September 18, 2017

Sent Via Email Only

Justin Senior  
c/o Telehealth Advisory Council  
Agency for Health Care Administration  
2727 Mahan Drive  
Tallahassee, Florida 32308  
Justin.Senior@ahca.myflorida.com  

Re: Comments to Draft Telehealth Advisory Council Report

Dear Secretary Senior:

We submit these comments in connection with the Telehealth Advisory Council’s draft Report of Recommendations, published today. Please share these comments with the Council at large during the public hearing on September 19, 2017.

Foley & Lardner’s telemedicine practice has been at the forefront of providing strategic legal and regulatory compliance advice to clients on the appropriate deployment and use of telemedicine across a wide variety of provider specialties and health care settings throughout Florida, across the United States, and Internationally. Based on our experience, we believe there is a growing enthusiasm and demand for telemedicine services in the State of Florida. This environment presents a valuable opportunity to drive expanded accessibility and enhanced quality of health care for all Floridians.

We are therefore encouraged by the Council’s leadership, diligence, and hard work over the last year regarding the future of telehealth in the State of Florida. Overall, the Council did an excellent job summarizing and categorizing the various policy issues while preparing a report that is brief and digestible. We hope and trust that the lawmakers in the Legislature will carefully consider all the effort behind the report’s creation. The report represents an important opportunity for the Council to recommend a reasonable, forward-thinking statute and policy designed to encourage (or at least, not discourage) the use of innovative health technologies in our State.
Please consider the following comments as the Council finalizes its report.

- **Definition of telehealth.** On page 4, line 31, the Council offers a good definition of telehealth. This language appears written to immediately plug into existing Florida Statutes. Has the Council considered offering similar proposed statutory language for the other sections of the report (e.g., insurance coverage and reimbursement)? Doing so might be quite helpful for lawmakers and legislative staff when it comes time to draft the actual bill language.

- **Insurance coverage.** On page 6, line 32, the Council recommends that the Legislature require Florida health insurance plans to cover healthcare services delivered via telehealth. The Council should make this recommendation more clear and unequivocal, and consider adding to the report the following language lawmakers can consider when drafting the bill, so that the bill actually matches the recommendations in the Council’s report:
  
  - “A health insurance policy issued, amended, or renewed on or after July 1, 2018, 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.”

- **Insurance reimbursement.** On page 8, line 7, the Council recommends the Legislature require health plans “to offer reimbursement for covered services provided via telehealth.” The Council’s recommendation, as written, is vague because the report advises the Legislature to “require” health plans to merely “offer” reimbursement. If the Council’s recommendation is that the Legislature include a payment parity provision, the report should be modified to clearly state such. If, instead, the Council’s recommendation is that the Legislature not include a payment parity provision, the report should be modified accordingly. Either way, the language of this particular recommendation could benefit from a clarifying revision.

  - If the Council recommends in favor of including a payment parity provision, the Council should consider adding to the report the following language lawmakers can consider when drafting the bill, so that the bill actually matches the recommendations in the Council’s report:

    - “For purposes of health insurance coverage and payment, payment rates for services provided via telehealth shall be no less than the rates for comparable services provided via in-person consultation or contact contained in the participation agreement between the insurer and the health care provider.”
If, instead, the Council recommends against including a payment parity provision, the Council should consider adding to the report the following language lawmakers can consider when drafting the bill, so that the bill actually matches the recommendations in the Council’s report:

- For purposes of health insurance coverage and payment, insurers and providers are free to negotiate payment rates for services provided via telehealth. Nothing in this section shall require an insurer to reimburse a health care provider for services provided via telehealth at a payment rate identical to comparable services provided via in-person consultation.”

- Medicaid. On page 9, line 13, the Council recommends the Agency work with Medicaid Managed Care plans to promote the expansion of telehealth utilization statewide. If the Council has not already considered the idea, the report may want to go one step further and recommend the Agency evaluate whether or not it should amend the State Model Contract for Medicaid Managed Care services to require Medicaid plans to cover services provided via telehealth to the same extent the services are covered if provided via in-person consultation or contact.

- Standards of Care. On page 11, line 25, the Council recommends the Legislature provide health care regulatory boards and councils specific statutory authority to develop standards of care rules for telehealth, if the boards deem it necessary and appropriate. This recommendation, while well-intended, might not be necessary, as state licensing boards typically are already empowered with the delegated authority to promulgate regulations governing the activities of their respective licensees. Thus, there might be no need for the Legislature to statutorily include such language in a telehealth bill. Moreover, doing so could trigger the unintended consequence of many state licensing boards moving to issue their own telehealth practice standards. This could result in rules more restrictive than the Council envisions or recommends, as well as a wide variety of different types of telehealth practice rules depending on the professional licensing board. It could also inhibit the adoption of telehealth in Florida by adding more levels of unnecessary and potentially confusing regulation. Instead, the Council could take a page from the recent Texas law and consider adding to the report the following recommended statutory language:

  - “A health care practitioner, acting within his or her scope of practice and license, may provide services via telehealth. A nonphysician health care practitioner providing services via telehealth within his or her relevant scope of practice may not be interpreted as practicing medicine without a license. State licensing boards and administrative agencies with jurisdiction over Florida health care practitioners may not promulgate telehealth rules or regulations more restrictive than this statute.”
We appreciate the Telehealth Advisory Council’s efforts in this important area of public policy and look forward to continuing the conversation as the report is finalized and shared with lawmakers. Thank you for your consideration of our comments, and please feel free to contact us if you would like to discuss further.

Very truly yours,

[Signature]

Nathaniel M. Lacktman

Enclosures

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telehealth@ahca.myflorida.com
### Agenda
**September 19, 2017**
**9:00am – 4:00pm**

**Location:** Agency for Health Care Administration  
2727 Mahan Drive, Building 3  
Tallahassee, Florida 32308

**Teleconference:** 1-866-901-6455  
**Attendee Access Code:** 192-281-577  
**Webinar:** Register Here [GoToWebinar](#)

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**Meeting Materials and Information** will be available at: [www.AHCA.myflorida.com/Telehealth](http://www.AHCA.myflorida.com/Telehealth)  
Additional comments and information may also be sent to: [Telehealth@ahca.myflorida.com](mailto:Telehealth@ahca.myflorida.com)
Tab 1 – Report with Attachments

- Draft Telehealth Advisory Council Report
- Attachment 1 – Florida Telehealth Unitization and Accessibility Report
- Attachment 2 – Telehealth Stakeholder Providing Testimony to the Council
- Attachment 3 – Chart of Healthcare Professions with National Licensure Compacts
Draft Telehealth Advisory Council
Report of Recommendations

Executive Summary
To be completed after main body has been drafted

Background
Chapter 2016-240, Laws of Florida, created the Telehealth Advisory Council (Council) to make recommendations to the Florida Governor and Legislature about telehealth. The law designated the Secretary of the Agency for Health Care Administration (Agency) as the Council Chair and the State Surgeon General (or designee) as a member. The Agency’s Secretary and the Surgeon General were then directed to appoint thirteen Council members representing specific provider and stakeholder groups. The Council was charged to review survey and research findings and to employ that information to develop recommendations to increase the use and accessibility of services provided via telehealth in the state.

The law also directed the Agency, the Florida Department of Health, and the Florida Office of Insurance Regulation to survey health care facilities, licensed professionals, insurance plans, and Health Maintenance Organizations (HMOs) regarding availability, utilization, and coverage of telehealth services in the state. The Agency was designated to compile the survey and research findings; and to submit a report of those findings to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 31, 2016. (Attachment 1)

The Council is required to submit its report of recommendations to the Governor, Senate President, and the House Speaker by October 31, 2017. This Telehealth Advisory Council Report of Recommendations represents the members’ findings from detailed discussions and deliberations during the course of ten (10) public meetings hosted in various regions of the state; and as informed by formal presentations from approximately 30 individual providers, stakeholders, and national experts (Attachment 2) as well as numerous public comments, the Florida telehealth survey results, and national and state research compiled by members and Agency staff. All meeting information, including the speaker presentations, survey results, and research materials, have been archived on a dedicated Council website for reference as needed. This report, when viewed in its electronic format, contains direct links to source information or meeting materials when appropriate.
Introduction

The United States, including Florida, is experiencing a shortage of health care professionals to serve a growing and aging population. Data from the U.S. Health Resources and Services Administration (HRSA) Bureau of Health Workforce indicated there were 615 federally designated Health Professional Shortage Areas (HPSAs) within the state for primary care, dental care, and mental health therapists in June 2014. More recent data from the bureau shows the number of HPSAs in Florida grew to 623 by December of 2016. The Florida Department of Health has projected a need for 3,060 additional primary care physicians in the state by 2025. The existing and emerging deficiencies in the physician and health care workforce is a driver of innovation as the industry explores new strategies to extend the reach of existing healthcare professionals. The adoption and use of telehealth technology is one strategy that is gaining momentum nationally to help address these workforce deficiencies.

The United States Department of Health and Human Services notes that telehealth is not a type of healthcare service; it is a means or method used to deliver health care. The standard of care for providing health services should not alter based on the mode of delivery. Telehealth services can enable real-time (synchronous) communication between patients and healthcare practitioners through video conferencing; facilitate the storage and forwarding (asynchronous) of clinical data to offsite location for evaluation by specialist teams; and support remote monitoring of patient’s chronic conditions via sensors and monitoring equipment. Telehealth technology is evolving into wearable and even implantable devices (mobile health) that detect information such as EKG readings. While these technologies offer promising solutions, the adoption and expansion of telehealth also presents specific challenges to facilities, professionals, payers, and others. This report is intended to address the specific challenges that were identified in the Florida Report on Telehealth Utilization and Accessibility and through stakeholder testimony and research provided to the Council. The report presents six specific areas with identifiable obstacles for the expansion of telehealth: the definition of telehealth, health insurance coverage, reimbursement for telehealth, health practitioner licensure, patient/consumer protection, and technology.

The information presented to and reviewed by the Council demonstrates clear benefits from utilizing telehealth technology and the provision of distant health services. There remain significant opportunities to increase access and enhance the quality of services provided to vulnerable populations, especially in isolated communities, both rural and urban.

Defining Telehealth

The Council heard testimony from numerous stakeholders on a broad array of telehealth applications. The value and utility of telehealth crosses most health service disciplines including but not limited to primary medical care, specialty care, chronic disease management, behavioral health, physical and occupational therapies, speech therapy, pharmacy, and home
health. There are as many definitions of telehealth or telemedicine as there are use cases and applications.

The American Telemedicine Association uses the terms telemedicine and telehealth interchangeably. Others use the term telemedicine as a specific reference to the practice of medicine and telehealth as an encompassing term inclusive of the broader scope of health care. Experts and stakeholders expressed the need for a clear definition of telehealth. Healthcare practitioners indicated the need for a definition that will clarify the use of technological modalities as a viable way to treat patients within their scope of practice. Health plans noted the need for clarity in the allowable modes of telehealth for coverage and reimbursement purposes.

Recommendation(s):
There are several definitions for “telemedicine” in Florida regulations, but none for “telehealth”. These definitions for telemedicine do include the broader language associated with the term “telehealth”. Although the terms telemedicine and telehealth are commonly used interchangeably, the term telehealth denotes the depth and range of the uses and modalities. The Council determined the need for a broad definition of telehealth in order to provide clarity on acceptable uses of current technology for treating patients, without becoming a barrier to technological innovations in the future.

To ensure clarity, the Council recommends 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 healthcare practitioner as prescribed by law or rule
4. Healthcare practitioners must treat within the scope of their practice
5. Telehealth can be healthcare practitioner to healthcare practitioner or healthcare practitioner to patient
6. There must be no limitations on geographic or site locations

The Council offers the following language as a clear definition of telehealth for Florida:

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

A large proportion of Florida healthcare stakeholders identify issues surrounding coverage and reimbursement as primary policy concerns influencing the delivery and growth of telehealth services. Healthcare facilities and practitioners have reported through surveys and testimony to the Council a lack of adequate coverage and reimbursement for health care services provided using telehealth technologies. Some stakeholders have expressed hesitancy to invest in telehealth programs, citing that without some assurance regarding reimbursement they are unable to determine a positive Return-On-Investment (ROI). Confirming these reports from healthcare practitioners, a majority of Florida’s licensed health insurers indicated in their response to the state’s Telehealth Utilization and Accessibility survey they offer only limited coverage, if any, for telehealth services. Among Florida insurers that do cover telehealth, coverage is typically limited to specific circumstances and methodologies or require special coding.

Executive leaders from the American Telemedicine Association and the Center for Connected Health Policy, the nation’s federally funded national telehealth policy resource center, presented information to the Council during April 2017. As of September 2017, both organizations’ websites indicate thirty-four (34) states and the District of Columbia have established health insurance parity laws to address gaps in coverage for telehealth services. According to a report published in August from the Center for Connected Health Policy, only three of the states with telehealth parity laws explicitly mandate reimbursement parity. Coverage and reimbursement parity laws apply varyingly to private and public payer plans in each state where they exist. Some states limit coverage and reimbursement based on modality and/or location.

The Council members have emphasized the importance of establishing a clear distinction between telehealth insurance coverage parity and reimbursement parity. The Council recognizes telehealth coverage parity as a requirement of health plans to include benefits for services provided via telehealth, when possible and appropriate, to the same extent the plan covers the same services provided in-person. Coverage parity is silent regarding the amount of payment for telehealth services. The Council recognizes telehealth reimbursement parity as a requirement of health plans to pay healthcare facilities and practitioners for covered telehealth services at an equivalent rate as the in-person reimbursement for the same service.

Policies governing the nation’s primary public health care programs, Medicare and Medicaid, also play a key role in shaping Florida’s telehealth landscape. These Federal programs strongly influence how states are able to serve senior and vulnerable populations, including patients who are dually eligible for both Medicare and Medicaid. There are efforts underway among members of Congress to modify current Medicare payment guidelines to support the expanded use of telehealth services nationally. 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.

The national paradigm shift among private and public payers toward quality and performance-based payment models serves as another driver to increase telehealth utilization. These value-based payment arrangements incentivize healthcare practitioners to achieve the triple aim of increasing access to healthcare services for all persons, providing the highest possible quality of care, and minimizing costs. The thoughtful integration of telehealth modalities into healthcare practitioner workflows can strongly support practitioners in meeting these goals.

Coverage of telehealth services, whether voluntary or required, has also led to new discussions around network adequacy requirements among health insurers and their stakeholders. The National Association of Insurance Commissioners (NAIC) has developed a Managed Care Network Adequacy Model Act as a guide for state lawmakers for evaluating insurers’ provider networks. This model includes potential uses for telehealth in meeting a state’s network adequacy requirements. If adopted, these measures offer a valuable benefit and incentive for health plans to cover telehealth services.

Telehealth Insurance Coverage
A number of healthcare facilities and licensed health practitioners have implemented successful telehealth programs and have reported real benefits in terms of cost savings, quality outcomes, and customer satisfaction. Others have been more reluctant to move toward the use of innovative technologies without stronger assurance that a return on their investment is achievable. One approach taken by some states to provide such assurance is through implementing laws requiring insurers to cover health services offered through telehealth when possible and appropriate, known as coverage parity. Coverage parity for telehealth services does not require health plans to provide any new service lines or specialties, and is intended to ensure patients have options for how they may be seen by healthcare practitioners, including in-person or virtually.

Recommendation(s):
In order to increase access and use of telehealth in Florida, there must be an increase in healthcare practitioners offering services via telehealth. The limited or lack of reimbursement for telehealth service stifles the expansion of the use of this modality to treat patients. The Council recommends the following:

1. Florida’s legislature require Florida-licensed health insurance plans (excluding Medicare) provide coverage for healthcare services provided via telehealth if coverage is available for the same service when provided in person.
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 healthcare insurers and practitioners from negotiating contractual coverage terms.

Telehealth Insurance Reimbursement

Telehealth *reimbursement parity* is recognized by the Council as a requirement of health plans to pay healthcare practitioners and facilities for covered telehealth services at an equivalent rate as the in-person reimbursement for the same service. The Council received a great deal of input from healthcare practitioners, healthcare facilities, payers, and stakeholders through research findings, survey data, and direct testimony regarding reimbursement for telehealth services. Reimbursement parity is a complex issue that must be considered from a variety of perspectives. A majority of practitioners, for example, contend that adequate funding of telehealth through reimbursement parity will serve to stimulate greater adoption of telehealth, which would increase access to care and reduce overall health care spending over time. Conversely, some payers and researchers predict that enhanced access through telehealth will increase utilization, which would result in increased spending under traditional fee-for-service payment models. Others suggest a time-limited requirement for payment parity would stimulate telehealth use until value-based payment models more fully mature to better support telehealth as a quality enhancement and cost reduction strategy. State policymakers must also consider whether forced payment parity stifles individual providers’ ability to competitively promote their telehealth programs to payers and other stakeholders separately from their in-person services.

The Council recognizes that the current and evolving national paradigm shift toward quality and performance-based health care payment models has significant potential to drive greater market use of telehealth. The U.S. Center for Medicare and Medicaid Services (CMS) is a primary driver of health care policy nationally and has launched a variety of value-based programs over recent years designed to reward healthcare practitioners for more favorable outcomes and restrict reimbursement for services resulting in less favorable outcomes and/or higher costs. Those CMS programs include:

- Hospital Value-Based Purchasing Program (HVBP)
- Hospital Readmission Reduction Program (HRR)
- Value Modifier Program (aka: Physician Value-Based Modifier or PVBM)
- Hospital Acquired Conditions Program (HAC)
- End-State Renal Disease Quality Initiative Program (ESRD)
- Skilled Nursing Facility Value-Based Program (SNFVBP)
- Home Health Value Based Program (HHVBP)
An increasing number of private and commercial health plans have adopted similar strategies to contain costs and improve care outcomes among their provider networks. 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.

**Recommendation(s):**

The Council recommends that the Florida legislature require Florida licensed health insurance plans (excluding Medicare plans) to offer reimbursement for covered health care services provided via telehealth. The intent of this recommendation is to ensure appropriate insurance reimbursement for the use of telehealth in treating patients. 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 healthcare insurers and practitioners from negotiating contractual coverage terms.

**Medicare**

Although Medicare is a federal program, Medicare laws and regulations often influence how states are able to serve vulnerable populations, including patients who are dually eligible under both the Medicare and Medicaid programs. There are many caveats governing telehealth coverage under current Medicare payment guidelines, including strict requirements for the geographic location and care setting of patients and limitations to specific technological modalities. The United States Congress is currently considering several bills that would expand or modify Medicare telehealth policy. One example is the Medicare Telehealth Parity Act, a bipartisan effort that would incrementally expand Medicare coverage for telehealth to include allied healthcare practitioner such as physical therapists, occupational therapists, audiologists, speech-language pathologists, and others; would allow a wider variety of telehealth modalities to be covered; and would expand the list of qualifying geographic locations. The Council finds the current Medicare policies related to telehealth coverage and reimbursement to be a significantly limiting factor to growth and innovation, and supports congressional efforts to expand coverage and reimbursement of telehealth in Medicare.

**Recommendation(s):**

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

**Medicaid**

The Florida Medicaid fee-for-service rules were updated in June 2016 to expand the availability of telehealth reimbursement to a broader array of licensed healthcare practitioners. Similar to Medicare, Medicaid coverage in Florida is currently limited to live video conferencing and pays the practitioner that provides the diagnosis only. With the vast majority of Florida Medicaid
beneficiaries enrolled in managed care, Florida’s Medicaid Managed Care plans are authorized to cover telehealth services with greater flexibility, although there is no state mandate for coverage. Based on survey responses from Florida licensed health plans and HMOs, coverage for telehealth is currently greatest among Florida Medicaid Managed Care plans and Affordable Care Act Exchange Plans.\textsuperscript{xvi}

**Recommendation(s):**

The Council members and multiple stakeholders have praised Florida Medicaid for its support of the expanded use of telehealth within the Statewide Medicaid Managed Care program, as well as its continued efforts to modify administrative rules governing the Medicaid Fee-for-Service program to support the use of telehealth. The Council recommends the Agency consider modifications to 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. The Council also recommends the Agency work with the Medicaid Managed Care plans to promote the expansion of telehealth utilization statewide.

**Insurance Network Adequacy**

The National Association of Insurance Commissioners (NAIC) defines network adequacy as “a health plan’s ability to deliver the benefits promised by providing reasonable access to a sufficient number of in-network primary care and specialty physicians, as well as all health care services included under the terms of the contract”. Network adequacy minimum requirements are established to ensure consumers have access to needed care without unreasonable delay. The NAIC has developed a Model Network Adequacy Act for use by states in developing laws around this issue. The Act includes provisions allowing healthcare practitioners who offer services via telehealth to be included in the plan network for purposes of network adequacy.\textsuperscript{xvii} Colorado was the first state to allow insurers to count available telehealth services in meeting network adequacy requirements for certain specialties.\textsuperscript{xviii}

**Recommendations(s):**

The Council supports the NAIC provisions related to telehealth as a means to ensure network adequacy among health plans and HMOs.

**Health Practitioner Licensure and Telehealth**

The ability for technology to bring health care to the patient irrespective of location expands the market reach of healthcare practitioners in Florida. Health care professionals residing in Florida are able to treat patients in other states, even globally where authorized. This expansion of health care access conversely allows Florida patients to receive care from licensed healthcare practitioners anywhere in the world. Assurances for patient protections and provider accountability are imperative in these arrangements. In order to ensure adequate protections and enforcement, Florida’s providers, stakeholders, and payers provided strong testimony to
the Council encouraging a requirement that all health care professionals providing care to Florida residents using telehealth be licensed in Florida, regardless of where the provider is physically located.

Interstate Licensure

To ensure patient protection and healthcare practitioner accountability, the Council recommends practitioners be licensed in the state in which the patient resides. The Council acknowledges time and expense burdens associated with attaining licensure in multiple states as a potential barrier to expanding healthcare practitioners’ use of telehealth. One opportunity to address this challenge is through the establishment of interstate licensure compacts. Nine (9) licensed health care professions currently have or are developing interstate compacts involving multiple states (Attachment 3), including Florida’s current licensure compact for nursing as adopted by the Florida legislature in 2016xix. Licensure compacts are established when a certain number of states enact the same legislation, intended to streamline administrative processes without undercutting the specific licensure requirements of any participating state. It is important to note that compacts may actually increase the eligibility requirements for licensure in some cases. Provider participation in a compact is voluntary, and the state maintains jurisdiction over all practitioners providing care to patients within its borders. Compact provisions vary from profession to profession and include distinct requirements and provisions for differing professions. The Federation of State Medical Boards’ (FSMB) Interstate Medical Licensure Compact creates an expedited process for eligible physicians to apply for licensure in compact states.xx The Nurse Licensure Compact creates a multi-state license similar to a driver’s license, where the initial licensing state and other compact participating states all recognize the license.xxii Although, different in implementation, the intent is to provide a less onerous process for practitioners seeking licenses in multiple states while maintaining the high standards of Florida licensure.

Recommendation(s):

In order to ensure the highest possible standard of care for Florida patients while allowing health professionals to expand their patient reach, the Council recommends the following:

1. Maintain the requirement of Florida licensure for health practitioners treating patients in Florida. 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.

Telehealth Standards of Care

It is imperative that Florida licensed practitioners understand and comply with established standards of care whether treating patients in person or through telehealth. The Florida Department of Health (Department), which is responsible for the licensure and regulation of the more than 800,000 health professionals in the state, provided information to the Council
clarifying that current rules are not intended to preclude Florida licensed practitioners from using telehealth within their authorized scope of practice and established standards of care. The Department is working to increase awareness and education among licensed health professionals regarding their ability to employ telehealth within their practices. The Department recognizes telehealth as a modality for providing health services as opposed to a separate service, meaning the state’s established standards of care developed by each regulatory health care board are applicable whether care is provided in person or using telehealth.

A number of stakeholders, primarily ancillary health care professionals (i.e. Physical Therapists, Occupational Therapists, Audiologists, Speech-Language Pathologists, etc.), have indicated a need for specific statutory authority to develop telehealth practice standards related to telehealth, similar to the authority given to Boards of Medicine and Osteopathic Medicine. Other stakeholders deem the use of the general standard of care provisions in regulation sufficient for practitioner oversight.

Recommendation(s):
The Council acknowledges Florida’s current standards of care as sufficient for general regulatory oversight of patient care; and recognizes each healthcare regulatory board has direct authority for establishing appropriate standards based on knowledge and insight for their respective practitioners.

To ensure clarity for Florida licensed healthcare practitioners and stakeholders regarding the ability to use telehealth as a modality of care, the Council recommends:

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 to treat patients when appropriate.

2. The Florida legislature provide health care regulatory boards and councils specific statutory authority to develop standards of care rules for telehealth, if the boards deem it necessary and appropriate.

Patient/Consumer Protection

Health care practitioners’ responsibilities to patients are the same no matter which modality of care is used; and likewise patients should have confidence in the standard of care they receive, whether delivered in-person or through telehealth. Patients should expect competent, confidential care and to receive accurate, timely, and complete information so that they may make informed decisions about their care.

Health care practitioners and stakeholders also have a responsibility to manage risks related to fraud and abuse in the delivery of healthcare services. There is no known evidence suggesting a higher risk of abuse or fraud involving telehealth over any other mechanism of care. A provider who bills for a disproportionate amount or frequency of services would warrant an audit of
their treatment and billing practices, whether providing healthcare services via telehealth or a more traditional modality of care.

Patient-Provider Relationships & Continuity of Care
While there is a significant and growing body of evidence supporting the use of telehealth to expand and improve the provision of health care services, the use of telehealth does not automatically diminish issues related to patient care, including coordination of care among multiple providers. Ideally, when a patient receives care, information from the episode is integrated into coordinated Electronic Health Records (EHRs) or similar systems and made available to inform other treatments and services. There is some concern among providers and payers, under increasing financial risk for patient care outcomes, regarding the high potential for care fragmentation or service duplication that can result when patients seek or receive care outside of established provider networks. Similar to visits that occur in non-network urgent care centers, non-network direct to patient telehealth services could result in episodic care without the information ever being shared with the patient’s primary care provider or health plan - thus creating health care information silos. Although the Council recognizes the ability for healthcare providers and patients to establish a relationship through telehealth, they also note the importance of ensuring that patient care is coordinated among treating providers.

Recommendation(s):
The Council supports initiation of healthcare practitioner-patient relationships through telehealth technology; and discourages the adoption of policies that would require patients to see a practitioner in-person before receiving care through telehealth.

Patient Consent
Prior to providing healthcare services, practitioners are required to ensure patients (or legal proxies) are aware of the specific benefits, risks, and alternative courses of action they may take for their care; and must receive and document patient consent. This is typically achieved through an informed consent, which also relates to providers’ liability and legal exposure. In the case of telehealth, it may be particularly beneficial for patients to know the potential risks, and to understand that a condition or treatment may require a provider to defer to in-person services. Section 766.103, Florida Statutes, governs the provision of medical consent for treatment and is applicable regardless of the care delivery mechanism.

Recommendation(s):
The Council recommends maintenance of the current consent laws in Florida. The Council notes that additional consent requirements may add unnecessary barriers for both providers and patients attempting to utilize telehealth services.

Telehealth & Prescribing
Many medical conditions and procedures require prescription medications as a component of the treatment plan. Both federal and state law governs appropriate prescribing, in particular the prescribing of controlled substances. The Ryan Haight Online Pharmacy Consumer
Protection Act (Ryan Haight Act) is a federal law that provides guidelines for the prescribing of controlled substances through the internet. The Ryan Haight Act affirmatively recognizes telehealth as a viable means of creating a treating relationship for the purpose of prescribing controlled substances.\textsuperscript{xiii} This federal regulation prohibits the prescribing of a controlled substance based solely on answering a questionnaire.

In Florida, medical doctors (allopathic and osteopathic), dentists, podiatrists, and some advanced registered nurses and physician assistants can prescribe controlled substances. Section 456.42, Florida Statutes, provides requirements for prescribing of controlled substances. The Florida Medical Boards’ rules on telehealth, additionally, prohibit the prescribing of opioids without an in-person visit – with the limited exceptions of treating of psychiatric disorders, treating patients in a licensed health care facility, and treating patients in an emergency medical situation.\textsuperscript{xxiv} These rules also specify requirements needed to ensure a complete record for any prescriptions. Although other health practitioners who prescribe do not have specific standard of care provisions, the Ryan Haight Act and scope of practice laws do provide boundaries for prescribing controlled substances when delivering care.

Recommendation(s)

The Council supports the establishment of provider-patient relationships through telehealth and recommends rejecting any provision that would require an in-person examination prior to treating and prescribing medication via telehealth. Limited exceptions should be made for controlled substances as currently outlined in the Boards of Medicine and Osteopathic Medicine rules.

Technology

The technology used to provide telehealth services is well established; it has existed for more than 40 years. Rapidly evolving technological innovation in the current market is making telehealth an increasingly accessible tool for both providers and patients. Healthcare practitioners have noted, however, some overarching technological barriers to effective telehealth implementations.\textsuperscript{xxv} Primary examples include limited access to technology and system networks (internet connectivity) in isolated communities, equipment costs, and challenges related to interoperability with other health care technologies and documentation systems. Noting continually increasing technological capability and decreasing costs, the Council has noted technology as a diminishing barrier in implementing telehealth programs.

Technology and Patient Access

Recognizing that some populations may have lower access to computers in a way that would enable them to be used for telehealth, Council members noted that many health services can be provided virtually through less expensive mobile devices such as smartphones. A vast majority of the United States population now have a cellphone of some kind, including 92% of adults with an income of less than $30,000 a year. The Florida Public Service Commission
operates and administers the federal **LIFELINE** program in Florida, which provides free or discounted mobile phones (including smartphones) to individuals who are eligible and enrolled in certain social services programs. xxvi Several of Florida’s Medicaid Managed Care plans promote LIFELINE services to their members in order to support health care management through access to internet-based services.

Approximately ten percent of American adults are “smartphone-only” internet users – meaning they own a smartphone and do not have traditional broadband service at home. xxvii This growing independence from in-home broadband services, however, does not diminish the need for a strong broadband network in order for telehealth services to expand. Florida has been very successful in implementing broadband connections throughout the state and is considered one of the top ten “most connected states” by Broadband Now, a national organization that compiles data from the Federal Communications Commission (FCC), the U.S. Census Bureau, broadband providers, resellers, IP-verified customers and other sources. Currently, over 97% of Floridians have access to wireline services and 100% have access to mobile broadband services. A small segment of the population in Florida, about 600,000 individuals, have access to the internet through mobile broadband only. xxviii Mobile broadband allows individuals to access the internet from their mobile devices. Telephone and data service providers, however, typically set limits on the amount of data a user can consume. These limits can inhibit some individuals from using their devices to receive health services via telehealth due to the additional costs imposed by telephone and data service providers for exceeding data limits.

**Technology and Healthcare Facilities/Practitioners**

Florida health care providers specifically identified the cost of equipment needed to treat patients using telehealth as a barrier. xxix The growing telehealth market and innovative technological landscape, however, indicate ongoing price point reductions. Additionally, research and stakeholder input suggests that telehealth technology is available at varying price points.xxx The Council is supportive of payment parity for telehealth services as a strategy to address initial technical cost concerns among providers, offering a clearer path toward Return On Investment (ROI). There are also federal grant funding programs available to support implementation of telehealth programs. Information about the availability of funding and resources to assist providers is available through the nation’s federally funded Regional Telehealth Resource Centers. The Southeastern Telehealth Resource Center provides resources and guidance to providers in Florida for implementing and expanding telehealth services at varying price points.xxxi

Health care facilities and practitioners also identify interoperability gaps between health technology vendors as a challenge at the national and state level. Florida health care facilities have indicated through survey responses that a lack of interoperability between providers is a barrier to development and implementation of telehealth programs. A bipartisan focus group conducted by Health Affairs and the national Bipartisan Policy Center identified the lack of interoperability between electronic health record systems and medical devices as a barrier to
telehealth expansion. In addition to the challenges related to interoperability between health care provider data systems, there is also a lack of interoperability between telehealth technology and electronic health record (EHR) platforms. Insufficient interoperability among information systems has the potential to increase communication gaps and hinder the continuity of patient care. Technology vendors and health care organizations are working to improve systems’ interoperability through implementations that support data exchange, such as the national \textit{eHealthExchange} and \textit{Carequality}. The \textit{eHealthExchange} is a growing network of exchange partners (ie. health care professionals) who securely share clinical information over the Internet across the United States, using a standardized approach. Exchanges leverage a common set of technical and data standards, legal agreements, and governance. Participants are able to securely share health information with each other, without additional customization and separate legal agreements. Carequality is advancing EHR interoperability by brokering agreements among health IT vendors to implement a framework for point-to-point health information exchange. In Florida, the Agency for Health Care Administration (Agency) provides governance for the statewide Heath Information Exchange (HIE) program, which promotes interoperability and offers services that allow sharing of patient information between healthcare providers when needed.

\textbf{Recommendation(s):}

The Council notes that technology-related barriers for providers will continue to decrease as technological advances and market forces drive cost reductions. Significant barriers remain, however, related to interoperability of health care information systems. Specific challenges to interoperability include varying administrative policies among states and providers, such as privacy laws – leading to misalignment, confusion, misinterpretation and sometimes over-restrictive interpretations of those laws.

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 and healthcare 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.

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State Telehealth Laws and Medicaid Program Policies. Center for Connected Health Policies. April 2017


Lacktman, N. Telehealth Coverage vs. Payment Parity. Aug. 11. 2015


Florida House Bill 1061. 2016.


Board of Medicine Rule 64B8-9.0141 Standards for Telemedicine, Florida Administrative Code and Board of Osteopathic Medicine Rule 64B15-14.0081, Florida Administrative Code


Board of Medicine Rule 64B8-9.0141 Standards for Telemedicine, Florida Administrative Code and Board of Osteopathic Medicine Rule 64B15-14.0081, Florida Administrative Code


