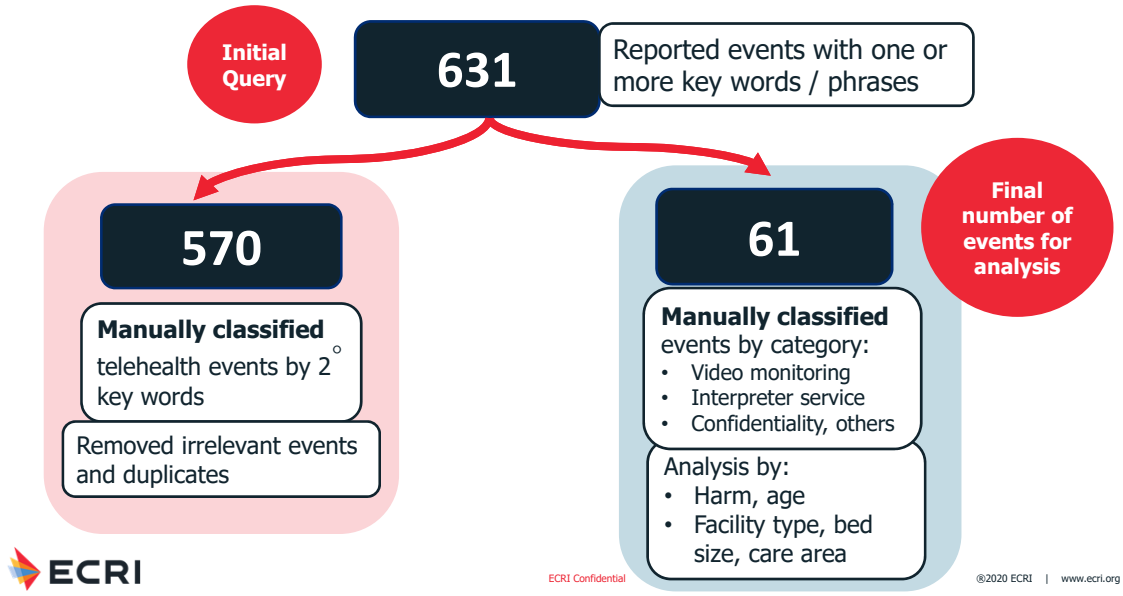
Methodology: January 1, 2016 – May 31, 2021



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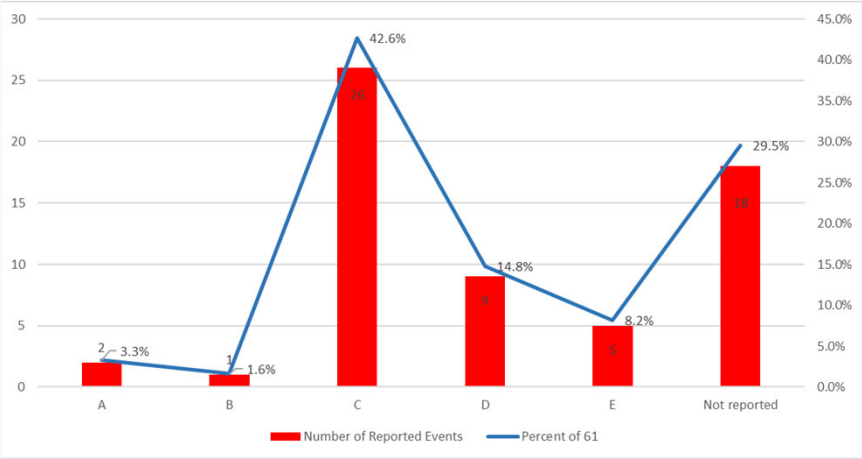
Telehealth Events by Harm Score

N = 61



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Telehealth Events by Age

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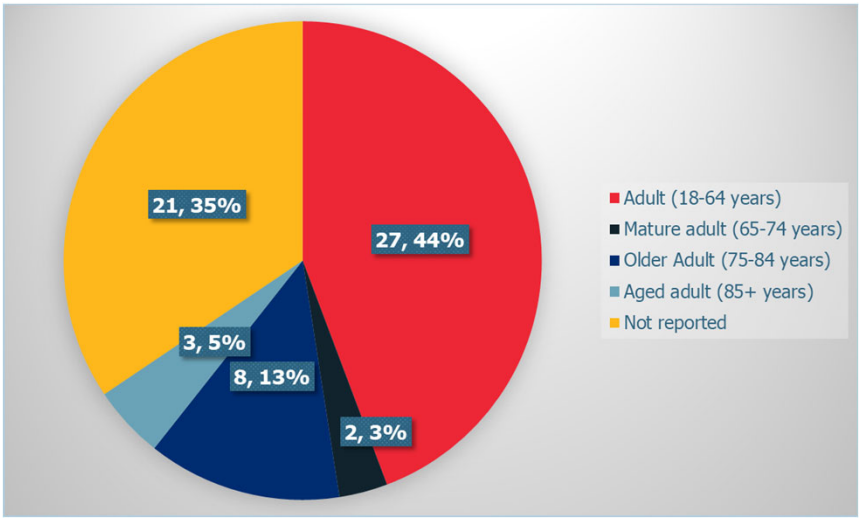

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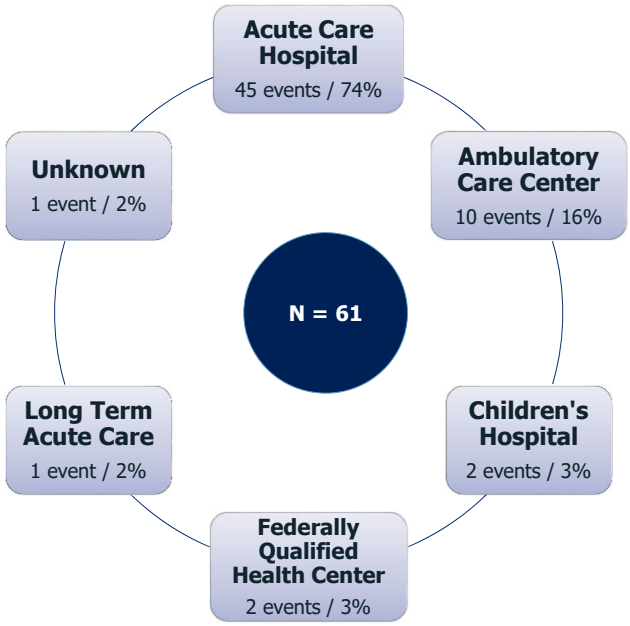
Telehealth Events by Facility Type



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Telehealth Events by Bed Size

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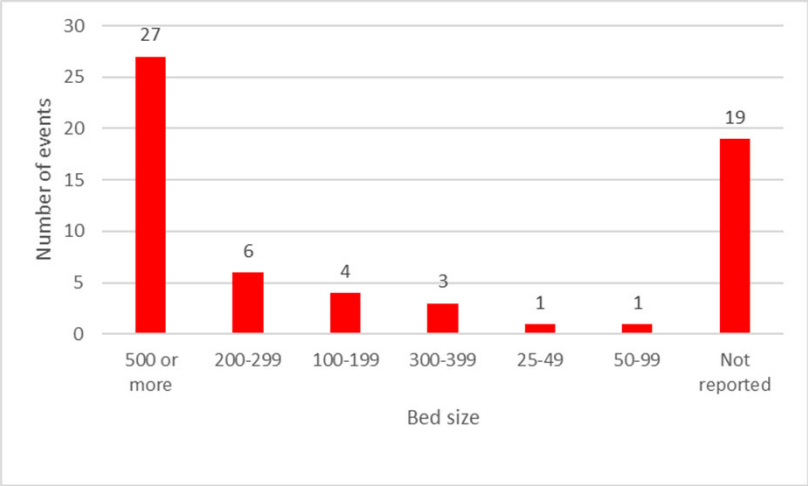

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Telehealth Events by Care Area

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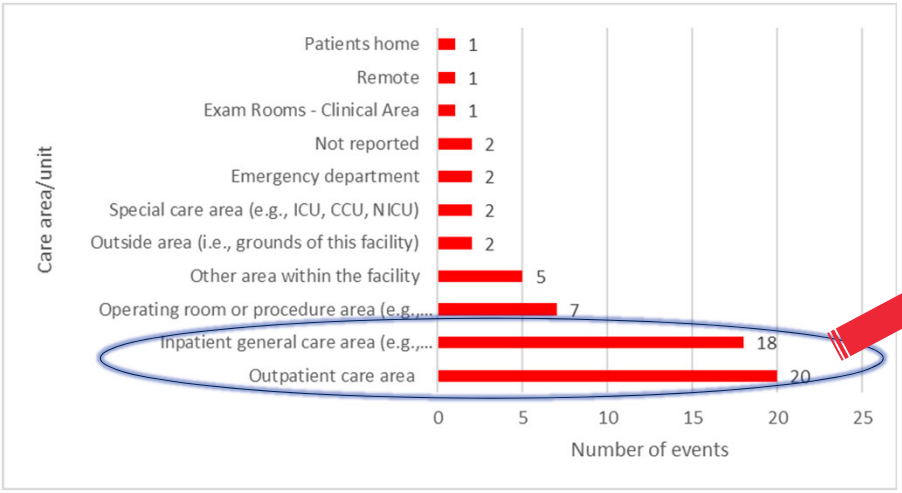

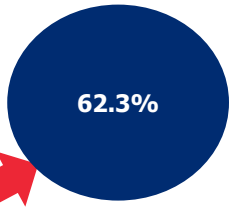

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Telehealth Events by Category*

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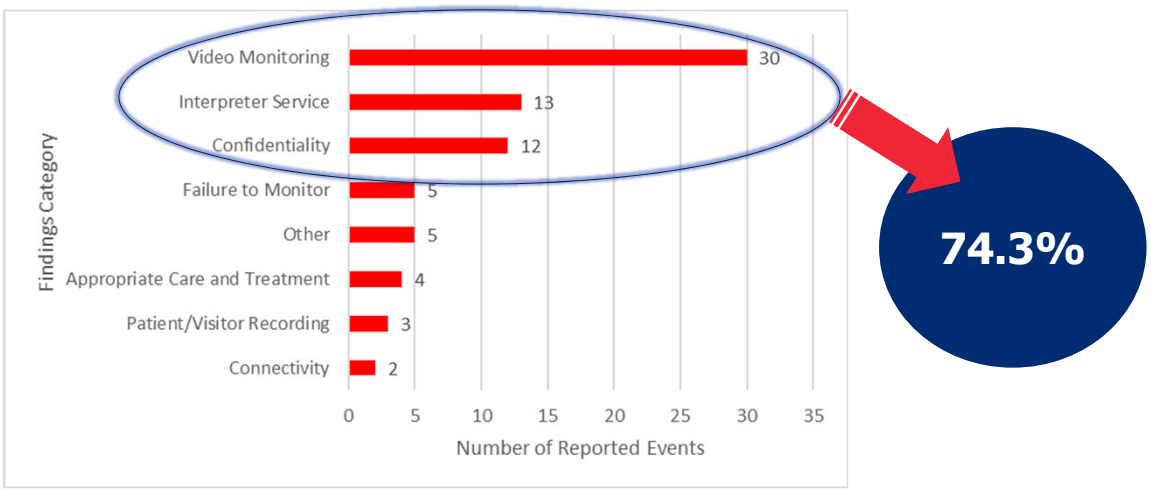

*Categories total more than 61 because the data is not mutually exclusive

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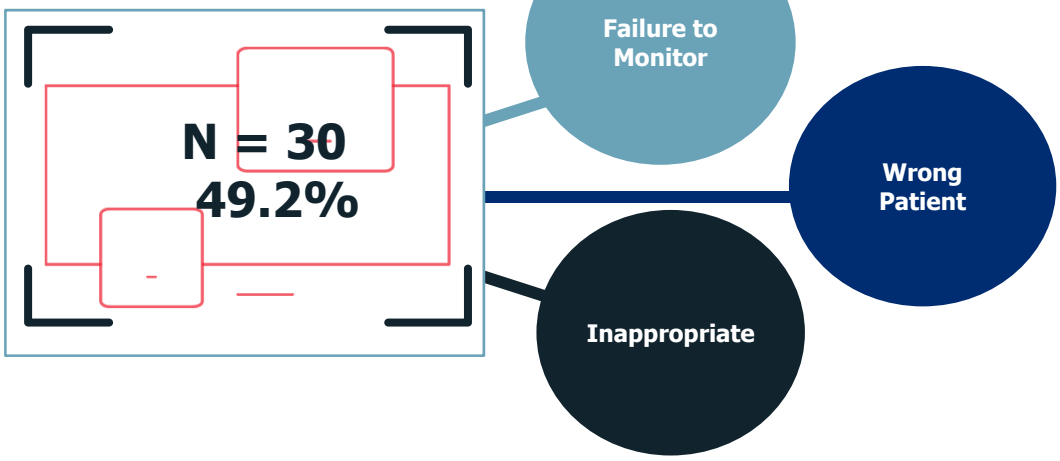
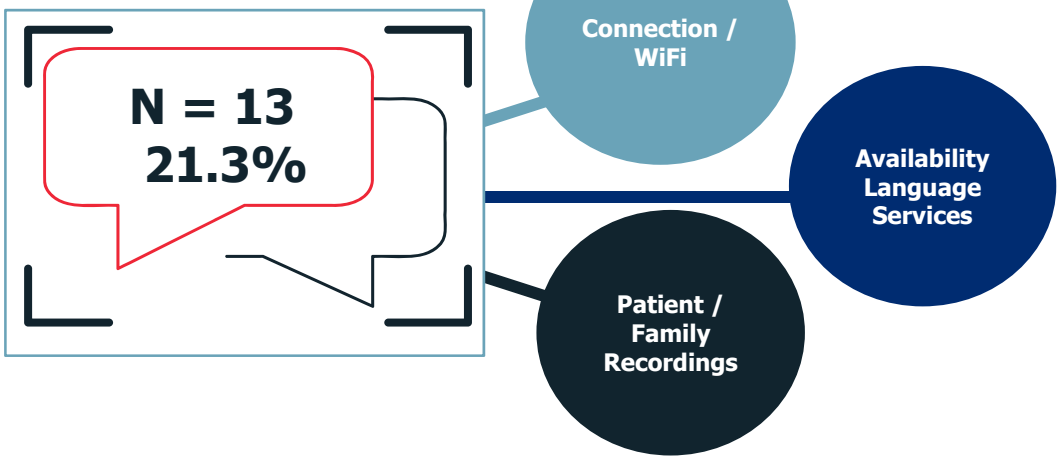
Video Monitoring



Interpreter Service



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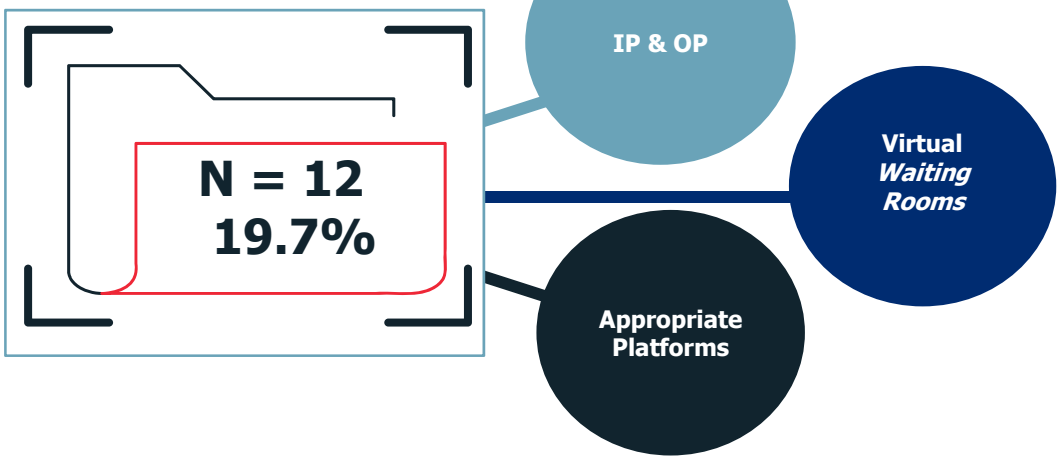

Exemplar event narrative: telehealth visit failure. 1 of 4

Granddaughter called to schedule an appointment for her grandfather. She was told that it would be a video call and she explained that her grandfather does not have video capabilities on his phone but that she would assist him. The **granddaughter's cell number was added as a contact. Fifteen minutes prior to the scheduled visit, they logged on.** They waited for 1 hour for the provider to start the video telehealth visit.

Exemplar event narrative: telehealth visit failure. 2 of 4

Five minutes prior to the scheduled visit, they received a call from the provider's office asking for insurance, medications, and other information. No link for the appointment was received; granddaughter called the provider's office and was told it would be a few more minutes. At six minutes after the scheduled visit they received another call about his updated insurance. At eighteen minutes they received another call asking the same questions.

Exemplar event narrative: telehealth visit failure. 3 of 4

At twenty two minutes after the scheduled visit they were told it would be a few more minutes. At thirty two minutes the granddaughter called the provider's office and was told they were having difficulty registering him for the visit d/t outdated insurance information. The provider's staff called a different number the day before in order to get updated insurance information; they should have called the granddaughter's cell as instructed but did not.

Exemplar event narrative: telehealth visit failure. 4 of 4

At forty two minutes after the scheduled visit the **granddaughter received a message with a link** but by then her **grandfather had already left**. In the **formal written complaint** the granddaughter mentioned **multiple calls** she made to the provider's office prior to and immediately before the scheduled visit and reported being placed on hold and being **hung up on**. **They are currently looking for another provider.**

Exemplar event, Telehealth visit failure Time Line with Gap Analysis

2:45pm*.....3:06pm.....3:18pm.....3:22pm.....3:42pm - **57 min Time Lapse**

Logged onto appointment
- 15 minutes prior

Received a call from the office
- 6 minutes **after** the scheduled visit, to update insurance

- Received a call from Providers office
- Verify Insurance, medications and other information
- No link for the appointment was received
- Granddaughter called office and was told it would be a few more minutes

Received Call from Office
- 18 minutes **after** scheduled visit received another call asking additional questions

Received call from Office
- at 22 minutes **after** scheduled visit received an update stating *it would be a few more minutes*

- Office, 1 day prior called a different number to validate insurance information
- Did not call the Granddaughter's cell as instructed

Granddaughter called office
- at 22 minutes **after** scheduled visit
- Was told they were having *difficulty registering d/t outdated insurance information*

Received link to appointment
- at 42 minutes **after** scheduled visit

- Grandfather had already left

* Time used for illustration purposes only, not actual. Minutes reported are actual.

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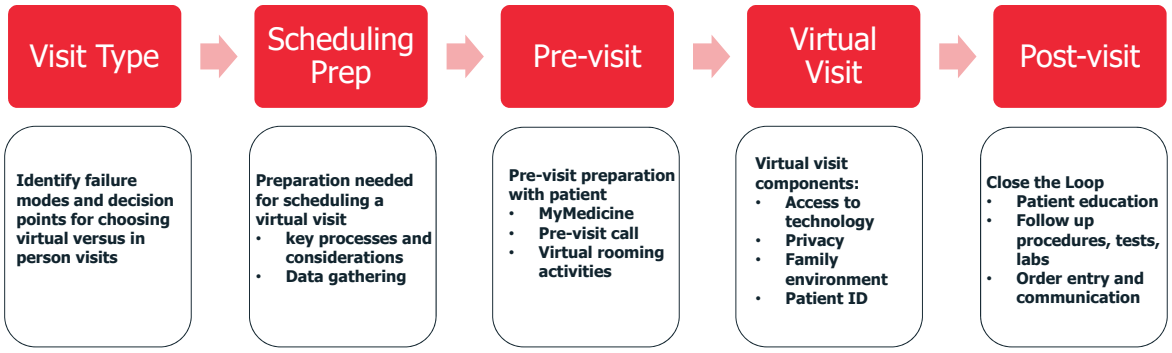
ECRI Partners with a PSO Client to conduct a High Level FMEA



Identify Failure Modes, Effects, Contributing Factors and Priority for Action

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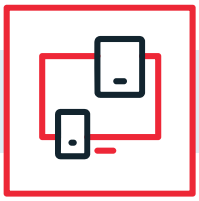
Recommendations: What's on your Radar for Telehealth



Workflows

New Workflow, New Roles
Not new Medicine

Goals

Workspace

Etiquette

Appropriate Pt Population

Operations

Capture the Costs

Billing / Reimbursement

Staff Ed & Training

Competencies

Liability / Malpractice

State Guidelines

Privacy Issues

Quality Review

Culture of Safety

Credentialing

Informed Consent

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Recommendations: What's on your Radar for Telehealth

Policies and Procedures

Governing Bodies & Regulations

Standard(s) of Care

Scope of Providers / Staff

IT Functionality

Platforms

Integration of Visits/ Monitoring into EMR

Cybersecurity Controls

Tele-Monitoring: IP & OP

DT Procedures

Communications & Care Coordination

Pt Preference

Pt Resources

Pre Visit Planning

Language Services

Post Visit Pt Education & Referrals

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Nurses are Going to the Dogs

Researchers have built a dog-like robot nurse to remotely measure patients' vital signs CNN 9/1/2020

(CNN) – Testing a patient for Covid-19 can be an unnerving experience for health care workers, but researchers from the Massachusetts Institute of Technology and Brigham and Women's Hospital in Boston are hoping to use robots to change that.

Operating robots with a handheld device, medical workers may soon be able to talk with patients about their symptoms while measuring vitals -- all from another room.

COURTESY OF THE MASSACHUSETTS COVID-19 HIT INTERP

Researchers modified Boston Dynamics' dog-like robot spot to measure patients' vital signs.

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Legal and Regulatory Issues

- Licensure of the provider providing services is essential
- Credentialing/privileging by the receiving entity is essential
- HIPAA regs were relaxed to help telemedicine pandemic use
- Licensing: Many states relaxed requirements to promote use
- Lack of state consistency here is a huge challenge but one must know the laws before proceeding
- General rule: The provider must be licensed where the care occurs
- Any act of diagnosing or recommending care is generally considered the practice of medicine
- Some states have special telemedicine licensing even for in-state functions; others require full medical licensure
- Most states' medical boards offer a "common consultation exception" (exempting from licensure) that may apply to telemedicine scenarios

COVID-19 Issues: Use Has Exploded Due to the Pandemic

- HIPAA
  - Waiver of HIPAA penalties per OCR/DHHS for use of "everyday communications technologies"
  - Acceptable platforms listed include Skype, FaceTime, Facebook Messenger, Zoom, among others
- Medicare Reimbursement
  - CMS significantly broadened payment for "office, hospital and other visits…that generally occur in-person" by telehealth communications including in the residences of patients
  - This expansion was done on a "temporary and emergency basis"
- Key State Law and Regulatory Revisions
  - Many states have issued a full waiver of in-state licensing requirements with certain limitations: Temporary or permanent?

Liability Issues: **Potential Malpractice**

- Jurisdiction is problematic: across state lines or international
- Reform laws may differ, e.g. damage caps
- Statute of limitations may vary, e.g. minors
- The hospital or other entity has a corporate legal duty to credential all telemedicine providers if originating site
- May need to create a category for this under medical staff bylaws
- Compliance with state laws and medical board regs is critical
- Standard of care may vary by venue
- ATA guidelines and specialty-specific guidelines arguably create a standard of care

Malpractice Cases to Date: Allegations

- Failure to diagnose and correctly triage
- Incorrect interpretations of images from home or remote and miscommunication of timeliness of "stat" reading (radiology)
- Failure to communicate presenting symptoms to a remote examining neuro-radiologist and resulting failure to diagnose
- Incorrect interpretation of remote reading of EFM strips
- Failed telepsychiatry communications
- Incorrect diagnosis of bacterial meningitis from a pharmacy kiosk
- Systemic failure of a device/app that monitored patient blood sugar resulting in hypoglycemic shock to one patient
- NP incorrectly prescribed medication from a kiosk encounter due to patient's weight changing significantly
- Patient suicide immediately after telepsychiatry encounter

Potential Telehealth Risks

- Starting virtual visits without legal/regulatory compliance
- Inadequate credentialing and licensure
- Inadequate training in the use of the technology
- Technology failure: Poor image quality, lags
- Inadequate patient selection criteria: Which patients are best handled by video and which need in-person care? Specialty-specific guidelines
- Physicians practicing from home: Bandwidth, interruption/distraction, privacy
- Getting informed consent, including video limitations
- Documenting the encounter: Especially follow-up care, referrals, prescriptions
- Verifying MPL coverage for virtual visits across state lines
- Verifying applicable laws in states where care is delivered: Informed consent, prescribing, etc.

Telehealth Risk Management

- Do Not Proceed Without Legal Advice
  - Telemedicine is very complex from a legal and regulatory standpoint
- Determine Which Patients Can be Appropriately Seen by Video Encounter: Patient Selection Criteria are Key
  - Which visits must occur in-person?
- Train Staff in Use of the Technology
  - Coach/supervise staff initially and support infrequent users
- Verify Patient Identity
  - Driver's license and asking questions regarding previous visits/history
- Document Informed Consent
  - The limitations of a video exam; some states have laws on telehealth consent
- Document the Video Encounter in the EMR
  - Test ordering and results, any communication with patient/family/referral/coordination with other providers, referral and follow-up care including time frame, any technical issues encountered

Telehealth Risk Management (continued)

- Informed Consent and Disclosure Laws Vary by State
  - Verify before allowing telemedicine visits across state lines
- State Requirements Regarding Prescriptive Authority Differ by State
  - Verify before proceeding
- As the Pandemic Recedes, Shift to More Secure Video Platforms
  - Protect patient privacy and security
- Reexamine the Best Clinical Scenarios for Use of Telemedicine
  - Now that patients can be seen physically, know telemedicine's physical examination limitations by physician specialty and patient condition
- Focus on the Patient Experience
  - Consider patent access to broadband, educational levels, age, ability to comprehend, language barriers requiring interpreters
- Verify Patient Understanding, Especially Followup Steps Required

Defense of Pandemic Telehealth Claims

- PREP Act immunity
- State law immunity
- Crisis standard of care
- Plaintiffs' difficulty finding physician expert witnesses
- Halo effect for health care providers

Telehealth: Coverage Issues

Potential Coverage Stumbling Blocks

- Cyber breach: MPL coverage problematic or nonexistent for hacking, unauthorized release of patient information, etc.
- Many start-up telehealth companies may not have cyber coverage
- Start-ups have diverse coverage needs: Clinical trials; incidental MPL, regulatory risk, patent infringement
- Technology failure: Coverage under MPL policy problematic = BI?
- Multiple carriers in one claims scenario fighting over coverage and exclusions

Telehealth Final Litigation Thoughts

- Telemedicine is evolving rapidly: “”A disruptive technology…”
  - The regulatory and legal framework is evolving rapidly
  - Insureds must comply or face claims of negligence per se
- Telemedicine risk is new and evolving but only a very small number of claims have occurred
- Telemedicine risk can be managed with planning and careful thought
  - Knowing the limits of a virtual encounter
  - Followup care
  - ATA guidelines
  - Specialty-specific guidelines: ACEP. ACR, APA, others
  - Staff practice and familiarity with new technology
  - Consent and disclosure of telemedicine limitations
  - Documentation in the EMR

Conclusion

- Identify potential adverse event hazards to care facilities using telehealth services
- Define the litigation risks for insurers and healthcare organizations
- Implement mitigation strategies to reduce the occurrence of telehealth-related adverse events
- **More tools to come:**
  - ECRI Telehealth Risk Assessment

Resources

- **ECRI Member Resources**
  - Telehealth: What's on Your Radar? (ecri.org)
  - Telehealth (ecri.org)
  - Telemedicine: The Future Is Here, When It Works (ecri.org)
  - Ready, Set, Go - Telehealth.pdf (ecri.org)
- Asking the Hard Questions About Telehealth | Agency for Healthcare Research and Quality (ahrq.gov)
- Telehealth for Acute and Chronic Care Consultations | Effective Health Care Program (ahrq.gov)
- CDC | Telehealth and Telemedicine
- Patient Safety Guidance for the Virtual Visit [Guideline] (harvard.edu)
- Introduction | Agency for Healthcare Research and Quality (ahrq.gov)
- Telemedicine | Medicaid
- State Telemedicine Laws, Telemedicine Parity Laws – eVisit
- Webinar: What Do Operations Managers Need to Know About Risk Management in Telehealth and Why? | ASHRM
- American Telemedicine Association – ATA
- FSMB | COVID-19

Questions

Presenters:

Paul Greve, JD, RPLU
Paul.Greve@Markel.com

Mary C. Magee, MSN, CPPS, CPHQ
mmagee@ECRI.org

Jeraldine S. Stoltzfus, MBA-HA, RN, BA
jstoltzfus@ECRI.org

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Thank you!