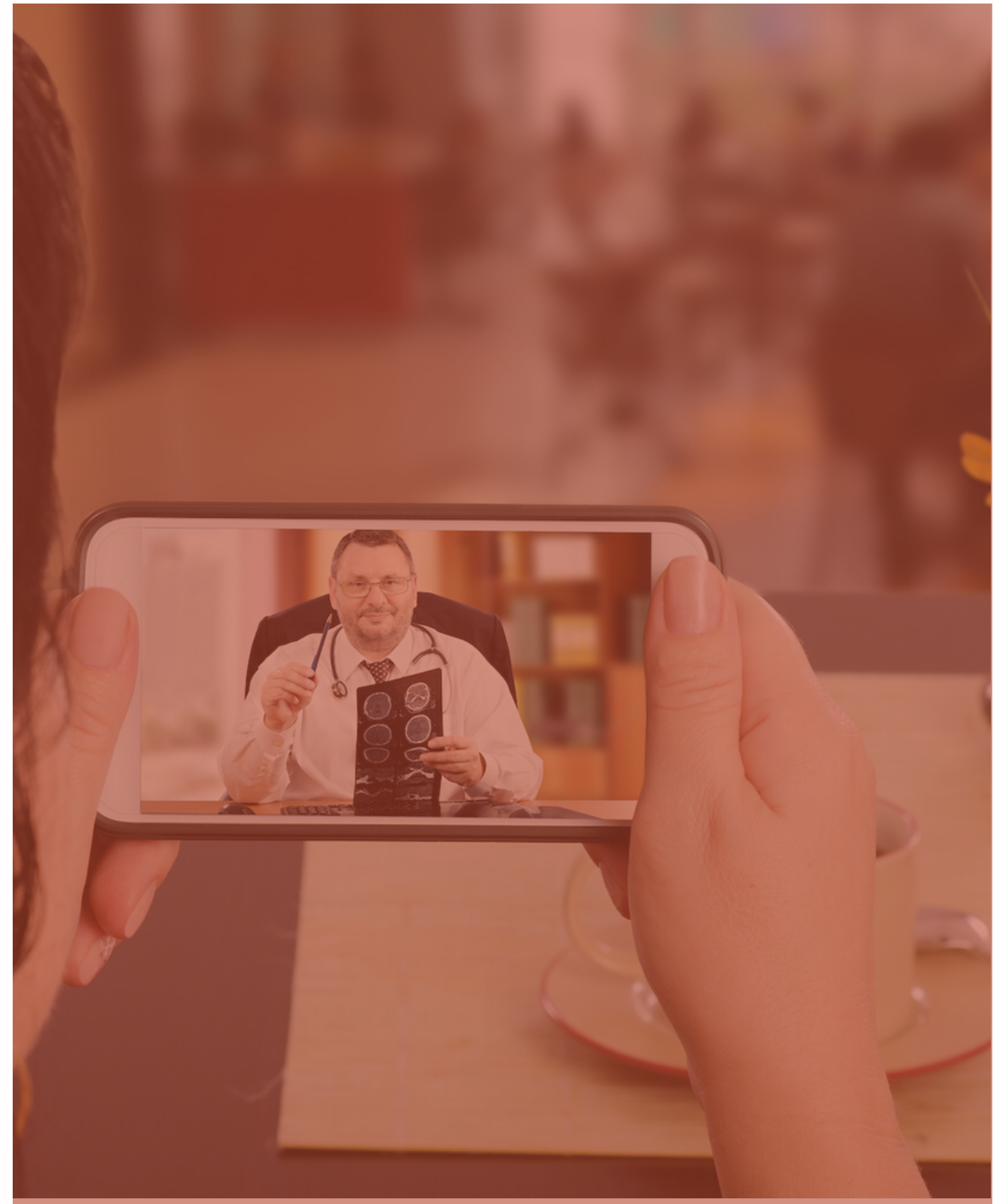


HIPAA, CORONAVIRUS AND TELEMEDICINE

PRESENTED BY
ANJALI B. DOOLEY, JD, MBA
AS OF MARCH 27, 2020





ANJALI DOOLEY, JD, MBA

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- Extensive experience in emerging healthcare technologies, telemedicine, rural healthcare and business law
- Former special prosecutor and public defender for the State of Missouri
- Vice-Chair of the American Bar Association Health Law Section for eHealth, Privacy, and Security Interest Group (2016-2019); Vice-Chair of Membership (2020)
- Adjunct professor and Coleman Fellow at St. Louis University's MBA Program in Entrepreneurship

STANDARD OF CARE: TELEMEDICINE VISITS

In legal terms, the level at which the average, prudent provider in a given community would practice.

It is how similarly qualified practitioners would have managed the patient's care under the same or similar circumstances.

The medical malpractice plaintiff must establish the appropriate standard of care and demonstrate that the standard of care has been breached.

STANDARD OF CARE: TELEMEDICINE VISITS

- Specialty-driven
- Local-based for malpractice claims
- Same as if in-person visit
- Have the coding ready
- Practical point:
Define the types of patients you will see via telemedicine

DEFINITION

The activities that an individual health care practitioner is permitted to perform within a specific profession. Those activities should be based on appropriate education, training and experience. He or she is authorized to perform by virtue of professional license, registration or certification. Health care professionals' scopes of practice sometimes overlap, reflecting shared competencies.

PAs AND NPs

Still need collaboration or supervision agreements.

SPECIALTY-DRIVEN AT TIMES

DO NOT PRACTICE OUTSIDE OF YOUR SCOPE

Scope of Practice for Telemedicine Visits

TYPES OF TELEMEDICINE COMMUNICATIONS

TEXT

Asynchronous: store-and-forward transmission of images and/or data that occurs over a period of separate time frames.

Synchronous: real-time (text can be real-time).

TELEPHONE

Real-time telephonic conversation.

VIDEO

A recording of moving pictures/video. DO NOT HIT THE RECORD BUTTON - it's a goldmine for personal injury attorneys.

PHYSICIANS CAN USE THESE APPS TO COMMUNICATE WITH PATIENTS

Temporarily, during the national COVID-19 emergency

- Microsoft Skype
- Apple FaceTime
- What's App
- Facebook Messenger (not posts)
- Zoom (healthcare plan)

PROVIDERS CANNOT USE

TIKTOK, SNAPCHAT

Not secure and the information location is tracked.

TWITCH, FACEBOOK

Information cannot be viewable by public audiences.

NOT COVERED ENTITIES



BUSINESS ASSOCIATE AGREEMENT (BAA)

An agreement between covered entities and their vendors to safeguard personal, protected health information (PHI).

GET VERBAL CONSENT AND DOCUMENT

Ask patient for consent to be treated by telemedicine and that you are authorized to share information, if you can.

LEGALLY APPROVED FOR USE WITH SIGNED BUSINESS ASSOCIATE AGREEMENT (BAA)

Not HIPAA-compliant, but allowable temporarily during the national COVID-19 emergency

ZOOM
for
Healthcare

Google
G-Suite

Vsee

Doxy.me

Updox

- **CDC AND OTHER STATE AND LOCAL GOVERNMENT AGENCIES**

- **OTHER PERSONS AT RISK**

Anyone at risk of contracting novel
Coronavirus

- **DOES NOT NECESSARILY MEAN LAW ENFORCEMENT**

Unless imminent threat to public and/or public safety. May disclose to law enforcement if imminent threat to society.

- **FAMILY AND FRIENDS**



BEST PRACTICE

Keep to minimum necessary disclosures.

With whom can you share information during
the current HIPAA privacy waivers?

IMPORTANT REMINDER

Providers, covered entities
and other organizations are
still supposed to take
reasonable measures for
HIPAA security and privacy.



PRACTICAL GUIDANCE

- Download real-time text communication and input into EHR.
- Check your EHR: may already have a HIPAA-compliant vendor for communication.
- Document! Document!
- Notify your malpractice carrier if you plan to conduct telemedicine visits.

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