Compliance Updates Q&A

1. How do I document the time spent (in a telehealth visit) for primary care exception care?
    - To use time spent to code, you have to meet that threshold of time. That's going to be Attending's time only. You will want to use the documentation of the Resident in the medical decision-making, but not include the Resident's time, as Resident time is not considered for time based codes. For example, if a Resident spent 10 minutes, and the Attending spent 5 minutes, then you account only for the 5 minutes spent by the Attending. The time would also need to be documented at the top of your encounter, so the coder can readily see the visit is being billed based on time.
2. What needs to be included in the note?
    - The total time spent for the encounter by the Attending needs to be documented.
3. When was this stated?
    - The Interim Final Rule was published on March 26th, but they are allowing the visits back to March 1st.
4. Are Residents not allowed to conduct phone visits?
    - Residents are not allowed to conduct phone visits.
5. Are Fellows not allowed to conduct phone visits?
    - Fellows are not allowed to conduct phone visits.
6. Do we just need to clearly document that a Resident is interacting with a patient?
    - Yes
7. Does everything need to be documented whether the encounter is on Zoom or a Texas Tech system?
    - Yes
8. Can we use students for telemed purposes instead of being in close proximity to the patient? Could we use them as a facilitator in patient visits? For example, could students direct traffic through Zoom appointments, clinical flow?
    - You could use students if they are sufficiently trained. Just remember that they are volunteers, not staff.
9. How will waivers of co-pays be handled in the TTUHSC system?
    - There are not clear guidelines with respect to insurance and payment. One thing available for clinic visits is to identify telemedicine visits. The Lubbock campus has put this in place, which has ramifications for provision of care as well as coding and billing. We are trying to find a balance between the rules we know and the rules as they may evolve. As far as the revenue side, we can put some appointment types in place. If people use those appointment types, we could put a mechanism in place so people could screen those appointment types. Maybe we need a work group. I think

we need to ask the group to consider a write-off process. The billing director in Amarillo said that the insurances would normally tell us what would be covered, what would be a co-pay, what would be a deductible. I don't know if they are ready to do that, yet. We can discuss this with the coding and revenue people and then report back next Friday.

10. What does direct supervision mean?
    - Direct supervision means that the Teaching Physician must be in the same office building or facility when and where the service is provided and must be immediately available to furnish assisted direction. In the COVID environment, the Teaching Physician would be available via interactive telecommunications technology.
11. Under the new COVID rules, does the Teaching Physician have to be present via interactive video during the encounter for a PCE clinic?
    - No, Primary Care Exception (PCE) - Residents may furnish all levels of office E/M telehealth services to beneficiaries under PCE.
    - Requirements for teaching physicians under the PHE:
        - Teaching physicians may not supervise more than four residents at any given time.
        - Must direct the care from such proximity as to constitute immediate availability.
        - Supervision can be provided in person or virtually through audio/video real-time communications technology.
        - Not have other responsibilities (including the supervision of other personnel) at the time the service was provided by the resident
        - Have the primary medical responsibility for patients cared for by the residents
        - Ensure that the care provided was reasonable and necessary
        - Review the care provided by the resident during or immediately after each visit. This must include a review of the patient's medical history, the resident's findings on physical examination, the patient's diagnosis, and treatment plan (i.e., record of tests and therapies)
        - Document the extent of his/her own participation in the review and direction of the services furnished to each patient. (Source: TTUHSC Telemedicine Guidelines v1.3)
12. What if the visit conducted in a PCE clinic by a Resident were a Level 4 visit? What should the Teaching Physician then do? Would a Level 4 or 5 follow that same workflow as a Level 1, 2, and 3?
    - See Q11

13. For non-PCE clinics, do Teaching Physicians have to be present for key and critical portions?
    - The Teaching Physician can use interactive video to meet the requirement for being *present* during key and critical portions of the patient encounter.
14. Are we permitted to use Google Duo to conduct a telemedicine visit? What other apps are allowed?
    - Google Duo is allowed under the OCR rules since they are encrypted at both ends. FaceTime, Google Duo, and others that are technically allowed should be your last choice because the way these services are designed they will allow the patient to contact you back. There is no way to prevent the patient from FaceTiming you back, even if you use a generic email or a no-reply email, anything you connect to your Apple ID to FaceTime the patient from your personal device, as long as you are still using your Apple ID, they can FaceTime you back and interrupt your future sessions with patients. So, it is for emergency use only. So, those others should be our primary choice for video visits.
15. How is consent obtained?
    - Guidance is available on the guidebooks that have been published for telephone visits.
16. Can we have a telephone origin visit or a Zoom visit with a new patient?
    - Yes
17. Have there been any updates for providing care for out-of-state patients?
    - If the state is not participating in the CMS waiver, then the provider must have a license in that state.
18. On the New Mexico website, it still says you have to be licensed in New Mexico in order to provide coverage. Is that still the case?
    - Yes
19. Are you familiar with the Doximity dialer app? Is it secure enough to use?
    - For the time being, TTUHSC recommends the use of Zoom for a couple of reasons because the security controls have been verified and in the event of an incident, we can investigate. You can also use TTUHSC Skype. FaceTime should only be used in rare circumstances where you cannot use Zoom or Skype.
20. Because some vendors may not enter through an HSC entrance, how do we ensure that vendors are following the specified requirements for coming to the clinics?
    - It is the departments (front desk staff, nurses, physicians) who must be the gatekeepers for this process. They need to ask if the vendor has registered with Vendormate and checked in using the app – ask to see their digital badge. During this critical time, we want all campuses to be aware that only vendors that provide

critical or essential services are allowed on campus. Product demonstrations and sales presentations should not be allowed at this time.

21. Can a TTUHSC physician provide telemedicine services to a New Mexico patient who is in New Mexico?
    - Not unless the TTUHSC physician has a license for New Mexico.
22. Does it make a different if the out-of-state patient is a new or established TTUHSC patient?
    - No. Physicians must have a license in that state. If patients are in another state at the time the service is being provided via telemedicine, the physician has to have a license for that state, unless that state has officially said they are complying with the CMS waiver.
23. Does it make a difference if the telemedicine services are for follow-up care during the global period after a procedure?
    - No. A physician must have a license in the patient's state in order to provide telemedicine services.
24. Can a TTUHSC physician provide in-person services at a TTUHSC clinic to a patient from a non-participating state?
    - Yes, since the patient is at the TTUHSC facility. These restrictions only apply when telemed services are provided across state lines to an out-of-state patient who is in that other state.
25. What's the penalty if I have done that?
    - The penalty in New Mexico for practicing without a license, including telemedicine, is a 4th degree felony (NM Statute, Section 61-6-20). It would also subject the physician to discipline and possible loss of license in Texas.
26. What does "providing care" mean? Does this include refilling prescriptions that were already established for that patient?
    - Because the phrase "telemedicine" is used, it is not expect that this applies to filling prescriptions. Telemedicine is characterized as a Zoom-type interaction. Telemedicine and telehealth are often used interchangeably, and telehealth for CMS's purposes does relate that interactive telecommunication.
27. What about phone visits only – the phone codes?
    - Telephone conversations involving the dispensing of medical advice constitute the practice of medicine and would be prohibited by states not participating in the CMS waiver, including New Mexico.
28. Is there an additional cost for professional liability insurance for physicians who are licensed to practice in New Mexico versus those who are just licensed in Texas?
    - Per General Counsel, during COVID, the existing coverage will be sufficient, as long as the treatment is limited to telemedicine.

29. What happens if a patient drives across the state line and then calls in to get care from their doctor?

    - There would be billing issues, as the provider would not have a New Mexico license when treating a New Mexico resident who had not presented to an HSC clinic for in-person services.

30. Is a verbal consent OK for new patients?

    - The Texas Medical Board states that "A patient may give written or oral consent to the physician via telemedicine. This consent must be documented in the patient's medical record." See TMB FAQs regarding Telemedicine. In addition, as part of the 1135 waiver, HHS will not conduct audits to ensure that a prior relationship existed for telehealth visits claims submitted during this public health emergency, which means CMS will not enforce an established relationship requirement for Medicare telehealth visits. See Medicare Telehealth FAQs.

31. Once you get the license, is it retroactive to services previously provided?

    - It is not retroactive. The license will begin on the date New Mexico assigns to it, which will probably be the date they grant the license.

32. If an APRN is doing telehealth, can they see a New Mexico patient?

    - With the New Mexico license, they can.
    - If the APRN has a compact or multi-state license, they don't need a license by endorsement.

33. Do we need a New Mexico license to return a patient's phone call when the patient has a question?

    - If someone wanted to be extremely technical, they would call this a practice of medicine. A representative of the New Mexico Medical Board indicated that they would not be that strict on the interpretation, especially with an established patient that we are following up on. It would be ideal if one practitioner in each department is licensed in New Mexico and have that practitioner do the telemedicine consults.

34. Does this include mid-levels?

    - Yes
    - Both the Nursing Board and the Medical Board in New Mexico respond promptly to email requests.

    *Please contact Joanna Harkey at (806) 743-9921 with additional questions regarding licensing in New Mexico.

35. Do new patients need to sign all of those forms and send them back to us?

    - NPP: If we get confirmation that they received it, we need to document that.
    - Confidential Communication: We need to get them to fill that out.

- Consent to Treat: If we can get that back, that would be great, but we can also document that they have received it, that they understand, and they are consenting to that treatment.

36. If one clinic completes the telemedicine consent, is it good for all the other locations?
    - There isn't any harm in letting the patient know that this is new to everyone. Even if telemedicine was explained to the patient on the first visit, they may still need a reminder on the second visit. Until we get familiar with the process, I think it might be best to obtain their consent to the telemedicine visit for each encounter.
37. Will consent work for both Texan and New Mexican patients?
    - Yes, as long as the provider has the license.
38. Does the out-of-state contract need to be sent to New Mexico patients?
    - Yes. Please add this to the list of forms. This would be an extra layer of protection.
39. Are these forms good for a calendar year or a full year between visits?
    - It would be a full year between visits.
40. Can patients fill out and email them back to us? Or do they have to mail them so we have original signatures?
    - They can email them back to you. If the patients don't have an email address or they don't want you to contact them via email, then mail is appropriate.
41. What about prepaid envelopes in the mailing?
    - If your clinic is mailing those forms to patients, you may want to consider including prepaid return envelopes to make it easier to get them back from the patient. That would be up to the clinic.
42. What about electronic signatures?
    - Electronic signatures are acceptable.
43. Is Doxy.me the same as Doximity?
    - No, they are not the same app. They are very similar. Both apps do not require the patient to download anything. You would send a link via text message or email to your patient. They only need to click the link; the videoconference opens up in a browser on their iPad or phone. They do not have to download an application or sign up for anything. However, Doxy.me has a couple of advance features that Doximity may not have.
        - Doxy allows for multiple people to be on the same video conference call (e.g., resident, attending physician, patient).
        - Doxy does allow the patient to sign documents electronically. Doximity does not.

- Doxy and Doximity patient encounters are both accessible to the patient via a URL link, instead of having to download an app.
- We are still exploring Doximity. Doximity Video Chat is only in a beta testing mode. They are releasing it to the public; you have to get put on a waiting list, and you have to wait to get approved. Doxy has been doing this for quite some time.

44. Can we use Google Duo?
    - CMS has allowed us to use various types, but IT Security has asked us to limit the number of platforms we use.
45. So, are you saying that we need to wait for a final word from Braden or Compliance before we encourage providers to sign up for Doxy.me?
    - Yes. There is a free feature on there. Some providers may want to pursue that. One of their terms of use it that if you have more than one provider signed up for the free version, they could kick you off. They want you to purchase the clinic version. We are looking at that paid version because it provides more protection for us. Also, if individual physicians sign up, they have to sign a BAA on their own, and we want to also protect the providers, so they are not having to do that.
46. What is the guidance on Residents performing telephone encounters (audio only) CPT 99441–99443?
    - The recent update states Residents can provide audio only encounters for Primary Care Exception clinics. The teaching physician can provide direct supervision by interactive telecommunications technology either during or immediately after the visit for all levels of office/outpatient evaluation and management (E/M) services.
47. What about Medicaid?
    - Medicaid is allowing the E/Ms to be used for telephone (audio only) encounters.
48. Are Medicaid telehealth visits coded differently?
    - Medicaid has asked that in-office visit codes be used. For telehealth visits, use the in-office code, instead of the telephone code, with the 95 modifier.
49. Does this apply to new patient visits?
    - This applies to both new patient and established patient visits.
50. How do we get the new patient paperwork for telehealth visits?
    - Some providers are emailing and some are faxing the forms to the patient with a request to complete and return by mail.

51. Is beneficiary consent required for virtual check-ins, e-visits, audio-video telehealth visits, and/or telephone-only E/M telehealth visits?

    - Beneficiary consent to receive virtual check-ins and e-visits is required although it may be obtained once annually and, during the PHE for the COVID-19 pandemic, consent may be obtained at the same time the services is furnished. Similar to the service furnished in person, the patient's consent is not required to be noted in the medical record for telehealth services furnished using interactive audio-video technology. The audio-only phone visits also do not require the patient's consent to be noted in the medical record.