School-Based Health Center (SBHC) Program
Telehealth / Telemedicine Regulations and Resources
Updated: September 6, 2017

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I. Definitions of Telehealth and Telemedicine

➢ Colorado Revised Statutes:

Definition of Telemedicine: "'Telemedicine' means the delivery of medical services and any diagnosis, consultation, or treatment using interactive audio, interactive video, or interactive data communication." (Colorado Revised Statutes 12-36-102.5)

Definition of Telehealth: "Telehealth means a mode of delivery of healthcare services through telecommunications systems, including information, electronic, and communication technologies, to facilitate the assessment, diagnosis, consultation, treatment, education, care management, or self-management of a covered person's health care while the covered person is located at an originating site and the provider is located at a distant site. The term includes synchronous interactions, store-and-forward transfers and services provided through HIPAA Compliant interactive audio visual communication or the use of a HIPAA compliant application via a cellular telephone. Telehealth does not include the delivery of health care services via voice only telephone communication or text messaging, facsimile machine or electronic mail." (Colorado Revised Statutes 10-16-123(2) (h) (4) (e) (I&II))

Source: http://www.lexisnexis.com/hottopics/Colorado/.

➢ Colorado Department for Health Care Policy and Financing (HCPF) of telemedicine:

Definition of Telemedicine: "Telemedicine is a way of giving services to Health First Colorado (Colorado's Medicaid Program) members who live a significant distance away from the providers they need to see. Telemedicine involves two providers: an "originating provider" and a "distant provider." The provider where the member is located is the originating provider and the provider in another location is the distant provider. Providers must have special equipment to provide telemedicine services. Telemedicine does not mean visits by telephone or fax." (Colorado Department for Health Care Policy and Financing, 2017).

Source: https://www.colorado.gov/hcpf/telemedicine.

➢ Colorado Department of Regulatory Agencies (DORA) Colorado Medical Board

Definition of Telehealth: "'Telehealth' means a mode of delivery of health care services through telecommunications systems, including information, electronic, and communication technologies, to facilitate the assessment, diagnosis, consultation, treatment, education, care management, or self-management of a person's health care while the person is located at an originating site and the provider is located at a distant site. The term includes synchronous interactions and store and forward transfers. 2. "Telehealth" includes "Telemedicine" as defined in section 12-36- 102.5(8), C.R.S. 3. This policy defines "telehealth" for purposes of compliance with the Medical Practice Act. Telehealth may be defined differently in different statutory contexts, including but not limited to, insurance requirements or reimbursement." (Telehealth Policy, 2015).

Source: https://www.colorado.gov/apps/calendar/attachment/282703.

➢ Centers for Medicare and Medicaid Services (CMS)

Definition of telemedicine: "Telemedicine seeks to improve a patient's health by permitting two-way, real time interactive communication between the patient, and the physician or practitioner at the distant site. This electronic communication means the use of interactive telecommunications equipment that includes, at a minimum, audio and video equipment. Telemedicine is viewed as a cost-effective alternative to the more traditional face-to-face way of providing medical care (e.g., face-to-face consultations or examinations between provider and patient) that states can choose to cover under Medicaid. This

definition is modeled on Medicare's definition of telehealth services (42 CFR 410.78). Note that the federal Medicaid statute does not recognize telemedicine as a distinct service." (Medicaid.gov, 2017).

Source: https://www.medicaid.gov/medicaid/benefits/telemed/index.html.

➢ **Institute of Medicine's (IOM)**

Definition of Telemedicine: "The use of electronic information and communications technologies to provide and support health care when distance separates the participants." (Institute of Medicine, 1996).

Source: https://www.nap.edu/catalog/5296/telemedicine-a-guide-to-assessing-telecommunications-for-health-care.

➢ **Health Resources and Services Administration (HRSA)**

Definition of Telehealth: "The use of electronic information and telecommunication technologies to support and promote long-distance clinical health care, patient and professional health-related education, public health and health administration. Technologies include video conferencing, the internet, store-and-forward imaging, streaming media, and terrestrial and wireless communications." (Health Resources and Services Administration Federal Office of Rural Health Policy, 2015)

Source: https://www.medicaid.gov/medicaid/benefits/telemed/index.html.

➢ **The American Telemedicine Association (ATA) definition of telehealth/telemedicine:**

Definition of Telehealth: "ATA largely views telemedicine and telehealth to be interchangeable terms, encompassing a wide definition of remote healthcare, although telehealth may not always involve clinic care. (American Telemedicine Association, 2016).

Source: http://www.americantelemed.org/about/about-telemedicine.

II. Statues and Policies

➢ **Colorado Revised Statues:**

Please **click here** for information and list of Colorado Revised Statues that address various issues related to telehealth and telemedicine.

Source: https://www.lexisnexis.com/hottopics/colorado/.

➢ **Department of Regulatory Agencies (DORA) Colorado Medical Board Policies:**

Colorado Medical Board Policies: 40-27 Guidelines for the Appropriate Use of Telehealth Technologies in the Practice of Medicine (Colorado Medical Board, 2015):

- **Licensure**: "Providers who evaluate, treat or prescribe through telehealth technologies are practicing medicine. The practice of medicine occurs where the patient is located at the time telehealth technologies are used. Therefore, a provider must be licensed to practice medicine in the state of Colorado in order to evaluate or treat patients located in Colorado utilizing telehealth technologies or otherwise." (Colorado Medical Board, 2015).

- **Establishment of a Provider-Patient Relationship**: "Where an existing provider-patient relationship is not present, a provider must take appropriate steps to establish a provider-patient relationship consistent with the guidelines identified in Board Policy 40-3. Provider-patient relationships may be

established using telehealth technologies so long as the relationship is established in conformance with generally accepted standards of practice." (Colorado Medical Board, 2015).

- **Evaluation and Treatment:** "An appropriate medical evaluation and review of relevant clinical history, commensurate with the presentation of the patient to establish diagnoses and identify underlying conditions and/or contra-indications to the treatment recommended/provided, should be performed prior to providing treatment, including issuing prescriptions, electronically or otherwise. Treatment and consultation recommendations made in an online setting, including issuing a prescription via electronic means, will be held to the same standards of appropriate practice as those in traditional (encounter in person) settings. Treatment, including issuing a prescription based solely on an online questionnaire, does not constitute an acceptable standard of care." (Colorado Medical Board, 2015).

- **Informed Consent:** "Appropriate informed consent should be obtained for a telehealth encounter including those elements required by law and generally accepted standards of practice." (Colorado Medical Board, 2015).

- **Continuity of Care**: "Physicians should adhere to generally accepted standards of medical practice as it relates to continuity and coordination of care." (Colorado Medical Board, 2015).

- **Referrals for Emergency Services:** "An emergency plan should be provided by the provider to the patient when the care provided using telehealth technologies indicates that a referral to an acute care facility or Emergency Department for treatment is necessary for the safety of the patient." (Colorado Medical Board, 2015).

- **Medical Records:** "The medical record should include, if applicable, copies of all patient-related electronic communications, including patient-provider communication, prescriptions, laboratory and test results, evaluations and consultations, records of past care, and instructions obtained or produced in connection with the utilization of telehealth technologies. Informed consents obtained in connection with an encounter involving telehealth technologies should also be filed in the medical record. The patient record established during the use of telehealth technologies must be accessible and documented for both the provider and the patient, consistent with all established laws and regulations governing patient healthcare records." (Colorado Medical Board, 2015).

- **Privacy and Security of Patient Records and Exchange of Information:** "Providers should meet or exceed applicable federal and state legal requirements of medical/health information privacy, including compliance with the Health Insurance Portability and Accountability Act (HIPAA) and state privacy, confidentiality, security, and medical record retention rules. Written policies and procedures should be maintained at the same standard as traditional in-person encounters for documentation, maintenance, and transmission of the records of the encounter using telehealth technologies." (Colorado Medical Board, 2015).

- **Disclosure and Functionality for Providing Online Services:** "Disclosures and advertising should be made in accordance with state and federal law." (Colorado Medical Board, 2015).

- **Prescribing:** "Prescribing medications, in-person or via telehealth technologies, is at the professional discretion of the provider. The indication, appropriateness, and safety considerations for each telehealth visit prescription must be evaluated by the provider in accordance with current standards of practice and consequently carry the same professional accountability as prescriptions delivered during an encounter in person. However, where such measures are upheld, and the appropriate clinical consideration is carried out and documented, providers may exercise their judgment and prescribe medications as part of telehealth encounters. The recommendation of medical marijuana via telehealth technologies is prohibited." (Colorado Medical Board, 2015).

- **Parity of Professional and Ethical Standards:** "There should be parity of ethical and professional standards applied to all aspects of a provider's practice. A provider's professional discretion as to the diagnoses, scope of care, or treatment should not be limited or influenced by non-clinical considerations of telehealth technologies, and provider remuneration or treatment recommendations should not be materially based on the delivery of patient-desired outcomes (i.e. a prescription or referral) or the utilization of telehealth technologies." (Colorado Medical Board, 2015).

Source: https://www.colorado.gov/pacific/dora/Medical_Laws.

➢ **Center for Connected Health (CCHP) Policies:**

"In 2012, CCHP was selected by the Health Resources and Services Administration to be the National Telehealth Policy Resource Center (NTRC-P) (Grant #G22RH230365) for the country. In this capacity CCHP serves as an independent center of excellence in telehealth policy providing policy technical assistance to twelve telehealth regional resource centers nationwide. In addition to acting as the NTRC-P, CCHP also collaborates with policymakers, researchers, industry leaders, health advocacy organizations, and other influential groups to advance valuable telehealth policy solutions based on non-partisan research." (Center for Connected Health Policy, 2017).

CCHP information about how the following issues relate to telehealth:

- **Medicare** – "The Centers for Medicare & Medicaid Services (CMS) identified The Joint Commission's (TJC) privileging by proxy standards as being in conflict with their Medicare Conditions of Participation (CoPs). The approved process and applicable CMS Code of Federal regulations are:

  o 42 CFR §482.12 Conditions of Participation (Governing Body)
  o 42 CFR §482.22 Conditions of Participation (Medical Staff)
  o 42 CFR §485.616 Conditions of Participation (Critical Access Hospitals)
  o 42 CFR §485.641 Conditions of Participation (Quality Assurance Review)
  o 42 CFR §485.635 Conditions of Participation (Critical Access Hospitals – Provision of Services)

  The approved and applicable TJC standards are:

  o Standard LD 04.03.09 - Care, treatment, and services provided through contractual agreement are provided safely and effectively.
  o Standard MS 13.01.01 - For originating sites only: Licensed independent practitioners who are responsible for the care, treatment, and services of the patient via telemedicine link are subject to the credentialing and privileging processes of the originating site.

- **State Law, Policy, Regulation and Reimburesement -** CCHP has an interactive webpage regarding the laws, regulation, Medicaid http://www.cchpca.org/jurisdiction/colorado. This webpage provides the related law, regulations and information about the Medicaid program for the following:

  o Live video reimbursement
    ▪ Law
    ▪ Medicaid Program Requirement

  o Store and forward reimbursement
    ▪ Law
    ▪ Medicaid Reimbursement

  o Remote patient monitoring reimbursement
    ▪ Law
    ▪ Regulation(s)
    ▪ Medicaid Reimbursement

- o Email/phone/fax
  - Law
  - Medicaid Reimbursement
- o Online prescribing
  - Regulation(s)
- o Consent
  - Law
  - Regulation(s)
  - Medicaid Reimbursement
- o Location
  - Regulation(s)
  - Medicaid Reimbursement
- o Cross-state licensing
  - Law
- o Private Payers
  - Law
- o Site Transmission Fee
  - Law
  - Medicaid Reimbursement
- o Confidentiality Procedures
  - Medicaid Reimbursement

- **Health Insurance Portability and Accountability Act of 1996 (HIPAA)** – "Telehealth provision or use does not alter a covered entity's obligations under HIPAA, nor does HIPAA contain any special section devoted to telehealth. Therefore, if a covered entity is utilizing telehealth that involves PHI, the entity must meet the same HIPAA requirements that it would if the service was provided in person.

  Telehealth does often require consultation with technical personnel, independent of the medical team, who may be exposed to patient data. Therefore, providers may need to enter into business associate agreements with these technical personnel organizations, which obligate them to maintain the same confidentiality required of the provider under HIPAA.

  The entity will also need to conduct an accurate and thorough assessment of the potential risks and vulnerabilities to the confidentiality, integrity and availability, of PHI. While there are some specifications, each entity must assess what are reasonable and appropriate security measures for their situation.

  Use of specific telehealth equipment or technology cannot ensure that an entity is "HIPAA compliant" because HIPAA addresses more than features or technical specifications. Nevertheless, certain features may help a covered entity meet its compliance obligations. For example, a telehealth software program may contain an encryption feature, or the technology might provide security through the use of passwords. However, these examples only provide elements or tools to help a covered entity meet its obligations under HIPAA; they do not ensure compliance and cannot substitute for an organized, documented set of security practices. View CCHP's HIPAA Fact Sheet."
  (Center for Connected Health Policy, HIPAA, 2017).

  - o **Malpractice** – "Providers should confirm with their carriers that their current malpractice insurance covers those services provided via telehealth and if the provider is practicing across state lines, that their coverage extends into that other state.

    While some malpractice insurance will cover services provided via telehealth, not all carriers operate in the same fashion. Additional coverage may need to be purchased.

Providers should ascertain they are adequately covered by their carrier or seek out another if necessary.

Additionally, carriers may not extend their coverage to other states. Due to various reasons such as lack of ceilings to malpractice awards, a provider's current malpractice carrier may not be able or willing to provide coverage across state lines. Providers should check with their carriers before embarking on providing services outside of their home state.

Providers may also want to consider seeking out some type of cyber liability coverage to protect against data breaches and hacking." (Center for Connected Health Policy, Malpractice, 2017).

- **Health Information Technology**

    o **Electronic Health Records (EHRs)**

    o **Meaningful Use**

    o **Federal Communication Commission (FCC)**

- **Mobile Health (mHealth) Laws and Regulations**

    o FDA – "The Federal Drug Administration (FDA) has the responsibility of regulating equipment or software intended for use in the diagnosis or treatment of a disease or other condition. With passage of the Food and Drug Administration Safety and Innovation Act in 2012, the FDA was given approval to go forward with its regulatory work on medical apps." (Center for Connected Health Policy, mHealth, 2017).

    o FTC – "The Federal Trade Commission (FTC) protects consumers from unfair or deceptive acts or practices as well as false or misleading claims. Where mHealth is concerned, it has focused on the claims companies have made about the effectiveness of their devices or apps. The FTC also has jurisdiction over health data breaches when the entities involved are not HIPAA-covered entities. The FTC has already been active, taking enforcement action against several mobile health app marketers that have not met the requirements of the FTC. The FTC collaborates closely with both the FDA and FCC on areas where there is jurisdictional overlap." (Center for Connected Health Policy, mHealth, 2017).

    o FCC - The Federal Communications Commission (FCC) regulates devices that utilize electromagnetic spectrum, or broadcast devices. FCC regulates the device as a communications device, not as a medical device. With potential overlapping jurisdictions, the FCC and FDA entered into a Memorandum of Understanding, where they would collaborate with each other within the areas of their respective agencies.

    In 2012, the FCC approved its mobile body area network (MBAN), which allocates an electromagnetic spectrum for personal medical devices. The allocated spectrum would be used to form a personal wireless network, within which data from numerous body sensors could be aggregated and transmitted in real time. This dedicated spectrum would allow for faster and more reliable transmission of information from patient monitoring devices to practitioner.

    The rapid pace of development of this field and the wide range of applications available on the market today have also been the source of a number of legal and ethical questions regarding their use. Questions are being raised regarding privacy protection. With the vast amount of individual health data being generated by remote monitoring and mhealth devices, determining what are actionable health data, who monitors the data, and where it gets stored are challenges that we will need to address as the field evolves. For an interesting discussion on the subject, read *Ethical Issues in mHealth: What is Good Enough?*" (Center for Connected Health Policy, mHealth, 2017).

- Credentialing & Privileging – there are applicable regulations for the Center for Medicare & Medicaid Services (CMS) and applicable standards from The Joint Commission that must be met.

➢ **The American Telemedicine Association (ATA) Policies:**

- **Colorado Specific Policies:** According to ATA, Colorado has Telemedicine Parity Law for Private Insurance Coverage of Telemedicine enacted in 2001 and Legislated Medicaid Coverage (primarily interactive video). HB 1094 – amends parity law.

  According to ATA State Policy Toolkit (American Telehealth Association, 2017), Colorado has the following important features for Good Telehealth Policy:

  o **State-wide Parity for Coverage**: telehealth-provided services should be covered to the same extent and in a similar manner as in-person services. Colorado mandated the coverage of telehealth-provided services under private health insurance plans in 2001.

  o **Medicaid**: allows for physician services that do not require direct interaction with a patient, such as for radiology. Colorado has some coverage for "telemental" health, home telehealth, and remote patient monitoring.

  Source: http://www.americantelemed.org/home.

- **Federal Policies:** ATA provides links to the following:

  o FCC Documents

  o FDA Documents
    ▪ Connecting America: The National Broadband Plan

  o Medicare Documents
    ▪ Medicare Code Requests
    ▪ Telehealth Services Fact Sheet
    ▪ Medicare Payment of Telemedicine and Telehealth Services

III. Colorado Heath Care Policy and Financing (HCPF)

➢ **Who is eligible?**

"All Health First Colorado members can receive services through the use of telemedicine, whether they live in rural or urban areas. Only the Health First Colorado providers that have special telemedicine equipment can serve members through telemedicine." (Health Care Policy and Financing, 2017).

➢ **How does telemedicine work?**

"Telemedicine services are provided "live" by audio-video communications between two providers. The distant provider is a consultant to the originating provider. Sometimes the distant provider may be the only provider involved in the visit, such as with mental health sessions. Providers such as doctors, nurse practitioners and mental health providers can provide services if they have the special equipment." (Health Care Policy and Financing, 2017).

➢ **What Health First Colorado services are reimbursed using telemedicine?**

"A list of approved services is available to providers. The services include office visits for preventive and routine medical care, psychotherapy and obstetrical ultrasounds." (Health Care Policy and Financing, 2017). *Source: https://www.colorado.gov/pacific/hcpf/telemedicine.*

IV. Other Information and Resources on Telehealth and Telemedicine

> **Institute of Medicine's (IOM) Resources:**

- The role of Telehealth in an Evolving Health Care Environment: Workshop Summary (published 2012). This report is a summary of a HRSA workshop sponsored by IOM in Washington, DC in August 2012. The purpose of the workshop was "to examine how the use of telehealth technology can fit into the US health care system." (Institute of Medicine, 2012).

  Source: https://www.nap.edu/catalog/13466/the-role-of-telehealth-in-an-evolving-health-care-environment.

- *Telemedicine: A Guide to Assessing Telecommunication for Health Care* (published 1996). This report provides information about the use of information and telecommunications technologies to provide support health care when distance separates the participants. This report examines basic elements of an evaluation and considers relevant issues of quality, accessibility and cost of health care.

  Source: http://www.nationalacademies.org/hmd/Reports/2012/The-Role-of-Telehealth-in-an-Evolving-Health-Care-Environment.aspx.

> **Health Resources and Services Administration Resources:**

- **HRSA Training** - there are 12 Regional TRCs and two National TRCs, one focusing on policy and the other on technology. The TRC website provides information on the following:

  o Operations Tools
  o Reimbursement
  o Legal & Regulatory Information
  o Program Development
  o Education and Training

  Source: https://www.colorado.gov/pacific/hcpf/telemedicine.
  Source: http://www.telehealthresourcecenter.org/.

- **HRSA grants** - there are several HRSA grants related to telehealth.

  o **HRSA Telehealth Network Grant Program (TNGP)** is a competitive grant program funding projects that demonstrate the use of telehealth networks to improve healthcare services for medically underserved populations in urban, rural, and frontier communities.

  o **Evidence-based Tele-Emergency Network Grant Program (EB TNGP)** is a competitive grant program designed to support implementation and evaluation of broad telehealth networks to deliver 24-hour emergency department consultation services via telehealth to rural providers that lack emergency care specialists.

  o **Licensure Portability Grant Program (LPGP)** awards competitive grants to state professional licensing boards to develop and implement state policies that will reduce statutory and regulatory barriers to telemedicine.

  o **Rural Child Poverty Telehealth Network Grant Program (TCPTNGP)** supports established telehealth networks in the delivery of social services such as early childhood development counseling, food and nutrition support and job counseling to rural areas.

  Source: https://www.hrsa.gov/ruralhealth/telehealth/.

> **American Telemedicine Association (ATA) Resources**

ATA is a non-profit association helping to transform healthcare by improving the quality, equity and affordability of healthcare throughout the world.

The ATA website provides information on the following:

- State Policy Resource Center
- Medicare Documents
- State Medicaid Best Practices
- State Toolkits
- Medical Licensure Documents
- Federal Communications Commission Documents
- Telehealth Capitol Connection (TCC) briefings to Congress, includes slides from President, John Schlitt, School-Based Health Alliance

Source: http://www.americantelemed.org/home.

> **School-Based Health Alliance (SBHA) Resources:**

- Lessons and Best Practices from Early Adopters
- School-Based Health Care via Telemedicine – Center for Rural Health Innovation

> **Colorado Telehealth Network (CTN):**

- **Work group:** CTN hosts the Colorado Telehealth Working Group (CTWG), "a coalition of stakeholders with the mission to promote fair and practical telemedicine polices and information policy makers on the current state of telemedicine in Colorado." (Colorado Teleheath Network, 2017). For more information about the work group, contact Eskedar Mokonnen, Project Manager, 720-330-6081.

- **Forum:** To receive the latest information from CTN, you can join CTN Community Forum.

> **State Innovation Model (SIM):**

"The Colorado State Innovation Model (SIM), funded by the Centers for Medicare & Medicaid Services, is helping practices integrate behavioral health and primary care and test alternative payment models. The first cohort launched with 100 practices in February 2016 and the application for cohort 2 closed on March 31, 2017. The application for the third cohort will be released in 2018." (State Innovation Model, 2017).

"The Colorado State Innovation Model (SIM) office and seven of Colorado's health insurers – Anthem Blue Cross Blue Shield, Cigna, Colorado Choice Health Plans, Kaiser Permanente, Rocky Mountain Health Plans, United Healthcare and Colorado's Medicaid program – coordinate together to support efforts that transform the way primary care and behavioral health care are delivered and financially supported in Colorado. Between February 2015 and January 2019, the State of Colorado will receive up to $65 million from the Center for Medicare and Medicaid Innovation (CMMI) to implement and test its proposed model for health care innovation. Colorado's plan, entitled "The Colorado Framework," creates a system of clinic-based and public health supporters to spur innovation. The state will improve the health of Coloradans by:

- providing access to integrated primary care and behavioral health services in coordinated community systems;

- applying value-based payment structures;

- expanding information technology efforts, including telehealth; and

- finalizing a statewide plan to improve population health. (The Colorado State Innovation Model)

For more information and to view the proposed timeline, visit the SIM website. Also, be sure to check-out the following SIM resources:

- newsletters,
- podcasts,
- videos,
- suggested reading materials, including information from the SIM Practice Transformation Series, such as the Secrets of Success.

V. Subject Matter Experts

- **Dr. John F. "Fred" Thomas, Telehealth Director**
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  john.thomas@ucdenver.edu

- **Dr. Steve North, Founder & Medical Director**
  Center for Rural Health Innovation
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