



Minutes
September 19, 2017
Telehealth Advisory Council
Agency for Health Care Administration

Members Present

Justin M. Senior, Chair
Dr. Ernest Bertha (virtual)
Dr. Anne Burdick
Leslee Gross (virtual)
Darren Hay (virtual)
Dr. Kim Landry
Elizabeth Miller
William Manzie
Dr. Steven Selznick (virtual)
Mike Smith
Matthew Stanton
Monica Stynchula
Dr. Sarvam Terkonda

Staff Present

Nikole Helvey
Pam King
Dana Watson

Guests Present

Please see Attachment A

Call to Order

Chair Senior called the meeting to order at 9:00 a.m.

Roll Call

Chair Senior welcomed the group and explained that due to the many health care related issues caused by Hurricane Irma, his presence would be intermittent, and Council member Mr. Mike Smith would Chair the meeting in his absence. Next, Chair Senior directed Ms. Helvey to call the roll. Ms. Helvey announced that a quorum was present.

Review and Approval of the Minutes

The Council reviewed the August 2017 meeting minutes. Dr. Burdick made the motion to approve the August 2017 minutes. Dr. Terkonda seconded the motion, which carried unanimously.

Member Discussion – Telehealth Legislation

Chair Senior told the Council that Senator Bean filed Senate Bill 280, on Telehealth, for the 2018 legislative session. He noted that the legislation included the Council's agreed upon definition. Some of the Council members were concerned that Senator Bean filed the bill prior to the completion of the report. Chair Senior explained to the Council that Senate Bill 280 is the Senate's first draft of the legislation and that it may be amendments at its referenced committee stops or on the Senate floor. He went on to explain that a member of the House of Representative would need to file a telehealth bill as well.

Member Discussion – Introduction

The Council members reviewed the Introduction section of the report and made suggestions to clarify parts of the section. Chair Senior began with the suggestion to use two words when referring to "health care." On page 3, paragraph 2, line 23, the members added the word "stakeholders" in the following sentence: *"While these technologies offer promising solutions, the adoption and expansion of telehealth also presents specific challenges to facilities, professionals, payers, and other stakeholders."* In the third paragraph, first sentence they replaced the word "distant" with "not being limited by physical location" in

the following sentence: *“The information presented to and reviewed by the Council demonstrates clear benefits from utilizing telehealth technology and the provision of not being limited by physical distance”*. On page 4, the Council suggested deleting the first two lines of the recommendation on lines 12-13 referring to the several definitions for telemedicine and telehealth. Rather, line 31 will read *“The Council offers the following language as a clear definition of telehealth and replacement for telemedicine for Florida:”*

Member Discussion – Defining Telehealth

The Council reviewed the Defining Telehealth section and recommended that a definition of telehealth should be included in statute and inclusive of six key components:

1. Telehealth can be used for providing health care and public health services.
2. Telehealth includes synchronous and asynchronous modalities.
3. Practitioners treating Florida patients must be appropriately licensed in Florida or appropriately supervised by a licensed Florida health care practitioner as prescribed by law or rule.
4. Health care practitioners must treat within the scope of their practice.
5. Telehealth can be health care practitioner to health care practitioner or health care practitioner to patient.
6. There must be no limitations on geographic or place of service.

After much discussion, the Council offers the following language as a definition of telehealth and replacement for existing telemedicine definitions in Florida statutes and rules:

Telehealth means the mode of providing health care and public health services through synchronous and asynchronous information and communication technology by a Florida licensed health care practitioner, within the scope of his or her (changed from their)practice, who is located at a site other than the site where a recipient (patient or licensed health care practitioner) is located.

Member Discussion – Health Insurance and Telehealth

The Council members reviewed the Health Insurance and Telehealth section of the report beginning with the topic “coverage parity.” The Council suggested the following changes: Changing the language on page 5 line 1 to include an empirical percentage of health care stakeholders providing input through the Telehealth Survey, rather than “a large proportion.” Ms. Gross suggested that on page 5, line 3, the report used the word “barriers” rather than “concerns.”

A large proportion of Florida health care stakeholders identify issues surrounding coverage and reimbursement as primary policy ~~concerns~~ influencing the delivery and growth of telehealth services.

On page 6 line 32, it was the consensus of the Council that they modify their recommendation to include the word “coverage.”

“Florida’s legislature require Florida-licensed health insurance plans (excluding Medicare) provide coverage for health care services provided via telehealth if coverage is available for the same service when provided in person.”

Also on page 6, lines 6-8, some of the Council expressed a desire to include language stating that some health insurance plans using a fee-for-service payment model do see value. The Council members suggested that the health care providers want direction in regards to what they should invest in to assure reimbursement for telehealth services. The Council discussed the value-based system policies included in the Affordable Care Act insurers and how they provide for the reimbursement for telehealth services.

Dr. Burdick noted that she would like the report to include a cost analysis. Ms. Gross clarified that there are already cost analysis available. She stated that the E-ICU saved approximately \$18 million a year. Nationwide there are 55-60 sites using E-ICU have documented the savings, which also include readmissions, and using remote monitoring. Mr. Hay recalled that the Council had determined at a previous meeting that they draft the report to be broad in regards to costs. The Council revisited the decision and requested that Ms. Gross provide documentation showing the \$18 million in savings to Nikole or Pam who will share with the Council. Dr. Burdick also suggested removing the word “greater” from the following sentence:

States, including Florida, have ~~greater~~ flexibility to develop policy for their Medicaid programs and enjoy full authority to establish guidelines for coverage of employees through state employee group health insurance programs, worker’s compensation, and similar state-sponsored programs.

On page 6, line 32, Mr. Stanton suggested using the language shared with the Council by Nathaniel Lacktman with Foley & Lardner (Foley) in a September 18, 2017 correspondence. The Council agreed to change the language in the report to use the Foley language below.

The intent of this recommendation is to ensure appropriate insurance coverage for the use of telehealth in treating patients. Any legislative language developed should not require insurers to add additional service lines or specialties, mandate a fee-for-service arrangement, inhibit value based payment programs, or limit health care insurers and practitioners from negotiating contractual coverage terms.

The Council continued to discuss the items they liked and did not like about the recommendation language. Council members questioned the inclusion of the date. Ms. Miller explained the reasons for the July 1, 2018. Ms. Stynchula likes the specificity of the language provided by the Foley correspondence. After much discussion, the Council agreed with Mr. Stanton and decided to replace the recommendation on page 6 lines 32-34 with the following language. The Council recommends:

The Florida Legislature require a health insurance policy issued, amended, or renewed on or after July1, 2018 (excluding Medicare) shall provide coverage for services provided via telehealth to the same extent the services are covered if provided via in-person consultation or contact. An insurer shall not impose any unique conditions for coverage for services provided via telehealth.

After approving the recommendation, Dr. Burdick suggested removing the word “thoughtful” on page 5, line 7.

The ~~thoughtful~~ integration of telehealth modalities into health care practitioner workflows can strongly support practitioners in meeting these goals.

Member Discussion – Telehealth Insurance Reimbursement

The Council discussed the issue of payment parity for services delivered via telehealth. Mr. Manzie voiced concern that the decision from the June meeting to include payment parity in the recommendation had not been included. Ms. Helvey pointed out the report is divided into sections, which include background and recommendations. She noted the background in this section is intended to capture the discussions and thought process of the Council in making their ultimate determination on their recommendation of requiring payment parity. She noted the language in the recommendation section does clearly indicated the Council’s recommendation on reimbursement parity.

Ms. Miller commented that the language regarding payment parity would be controversial because health plans have different contracts with different practitioners, reimbursing at different rates, at their own discretion. Dr. Bertha agreed with Ms. Miller that the topic of reimbursement parity would be

contentious; he pointed out that the language in the Foley document removes ambiguity and gives the Council the choice to either include or leave out the reimbursement parity provisions. Ms. Miller told the Council that the parity section would receive push back from the insurance industry because of the mandate. After more discussion, the Council agreed to slightly amended the Foley language for the recommendation. Dr. Burdick referred back to the June vote to include the parity provisions. She suggested using the Foley language, slightly amended, to remove the words “no less than” from the first sentence. The following recommendation language will be included in the report.

For the purposes of health insurance coverage and payment, payment rates for services provided via telehealth shall be ~~no less than~~ “equivalent to” the rates for comparable services provided via in-person consultation or contact contained in the participation agreement between the insurer and the health care practitioner. Any legislative language developed should not require insurers to add additional service lines or specialties, mandate fee-for-service arrangements, inhibit value based payment programs, or limit health care insurers and practitioners from negotiating contractual coverage terms.

After approving the recommendation, Dr. Burdick suggested removing the word “thoughtful” from page 8, line 3.

Council members acknowledge that ~~thoughtful~~ planning and implementation of integrated telehealth strategies can assist practitioners in more efficiently and effectively meeting the foundational goals of value-based payment methodologies.

Mr. Smith told the audience members on the phone and in the room that the Agency received the “Foley & Lardner” correspondence on September 18, 2017, and the Council members were reviewing it for the first time. He said the document would be on the Telehealth Advisory Council meetings page after the meeting.

Member Discussion – Medicare

Dr. Burdick suggested rewriting the recommendation to list the store-and-forward modalities before the remote monitoring. The recommendation is as follows.

It is the consensus of the Council that the State of Florida support modifications to Medicare telehealth laws that would expand coverage to include store-and-forward modalities, as well as remote patient monitoring ~~as well as store and forward modalities~~; expand ~~of~~ the types of health care practitioners covered; and revise or eliminate the existing geographic and place of service requirements.

Member Discussion – Medicaid

The Council reviewed the background information and made the suggestion to amend the Medicaid background information with the following change:

~~Similar to Medicare,~~ This Medicaid rule does limit fee-for-service coverage to ~~in Florida is currently limited to~~ live video conferencing and pays the practitioner that provides the diagnosis ~~only~~ and treatment recommendations.

A suggested recommendation is:

The Council recommends the Agency ~~consider~~ modify ~~ications~~ to the Medicaid telehealth fee-for-service rule to include coverage of store and forward and remote patient monitoring modalities in addition to the currently reimbursed live video conferencing modality.

In an attempt to draw a broader picture, Council members brought up the current Medicaid procurement. The staff quickly explained that the Agency is unable to discuss the procurement as the Agency is in a blackout period and is unable to discuss it.

The Council members discussed the last sentence of the recommendation. Ms. Miller explained that Medicaid currently pays and the sentence is not necessary. Dr. Bertha agreed with Ms. Miller to delete the sentence from the recommendation. However, Dr. Burdick suggested amending the sentence, rather than deleting it. The Council members wanted to wait for Chair Senior to return before making the recommendation. The Council revisited the Medicaid recommendation when Chair Senior was present. Once Chair Senior shared his thoughts, the Council agreed to delete the sentence from the recommendation.

~~The Council also recommends the Agency work with the Medicaid Managed Care plans to promote the expansion of telehealth utilization statewide.~~

The Council amended recommendation for the Medicaid section begins on page 9, line 10, remove lines 7-9 and move them to the background information, right before the recommendation.

The Council recommends the Agency modify the Medicaid telehealth fee-for-service rule to include coverage of store and forward and remote patient monitoring modalities in addition to live video conferencing.

Member Discussion – Insurance Network Adequacy

The Council reviewed the Insurance Network Adequacy section of the report. Dr. Burdick suggested the Council to include information regarding states besides Colorado. Staff explained that Colorado is the only state to date that has laws regarding allowing insurers to count available telehealth services in meeting insurance network adequacy requirements specialties.

Dr. Burdick suggested that the language on page 9, line 29 should begin with the words “The Council recommends...” She suggested the following “The Council recommends that Florida health plans and HMOs adopt provisions included in the National Association of Insurance Commissioners (NAIC) related to telehealth as a means to ensure network adequacy.” Mr. Smith asked Ms. Miller and Dr. Bertha to comment on the topic. Ms. Miller explained that the language meant the adoption of the NAIC definition of network adequacy and allowing the location of the telehealth providers to count towards network adequacy. Ms. Miller suggested that the Council look at the “Model Network Adequacy Act” (ACT) and use the language from the Act. Dr. Burdick responded that the Council does not know what is in the Act and suggested discussing the Act and the NAIC at a later Council meeting. Ms. King directed the Council to the Model Network Adequacy Act in the member materials. Dr. Bertha directed the Council to the language in the Act, and noted that the Council can massage the language for use in the report.

Chair Senior stated that Network Adequacy in Florida would really be associated with Medicaid and CHIP plans. He advised the Agency does have extensive Network Adequacy requirements for Medicaid health plans. Chair Senior stated that he would speak with the Agency legal team about the regulation of the Commercial plans and the expense of the added full time FTE to monitor network adequacy in every area of the state. Ms. Miller shared the regulation and monitoring that Medicaid plans currently have with the Council.

Chair Senior stated that Council wants telehealth to count towards network adequacy, however, there needs to be a specific description of the parameters for when it counts. Dr. Bertha stated that his understanding of the definition and recommendations is that health care services are the same whether provided in person or via telehealth. He questioned why or how, some of the services would count towards network adequacy requirements. He stated that the use of telehealth makes it much easier to meet the network adequacy requirements. Chair Senior responded that while that is true, the Council needs to respect that some of the patients might not be comfortable using telehealth, so actual brick and mortar locations would be necessary. He suggested that there should be a compilation of some telehealth practitioners and some brick and mortar practitioners in the network. He stated that currently, Medicaid only pays for telehealth services in a brick and mortar facility. He listed some of the specialties that could use telehealth.

Mr. Smith stated that the Council needed to give this section more consideration and would discuss it at the next Council meeting.

Member Discussion - Health Practitioner Licensure & Telehealth

The Council reviewed the Health Practitioner Licensure section of the report. Dr. Landry shared a scenario of a North West Florida patient receiving health care services from an Alabama licensed cardiologist, but also has a Florida licensed practitioner who referred the patient to the Alabama cardiologist. He questioned if the patient could consult with a licensed Alabama specialist and noted that there should be a way for a Florida practitioner to refer a patient across state lines for a consultation with a practitioner with a specific specialty. Council members asked if they needed to add a section about consultations between practitioners, across state or national borders where there is no treatment provided to the patient, just a treatment plan from the specialist on the consultation. Mr. Manzie suggested they not include a section on provider-to-provider consultation, which is not the same as telehealth. Other members agreed to leave the section out.

Council members reviewed the Interstate Licensure section. Dr. Burdick commented that she would like to see a figure with each compact including the states participating and the minimum number of participants required by each compact to “go-live.” Staff directed Dr. Burdick to the chart included in the materials, however, she suggested the report list the findings in text.

Ms. Gross asked Dr. Terkonda how the Florida Medical Association (FMA) feels about the compacts. He responded that he is not aware of any position statement that the FMA has on compacts. Dr. Terkonda asked Ms. Mary Thomas representing the FMA to come forward and answer the Council’s questions. She stated that the FMA fully supports the compacts as long as the compact remains voluntary, so practitioners do not have to participate, and those practitioners will not feel negative affects due to their non-participation.

Dr. Landry would like clarify the section by including a provision stating, “practitioner to practitioner consultations are not considered telehealth.”

The Council reviewed the recommendation and made the following edits.

In order to ensure the highest possible standard of care for Florida patients and maximize the access to care for Florida residents, while allowing health professionals to expand their patient reach through the use of technology.” The Council recommends the following:

1. Florida maintain the requirement of Florida licensure for health practitioners ~~treating~~ providing direct care to patients via telehealth in Florida from a distance. This recommendation requires no change to current regulations and does not inhibit the use of telehealth to treat patients.
2. Participate in health care practitioner licensure compacts that ensure equivalent or increased licensure requirements as Florida, when available and appropriate.
3. Allow health professionals to expand their patient reach through the use of telehealth technology.”

Member Discussion - Hurricane Response

Chair Senior shared examples provided during the 2017 Hurricane season of how the use of telehealth, patients were provided care throughout the state. Ms. Gross commented that during the storm, the facilities were only concerned with treatment, not reimbursement. Chair Senior shared that the federal government provided many waivers to provide expanded care through Medicaid and Medicare during a state of emergency. He also stated that the main objective was providing good patient care.

Dr. Burdick suggested including a section on the state response to the hurricanes. Mr. Smith agreed and stated that Nemours experienced a large increase in the telehealth services during Irma since the issue is topical and the section can provide a favorable impression of telehealth services.

Break 12:35 reconvene

Member Discussion- Telehealth Standards of Care

The Council reviewed the Standards of Care section of the report. Mr. Smith read the current recommendation in the report and then read part of the Foley correspondence, which suggested the Council adopt the language from Texas statutes.

Mr. Manzie stated that he did not think the language pertaining to non-physician health care practitioners and unlicensed practice of medicine was necessary. He stated that they are already licensed and have a scope of practice to work within. Ms. King reminded the Council they had determined they should use the language because there were some practitioner types whose regulating boards do not currently have statutory rulemaking authority.

Mr. Smith directed the Council in a conversation regarding the standard of care provisions in SB 280 on Telehealth, by Senator Bean. There was much discussion about the current language in the Bill. The discussion included concerns the current language might insinuate providers are not required to do as much to provide treatment. There were also questions about sections of the Bill that spoke to unlicensed practice of medicine and non-physician practitioners.

Ms. Thomas, representing the Florida Medical Association told the Council that in the past, the FMA referred to telehealth services as being telemedicine, because physicians were practicing medicine. However, she stated that the FMA's position has changed to refer to telehealth rather than telemedicine because all provider types can use it. Ms. Thomas also stated that the FMA does not like the language in the Practice Standards section of the bill, as it falls below the standards of practice. Dr. Landry commented that the words "evaluation sufficient to diagnose" are ambiguous and can cause confusion, leading to a lower standard of care. Ms. Stynchula agreed with Dr. Landry and stated she had concerns with the proposed Bill language and that the more precise the report can be regarding the standard of care, the better. Based on the discussion of the Bill, Mr. Stanton stated that the following should be included in the report as recommendation.

The current standard of care shall remain the same regardless of whether a Florida licensed health care provider provides health care services in person or via telehealth.

There was additional discussion about eliminating the recommendation to provide statutory authority to regulatory boards and council for establishing telehealth rules. Ms. Helvey stated that the Council did hear from other practitioner types that do not have statutory authority to write rules and Ms. Miller reminded the other Council members about the request from allied health providers. The Council asked for clarification on the rule making process and why statutory authority was needed.

Mr. Michael Moné, with Cardinal Health advised the Council that the boards and councils need specific authority to develop rules. He further noted the need to include some type of language in the report to provide authority for the boards and councils to establish needed rules. The Council and Mr. Moné discussed the recommendations for the standard of care section.

Mr. Smith asked Mr. Moné and Ms. King to draft language regarding standard of care for the Council's consideration during a short recess.

Break reconvene at 1:50 p.m.

After discussion, the consensus of the Council was to include the following recommendations in the standard of care section of the report:

- 1. The Department of Health and health care regulatory boards continue to educate and raise awareness among licensees about their ability to utilize telehealth modalities as a means treat patients when appropriate.*
- 2. The Florida legislature authorize health care regulatory boards and councils specific statutory authority to develop standard of care and other rules necessary for implementation of telehealth. The telehealth standard of care shall be the same as the in-person standard of care.*

Member Discussion – Patient and Consumer Protections

The Council reviewed the Patient and Consumer Protections background section of the report. The Council agreed to change the term “*mechanism of care*” to “*modality of care.*” The Council also modified the second sentence of the section to read:

Patients should have confidence the standard of care they receive, whether delivered in-person or through telehealth will be the same.

The consensus of the Council was to modify the last sentence of the background section to read:

A practitioner who potentially bills inappropriately for services may be audited regardless of modality of care.

Member Discussion – Patient-Provider Relationships and Continuity of Care

The Council reviewed the Patient-Provider Relationships and Continuity of Care section of the report. Mr. Hay likes the recommendation, but thinks the background section should include more data. Dr. Burdick suggested adding in positive statements to the background section. After much discussion, the consensus of the Council was to use the last line of the background section as the recommendation. The modified recommendation reads:

The Council recommends the Florida legislature recognize the ability for practitioners and 12 patients to establish a relationship through telehealth in addition to encourage efforts for 13 ensuring patient care coordination among treating practitioners.

Member Discussion – Patient Consent

The Council reviewed the Patient Consent background section of the report and changed the last sentence to read “...*care delivery mechanism*” to “*delivery modality.*” The Council agreed to change the recommendation to read:

The Council recommends maintaining current consent laws in Florida. The Council notes that additional consent requirements will add unnecessary barriers for both practitioners and patients attempting to utilize telehealth services.

The Council members discussed the different consent requirements their practices follow.

Member Discussion - Telehealth and Prescribing

The Council reviewed the Telehealth and Prescribing section of the report. Mr. Manzie inquired what the drug schedules meant. Dr. Landry explained the schedule and the potential for addiction. Ms. Stynchula and Ms. Miller asked about the ability for hospices and other specific healthcare providers' ability to use telehealth for prescribing of controlled substances. Ms. King advised that the language the Council was recommending did include a provision for hospice care, in patient care for licensed facilities, behavioral health, and emergency care.

The consensus of the Council was to modify the recommendation to read:

The Council recommends the Florida legislature recognize the establishment of practitioner-24 patient relationships through telehealth as appropriate for treating patients, including the 25 prescribing of medications; with limited exceptions for prescribing of controlled substances.

Dr. Landry stated concerns about the abuse and addiction of controlled substances prescribed via telehealth. The Council requested staff to include language that would support the language found in the Boards of Medicine and Osteopathic Medicine telehealth rules regarding prescribing of controlled substances.

Member Discussion – Technology

The Council reviewed the Technology section of the report. Ms. Gross commented that the section has too much detailed. Mr. Stanton suggested reducing the length. He said the recommendations were fine, but too vague. The Council made following changes to the recommendations.

Noting diminishing technological barriers, the Council recommends:

- 1. The Agency identify existing resources for health information exchange; existing and potential solutions to expanding interoperability_ ~~and pathways to potential solutions.~~*
- 2. Florida continue promotion of existing programs and services available to increase access to technology, access to broadband networks, and improved interoperability.*
- 3. Education opportunities be offered by medical schools, health care institutions and allied health care practitioner associations related to the utilization to telehealth to treat patients. Educational opportunities should include training on technology system security and HIPAA and requirements needed to ensure the appropriate standard of care.*

Mr. Hay stated the only recommendation he thinks is necessary would be “to encourage the Legislature to support the policy supporting interoperability.” He does not think the recommendation needs to be so prescriptive as it is currently written.

The Council discussed the Lifeline program and smart phone access provided to patients to use telehealth. Ms. Stynchula asked if Florida could increase the phone benefits to allow the use to access telehealth. Staff will research.

Public Comments

Jane Johnson, with the Florida Council for Community Mental Health asked the Council to include the use of telehealth when providing Mental Health services. She noted telehealth is very useful when treating pediatric and adolescent patients. She discussed the way telehealth can help with meeting network adequacy goals.

Michael Mone` with Cardinal and Mary Thomas with the Florida Medical Association provided input and testimony during the member discussion portion of the meeting.

Next Steps

The Council directed Agency staff to make the agreed upon changes to the report and distribute it as soon as possible. The Council will hold a webinar on October 3, 2017, where the Council will make further recommendations for the report. The staff will make the changes and the Council will review and vote on the “Florida Telehealth Utilization and Accessibility” report.

Adjournment

There being no further discussion, the Telehealth Advisory Council adjourned at 3:10 p.m.

Attachment A

Interested Parties in attendance at the September 19, 2017 Telehealth Advisory Council Meeting

Doreen Barlu, AARP; Ben Browning, FACHC; Nathan Dunn, Florida Department of Health; Jessica Grace, Agency for Health Care Administration; Carolyn Grant, Cardinal Health; Joe Anne Hart, Florida Dental Association; William Hightower, Florida Osteopathic Medical Association; Joni Higgins, Bay Care; Jane Johnson, Florida Council for Community Mental Health; Michael Moné, Cardinal Health; Joy Ryan, Meenan, PA; Chris Snow, FLASHA; Mary Thomas, Florida Medical Association; Chris Hansen, Cardinal Health; Craig Hansen, Wellcare.