Evolving Models of Care

8 risks to consider when diving into telemedicine

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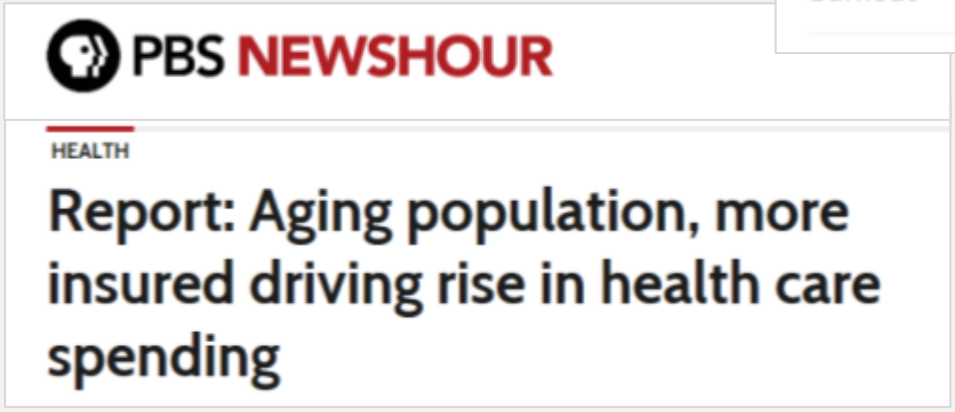
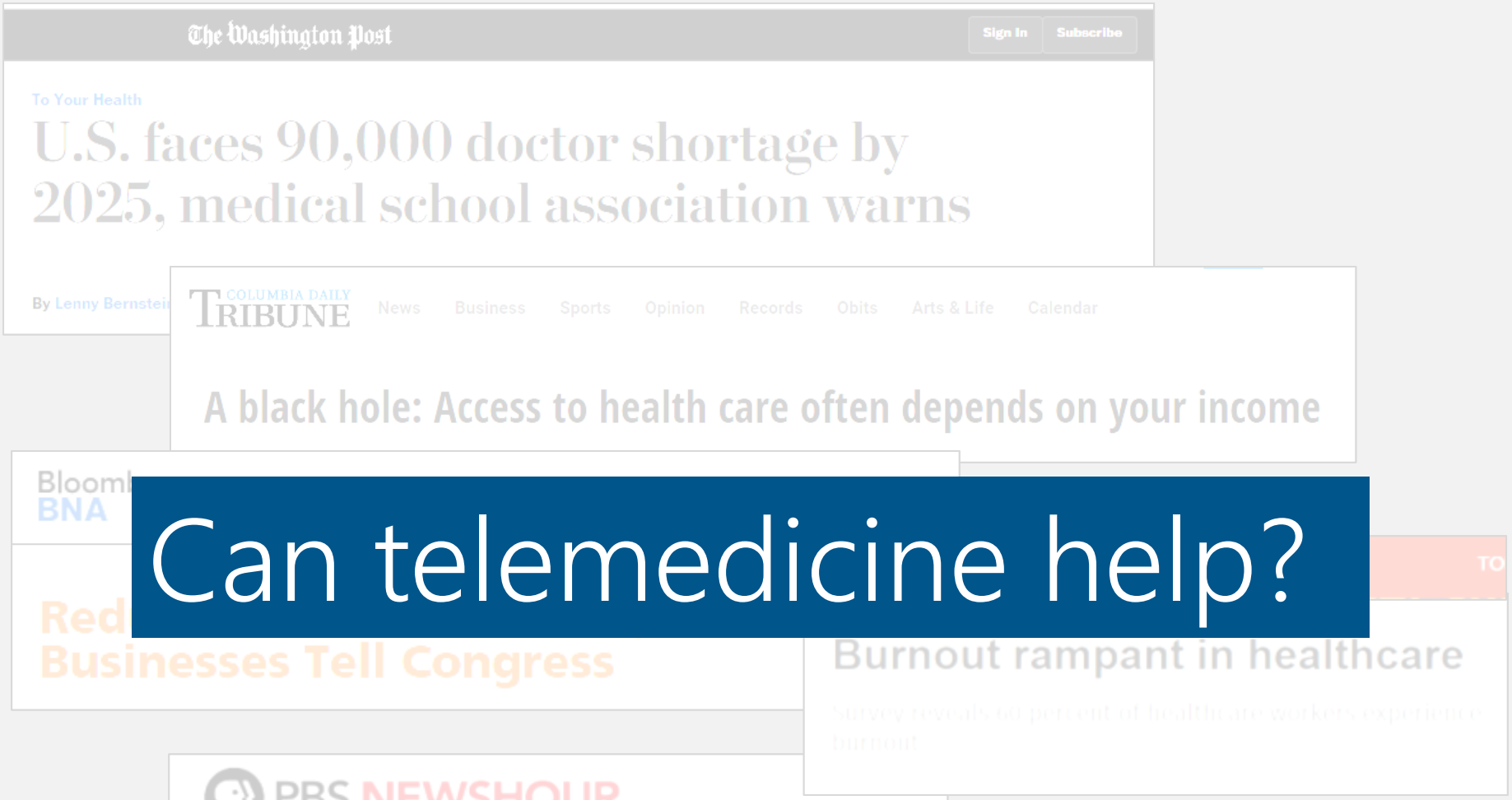

PBS NEWSHOUR
HEALTH
Report: Aging population, more insured driving rise in health care spending



Can telemedicine help?

Patients embrace technology

72%

of adults are ok with teleconsultation for non-urgent care

- Intel Healthcare Innovation Barometer

Patients embrace technology

82%

of young adults **prefer** consultation with their doctor via mobile device

- MD Live

And …

Potential for $1.8 to $6 billion in savings over 10 years

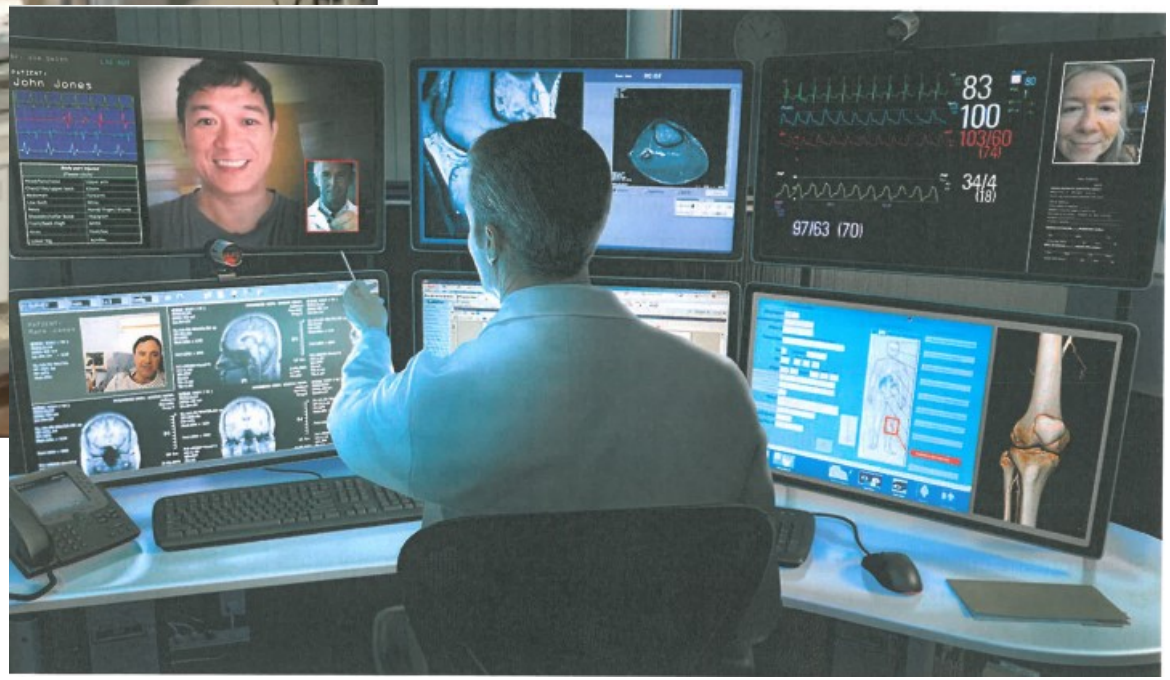
Win-win-win!

TELEMEDICINE
Risk Management Considerations

ASHRM AMERICAN SOCIETY FOR HEALTH CARE RISK MANAGEMENT

"Telemedicine is moving from its adolescence into early adulthood."

- Technology is improving
- Costs are decreasing
- Reimbursement is increasing



Defining telemedicine

CMS	Two-way, real-time interactive communication
ATA	Remote delivery of health care services and clinical information
TJC	Use of technology to support long-distance clinical health care
States	Varied sophistication

Goal of today

Awareness

Eight questions

Eight questions

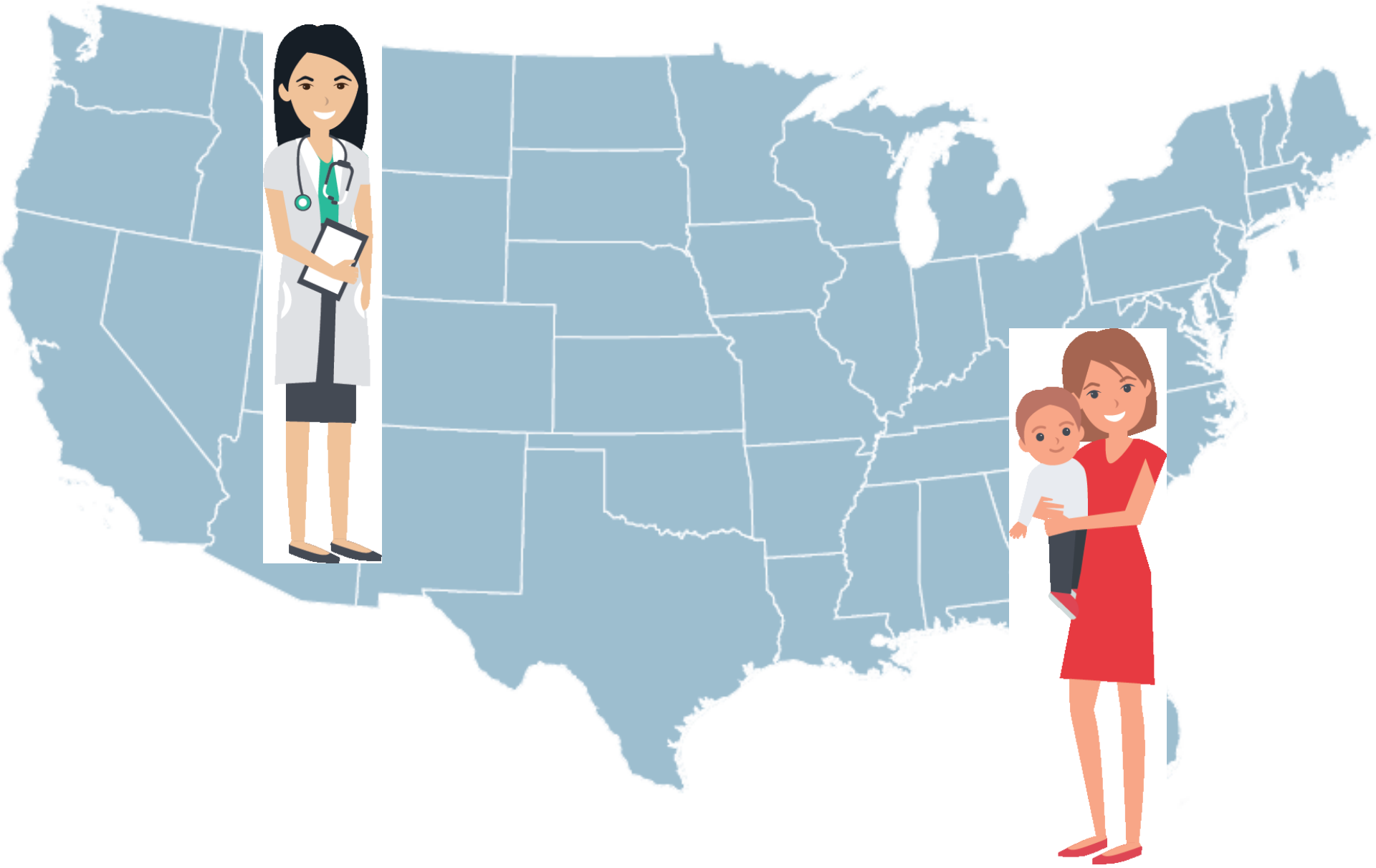
1. Are we licensed and credentialed properly?
2. Are we creating a provider/patient relationship?
3. Are we seeing the right patients and conditions?
4. Are we providing the right physical environment?

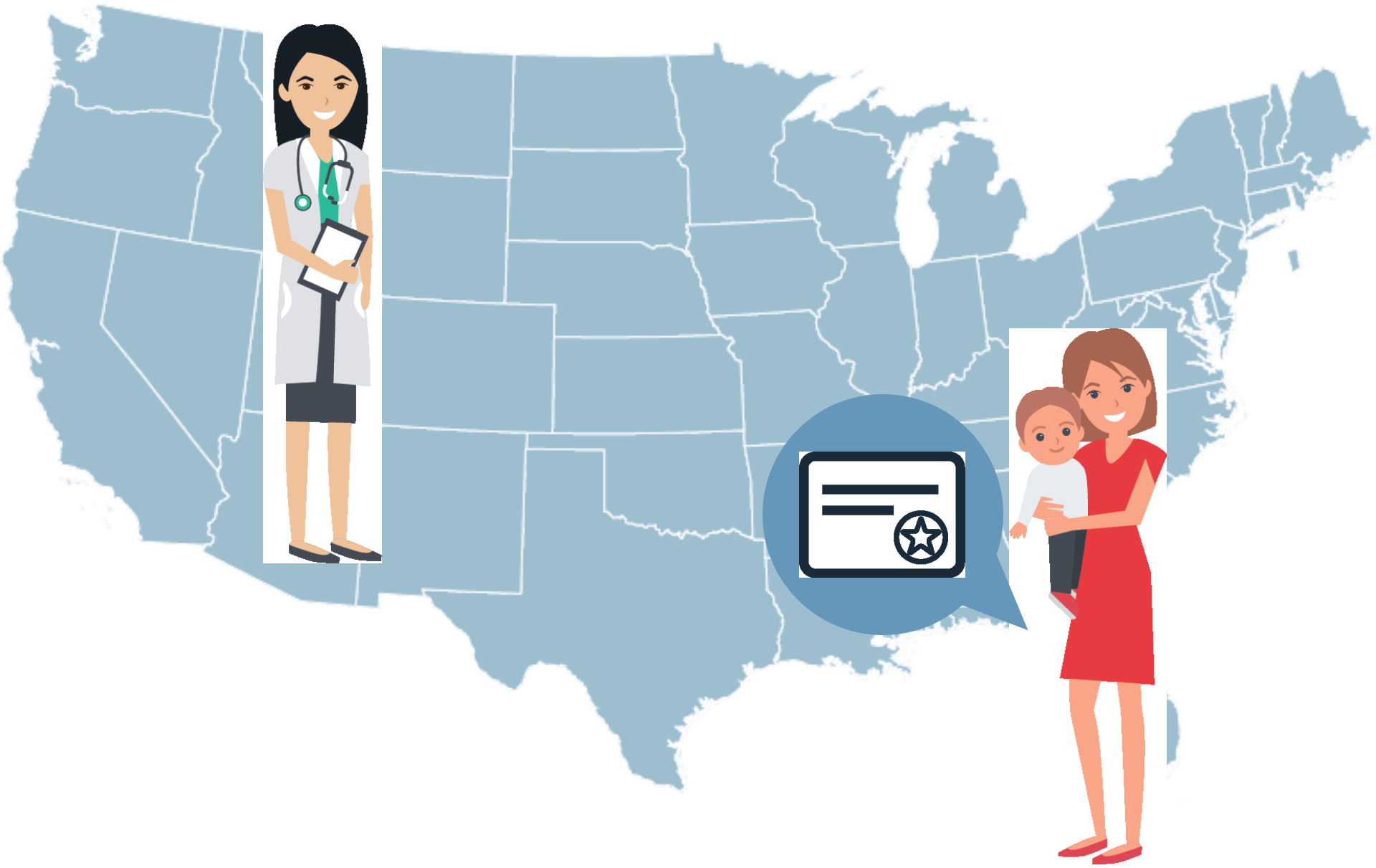
Eight questions

5. Are we protecting privacy and security?
6. How is care getting into the medical record?
7. Does our professional liability policy cover this?
8. Do we need a special consent form?

1

Are we licensed and credentialed properly?





The patient's state

- Rapidly evolving
  - Some require a full license
  - Some give telemedicine-only license
  - Some are silent
- May have different prescribing rules
  - Some require an in-person visit every time
  - Some require availability and emergency resources
- Growth in interstate compacts

Center for Connected Health Policy:
http://cchpca.org/

The current status in Wyoming

Center for Connected Health Policy: http://cchpca.org/

Definition: Wyoming Statute Sec.: 33-26-102:

"Telemedicine means the practice of medicine by electronic communication or other means from a physician in a location to a patient in another location, with or without an intevening health care provider"

Wyoming Medicaid Reimbursement:

"Telehealth is the use of an electronic media to link beneficiaries with health professionals in different locations." This means that the patient must be able to see and interact with the off-site physician at the time services are provided via telehealth.

Controlled substances

- Ryan Haight Act of 2008
  - Must conduct an in-person medical evaluation first
  - Slim exception for expert consult situation
- Questionnaires never ok
- Possibly subject to amendment?
- Possible special DEA registration?

- Other members of the care team

Case Example:

- Surgery practice crosses over state lines
- Surgery in one state
- Follow-up care by telemedicine, primarily by nursing team

Credentialing

- Facilities need to credential and privilege all distant telemedicine providers
- Medicare CoPs and Joint Commission allow some reliance on provider's hospital
- State laws may have credential requirements

Center for Connected Health Policy:
http://cchpca.org/

Credentialing

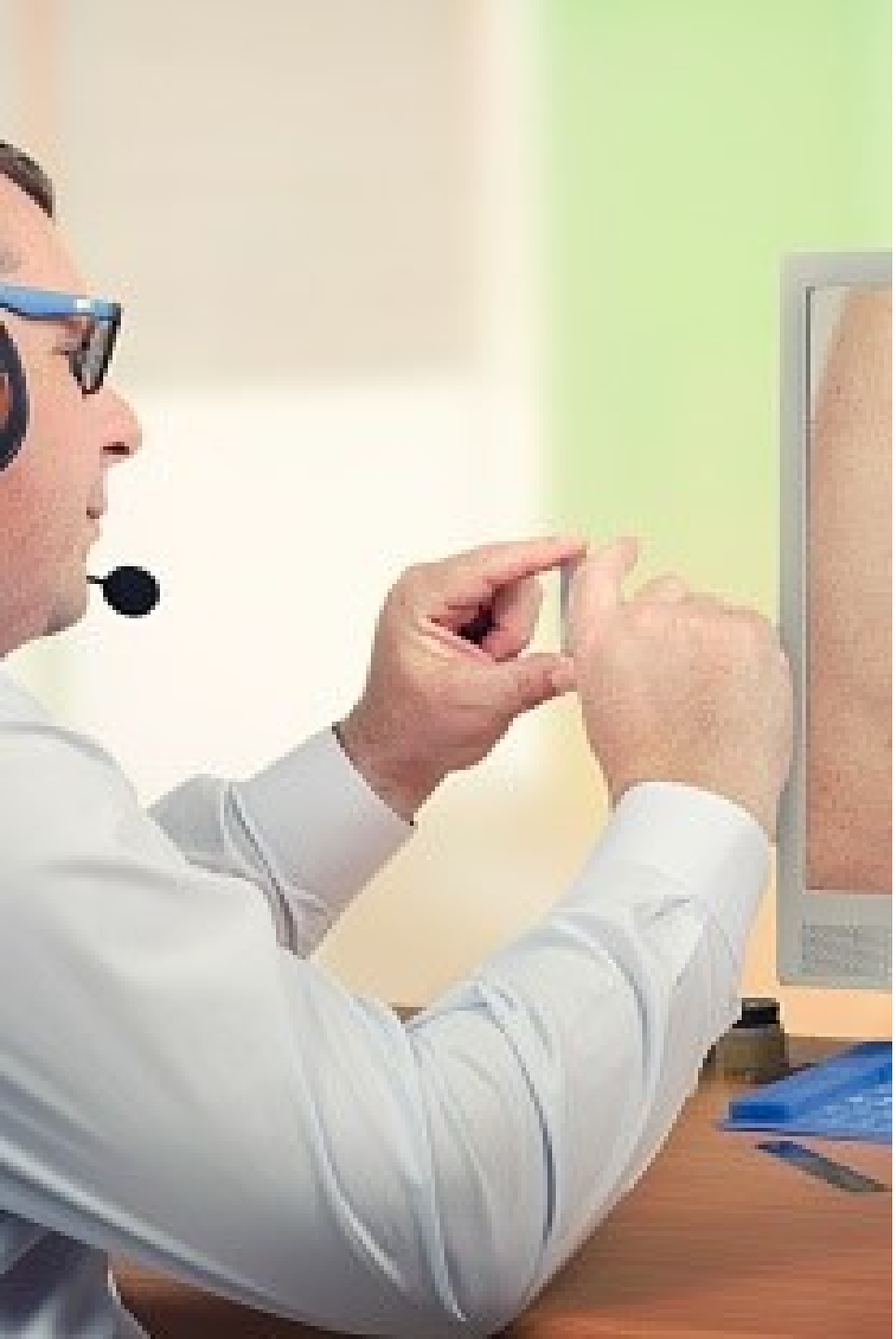
- Distant providers in the medical staff bylaws
  - Define their involvement in the medical staff
  - Think through performance review and peer review
  - Outline discipline and procedural rights

Risk strategies

- ❑ Are we asking where patients are located?
- ❑ Are we verifying licensure?
- ❑ Are there state-specific rules?
- ❑ Is everyone on the team licensed?
- ❑ Have we clarified credentialing and privileging?

2

Are we creating a provider/ patient relationship?



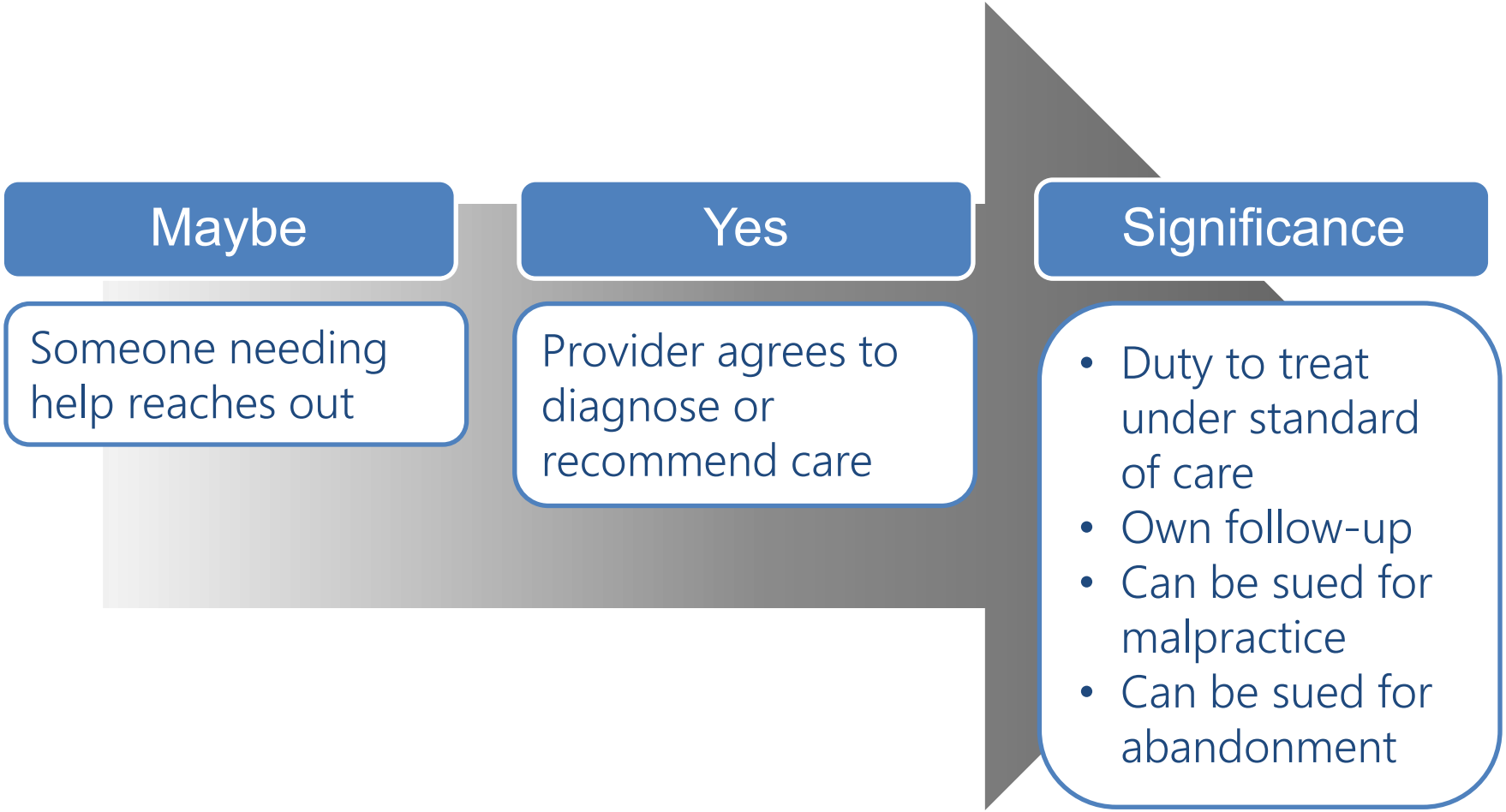
Case Example

- Website where users upload photos
- “Dermatologist” will identify and recommend treatment
- Most providers are overseas
- Diagnosis and recommendations are unreliable
- CEO says too bad-- no doctor-patient relationship because both sides are anonymous

Defining the P/P relationship

- No exact definition, states can differ
- Legal standard based on each circumstance
  - Have you seen the patient before
  - Do you invite the patient to your online practice
- Providers can usually refuse
  - But need to say so (and earlier the better)
  - Better not bill for the interaction
  - No emergencies or discrimination

Defining the P/P relationship



Risk strategies

- ❑ Am I creating a provider/patient relationship?
- ❑ If not, is that clear to the patient?
- ❑ Are we educating on continuity of care and follow up recommendations?
- ❑ Are we tracking orders?

3

Are we seeing the right patients and conditions?

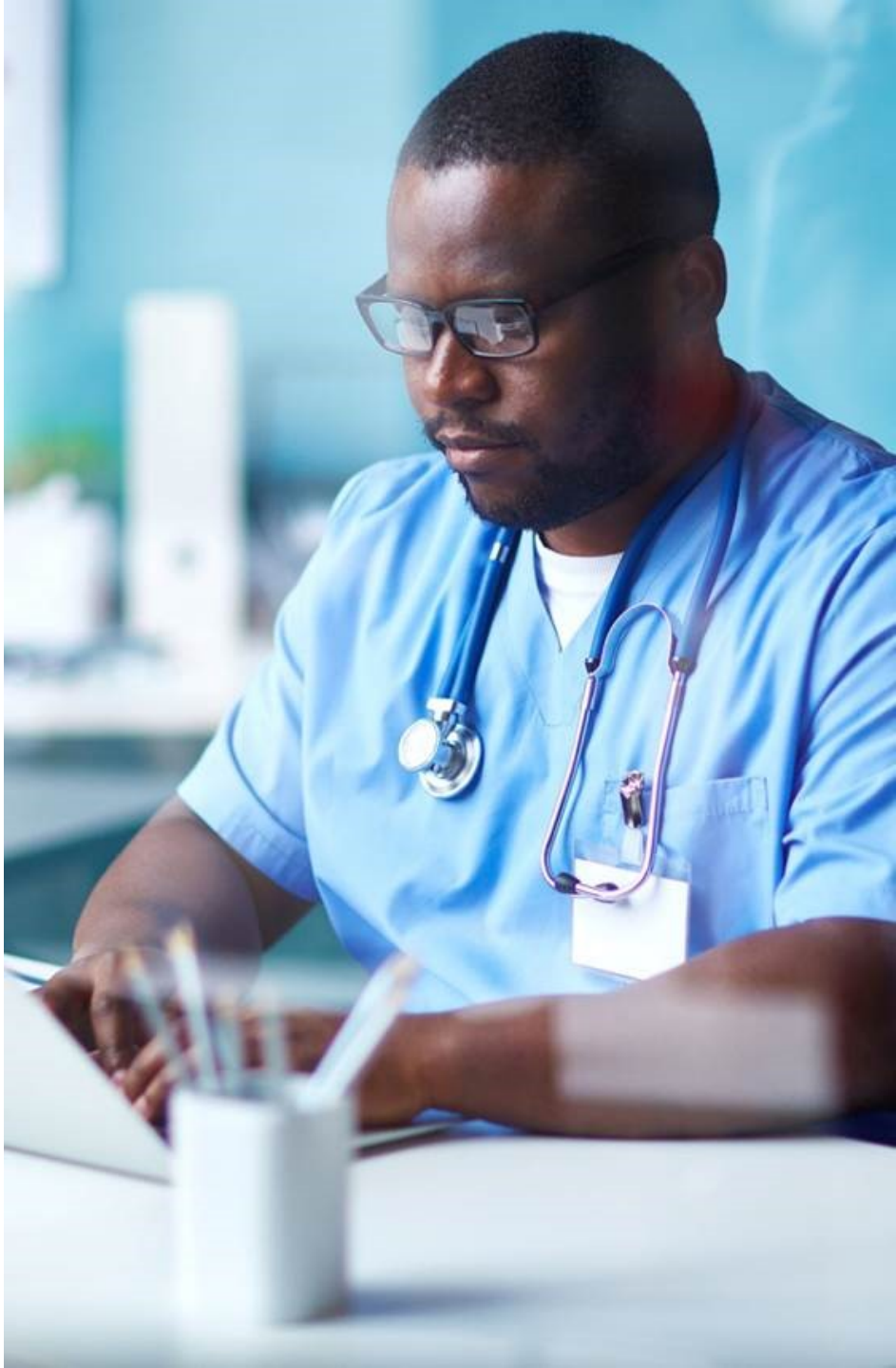
Case example

- E-visit for wheezing, shortness of breath to point of dizziness
- History of asthma
- Diagnosis: Asthma flare
- Missed diagnosis: Acute coronary syndrome

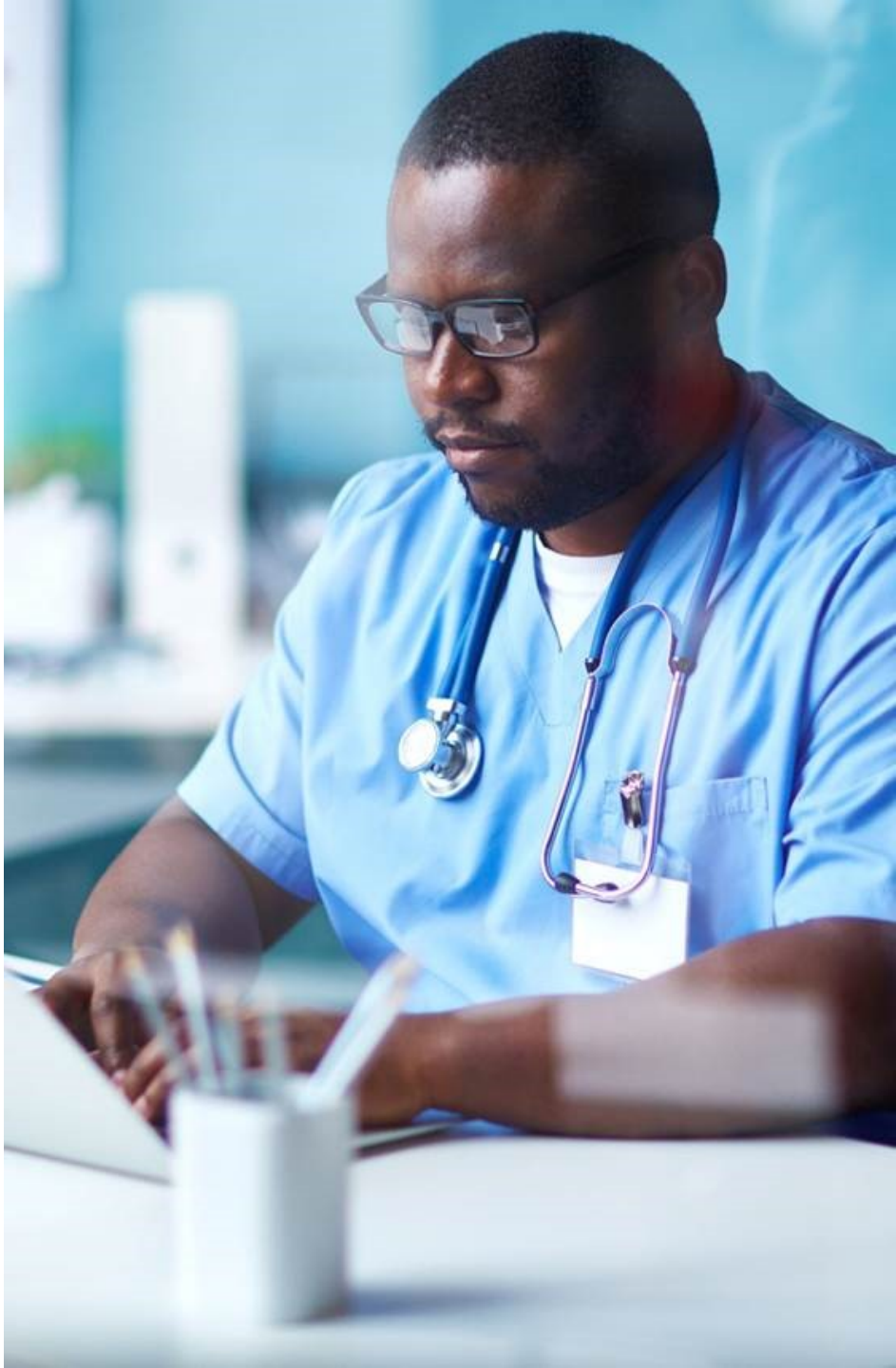
Fastest-growing segment
is one-time video

75%

of large employers
offer virtual visits

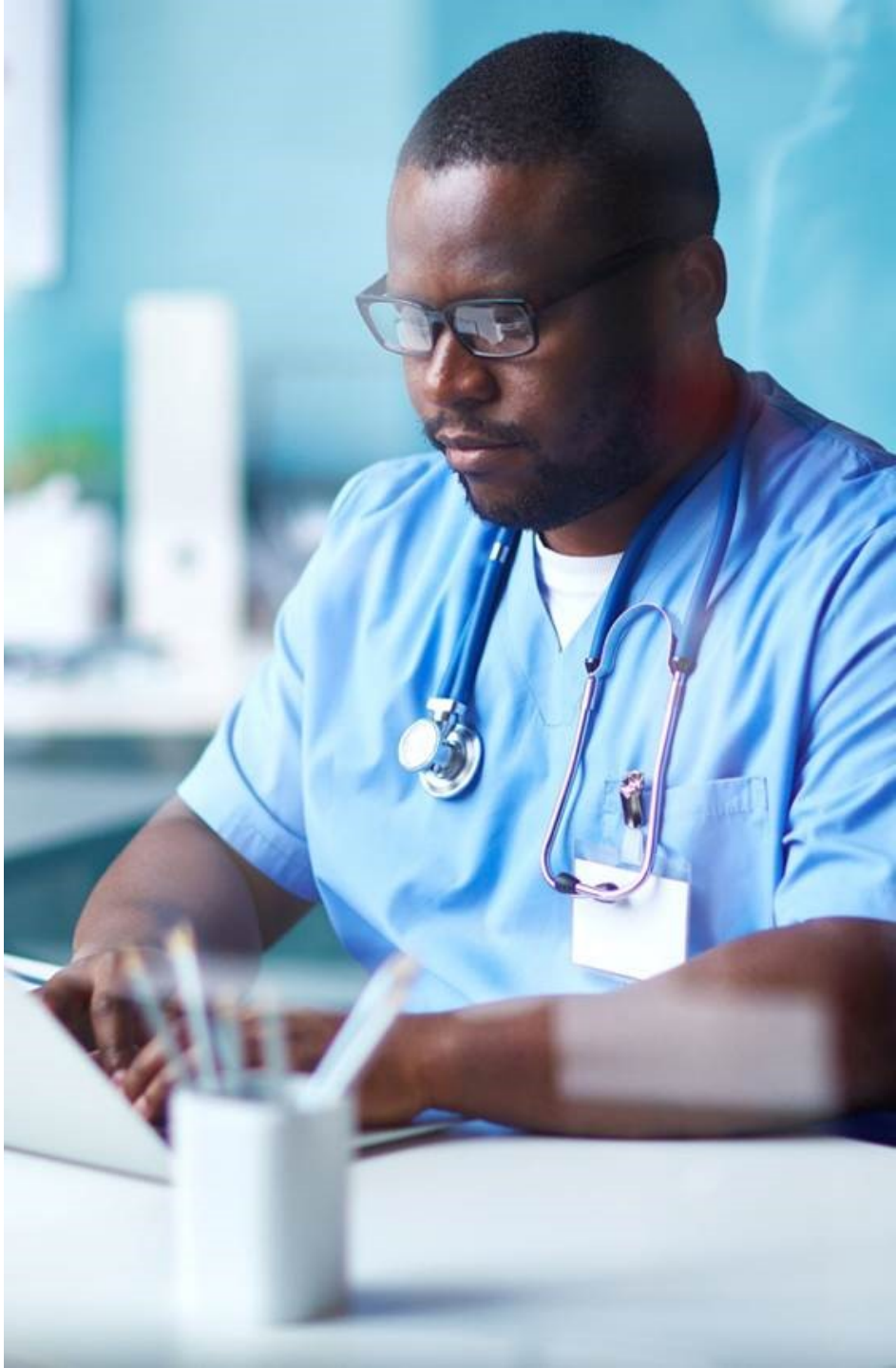


Can we care for **this patient** and **this condition** as well as we could in person?



Acute conditions primary or urgent care	Chronic conditions primary care
• Uncomplicated allergy/asthma • Chronic bronchitis • Conjunctivitis • Genitourinary • Low back pain • Otitis media • Rashes • Upper respiratory infections	• Mental illness • Behavioral health • COPD • Asthma • Congestive heart failure • Diabetes • Hypertension • Overall wellness

How do I say **no?**



Risk strategies

- Do we have standards for patient selection?
- Do we have guidelines on appropriate conditions?
- Are providers empowered to say no?

4

Are we providing the right physical environment?

Case example

- E-visit with flu-like symptoms
- Home location is dark
- Image and sound are poor
- Provider is outside on patio with kids
- Diagnosis: Flu
- Missed diagnosis: Meningitis

Do we have the same ability to **communicate** and **treat** as we would in person?

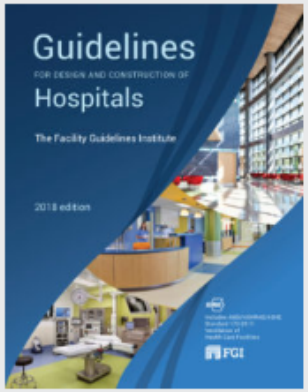
In person visit

- Adequate lighting
- Ability to hear
- Private
- Minimal interruptions
- Peripheral tools
- Medical records
- Other services (labs, pharmacy)

In person visit	Telemed visit
• Adequate lighting • Ability to hear • Private • Minimal interruptions • Peripheral tools • Medical records • Other services (labs, pharmacy)	• Adequate lighting • Ability to hear • Private • Minimal interruptions • Peripheral tools • Medical records • Other services (labs, pharmacy)

www.fgiguidelines.org

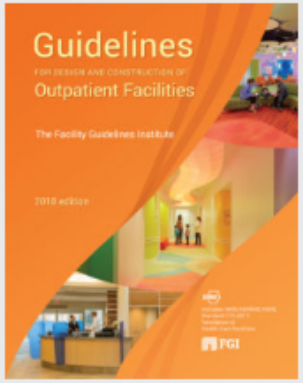
Guidelines for Design and Construction of Hospitals



Changes to the Hospital *Guidelines* clarify requirements and allow flexibility in some designs to support development of facilities that will be functional over the long term. Key changes affect requirements and recommendations for clinical telemedicine spaces; accommodations for patients of size; mobile/transportable units; sterile processing; and examination, procedure, operating, and imaging rooms. The document provides minimum design standards for general hospitals, freestanding emergency facilities, critical access hospitals, psychiatric hospitals, rehabilitation hospitals, children's hospitals, and mobile/transportable medical units.

To learn more about the content, review the **Hospital table of contents** and the discussion of **major additions and revisions**, which outlines significant changes from the hospital requirements in the 2014 edition.

Guidelines for Design and Construction of Outpatient Facilities



The 2018 edition introduces the new Outpatient *Guidelines* document. Flexible enough to address a wide variety of outpatient facility projects, this inaugural publication was conceived to meet the needs of the U.S. health care industry and address the evolving nature of outpatient facilities. The document provides minimum design standards for a variety of outpatient facility types, including general and specialty medical services facilities, outpatient imaging facilities, birth centers, urgent care facilities, infusion centers, outpatient surgery facilities, freestanding emergency facilities, endoscopy facilities, renal dialysis centers, outpatient psychiatric facilities, outpatient rehabilitation facilities, mobile/transportable medical units, and dental facilities. Guidance is provided for applying the *Guidelines* to outpatient facilities of numerous types, both freestanding and part of existing facilities, including those not specifically addressed in the document.


Is it safe to talk?


What is our
webside manner?

Risk strategies

- Can we always see, hear, and understand?
- Do we have access to required tools or records?
- Are we both in a private space?
- Have we thought through Webside Manner?

5

Are we protecting privacy and security?

Case Example

- Family doc conferencing with patients online
- No encryption
- No HIPAA security certifications
- Some data on encounters is being stored in the cloud
- Data is breached

HIPAA says

YOU must protect confidentiality, integrity, and security

(no matter the platform or devices)

TELEMEDICINE
Risk Management Considerations

ASHRM AMERICAN SOCIETY FOR HEALTH CARE RISK MANAGEMENT

"IT leadership at both the originating and distant locations should be consulted and involved in decision-making related to the IT systems that will be used to transmit and receive data."

Vendors

- Demand proof of HIPAA and HITECH compliance
- Demand BAAs
- Where is the data backed up? (on premises vs. cloud)
- Who owns the data?
- Negotiate liability for breaches

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- Who owns the data?
- Negotiate liability for breaches

Devices

- Encryption?
- Passwords?
- Anti-virus and security?
- Plan if lost or stolen?

Risk strategies

- ❑ Are we using experts?
- ❑ Do we have agreements on HIPAA and HITECH?
- ❑ Do we know what happens in a breach?
- ❑ Are we training enough?
- ❑ Do we have encryption, passwords, etc. for all devices?

6 How is care getting into the medical record?

Case Example

- Tele-radiology arrangement
- Radiologist and PCP view images together and discuss
- Neither creates a record
- PCP texts more history and radiologist responds via text
- Neither creates a record, neither saves texts

What goes in the record?

What would we have from an in-person visit?

What did we rely on to make decisions and recommend treatment?

What do we need to support billing claims?

New items to include

- Mode of service delivery
- Time-stamps in multiple time zones
- Location of the patient
- Anyone else in the room with your patient
- Any technical difficulties

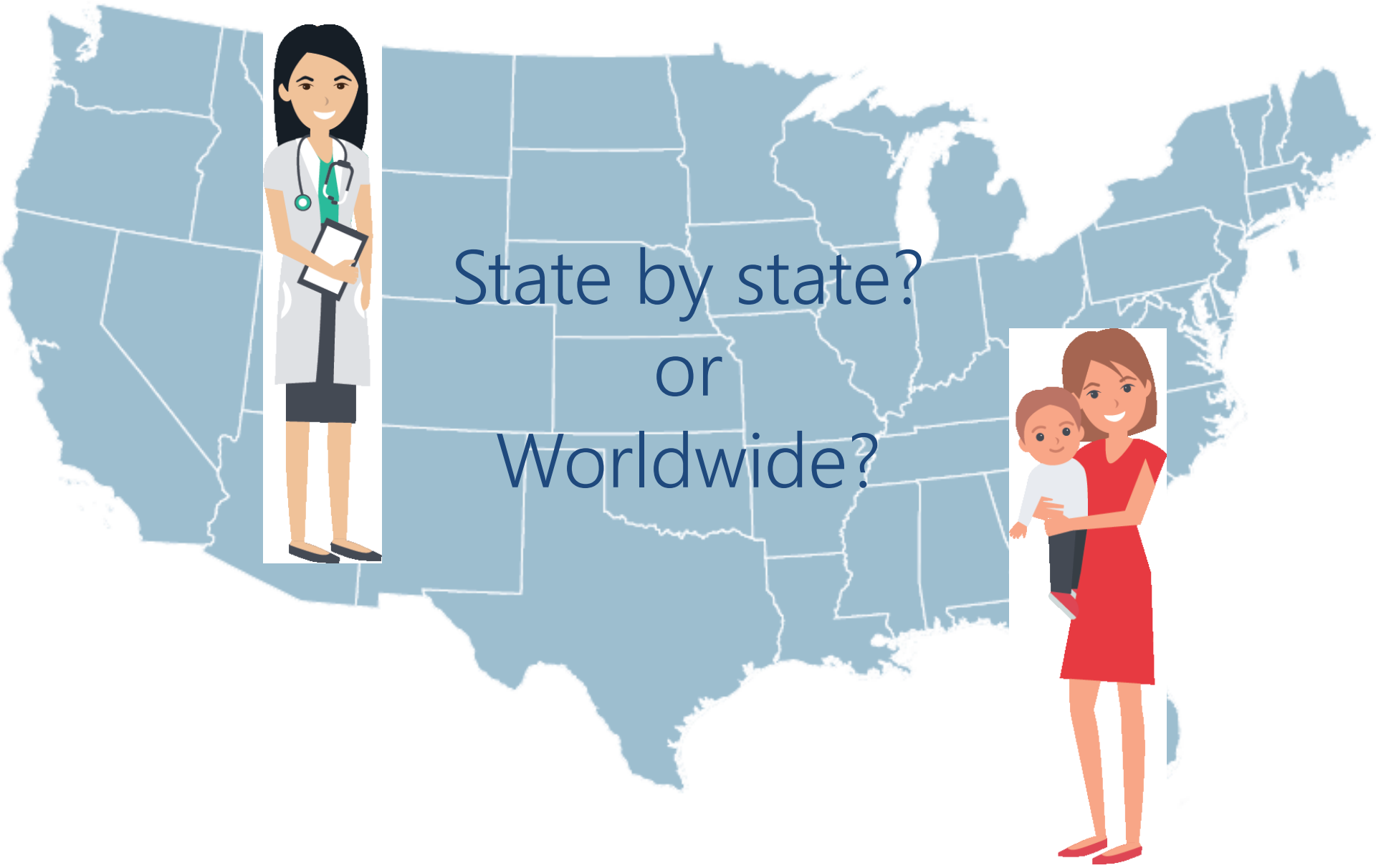

Where is the
record?

Risk strategies

- ❑ Do we have standards for record-keeping?
- ❑ Are we documenting what we would in person?
- ❑ Are we documenting any tech problems?
- ❑ Do we know how to get access to records?

7

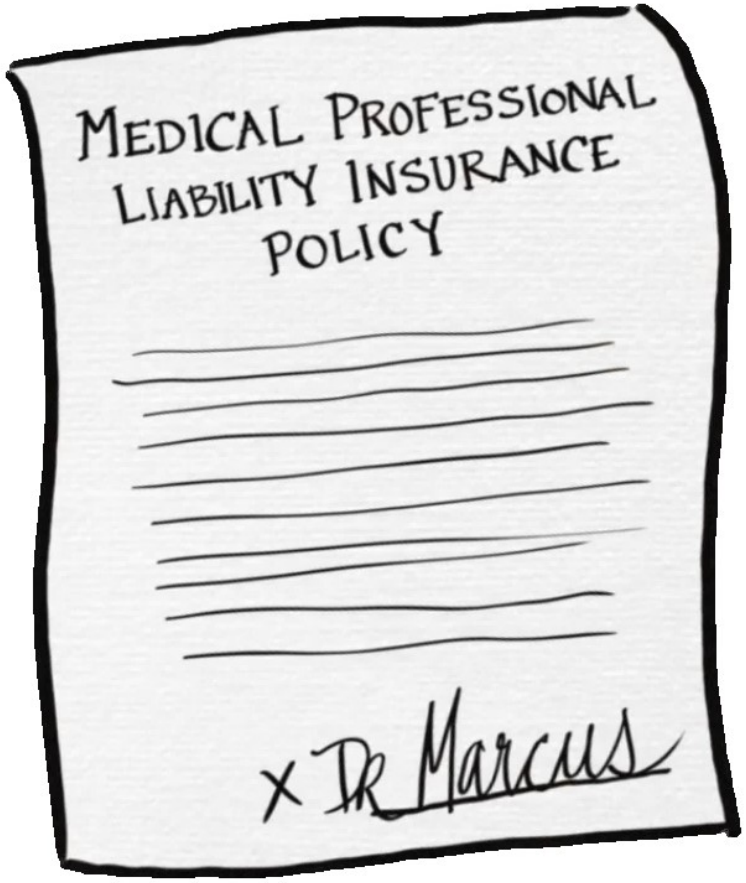
Does our professional liability policy cover this?




Where will the
claim arise?

Insurance issues

- Are we staying within our scope of practice?
- Do we need cyber liability coverage?
  - You might already have coverage
  - Which policy is triggered?



TELEMEDICINE
Risk Management Considerations

ASHRM AMERICAN SOCIETY FOR HEALTH CARE RISK MANAGEMENT

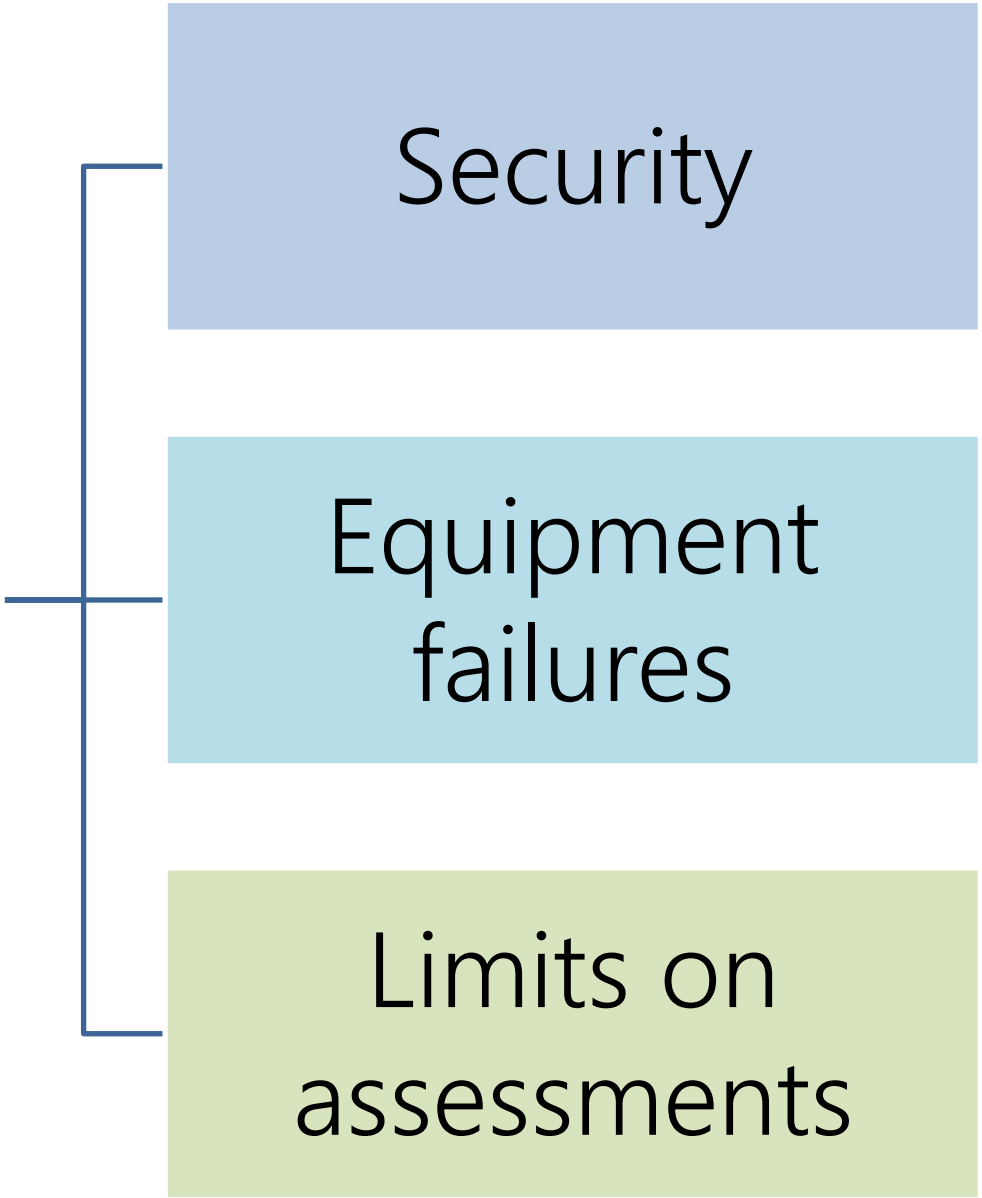
"At the very least, currently existing insurance policies should be reviewed with counsel, the insurance broker and underwriting to determine what if any gaps in coverage are created by the addition or expansion of telemedicine services."

Risk strategies

- ❑ Have we verified what our carrier will cover?
- ❑ Are any providers going outside of their scope?
- ❑ Are we comfortable with out-of-state claims?
- ❑ Do we need cyber coverage?

8 Do we need a special consent form?

Unique issues



Case Example

- E-visit with shortness of breath and chest discomfort
- Technology difficulties during the visit
- Patient does not seek other care – spends hours trying to re-connect (thinks provider is too)

Consent form

- Description of telemedicine care
- Types of transmissions permitted (e.g. prescription refills, scheduling, education)
- Privacy and security risks and safeguards
- Technical failure risk and plans
- Risks, benefits, alternatives
- Patient agrees that physician determines if this care is appropriate for telemedicine
- Where to go for ongoing care

Risk strategies

- ❑ Do we have a consent plan?
- ❑ Can our vendor help?
- ❑ Are we managing expectations about care?

Closing thoughts

Critical success factors

Don’t force it

Critical success factors

- Leadership engagement
- Program champions
- Internal marketing
- External marketing
- Implementation team
- Learn from mistakes

Monitor success

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Telemedicine ERM Risk Checklist

Operational
- ☐ Credentialing of caregivers- Hub is responsible for credentialing specialist.
- ☐ Standard of Care- Check with legal if there are state code
- ☐ Documentation – Work out how this will be done

Clinical/Patient Safety
- ☐ Dedicated space for patient confidentiality on both Hub and Spoke end.
- ☐ Informed Consent- before you provide services. Include names of providers on both ends, privacy measures, opportunity to refuse TH care, permission to bill, technology used and risk/benefits with the technology and alternative care if technology fails.
- ☐ Develop guidelines for sharing feedback between originating and distant site (complaints/grievances, adverse events and other care or technical issues review.)

Strategic Initiative
- ☐ To improve access
- ☐ Keep patients in community, if possible
- ☐ Keep revenue in community

Financial Considerations
- ☐ Investment in equipment and "linkages"
- ☐ Do you have enough staff for the added patient load?
- ☐ Explore billing strategies for this new technology
- ☐ Risk Financing and Insurance Considerations- telehealth covered? Have you notified your carrier?

Human Capital
- ☐ Assess adequacy of staff for this program.
- ☐ Role specific, training and competency in providing telehealth care.
- ☐ Address chain of command and what to do if the local and distant MD/providers are at conflict.
- ☐ Develop downtime procedures and training.
- ☐ Downtime training and troubleshooting training.
- ☐ Role Specific Job Description

Legal & Regulatory
- ☐ (RM's check with legal counsel to see if any of following apply to your situation.

HIPAA & HITECH-
- ☐ Incorporate telehealth into the Notice of Privacy Practice?
- ☐ Add TH equipment to Security Management & annual Security Risk Assessment
- ☐ Training of staff of TH specific privacy.
- ☐ Do any of the parties need a BAA?

CMS-
- ☐ 42 CFR §485.616c & 42 CFR §482.22a – for hospital and critical access hospital's CoP regs.
- ☐ Established credentialing process as outlined in CMS regs above.
- ☐ Written agreement in place with all specifics (need legal involvement)
- ☐ Agreement with outside organization for quality review of telehealth services.
- ☐ Check Medicare Fee schedule for reimbursable services.
- ☐ Check the requirements for reimbursement, outlined in Chapter 12 of the Medicare Claims Processing Manual section 190.24

State Specific Regulations
- ☐ Check your state for telehealth legislation, especially in insurance and reimbursement.
- ☐ Pull the 2013 FSMB Policy on Telemedicine
- ☐ Is your state part of the FSMB- Federation of State Medical Boards and part of the Interstate Licensure Compact?

Technology

Equipment and Maintenance
- ☐ Purchase or lease, make sure E&M addressed in your contract.
- ☐ Do you have equipment that has high quality audio, visual capabilities and up-to-date operating systems that is secure from malware.

Roles & Responsibilities of the IT Dept (both ends)
- ☐ IT leadership at both the originating and distant locations involved and part of the decision-making process.
- ☐ Appropriate security, capacity and reliability of data transmission.
- ☐ Equipment evaluated for interoperability of systems, ability to provide verification of receipt of data and results.
- ☐ Technical support availability.

Hazard/Disaster/Mass Casualty
- ☐ Consider using telehealth in the future.
- ☐ Need to establish MOU-Memorandum of Understanding to use telehealth for this situation.

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and Patient Safety

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Best Resources

- American Telemedicine Association (ATA), www.americantelemed.org
- Federation of State Medical Boards (FSMB), www.fsmb.org
- Center for Connected Health Policy, www.cchpca.org
- Telehealth Resource Center, www.telehealthresourcecenter.org
- ASHRM Telemedicine White Paper, www.ashrm.org/pubs/files/TELEMEDICINE-WHITE-PAPER.pdf
- Interstate Compacts: www.licenseportability.org, www.ncsbn.org/nurse-licensure-compact.htm
- Facility Guidelines: www.fgiguidelines.org