



LEGAL ISSUES

By Janet Feldkamp, RN, BSN, LNHA, CHC, JD, and Christine Pokryfky, RN, BSN, CCM, JD

The Explosive Growth of Telehealth Throughout the COVID-19 Pandemic and Beyond

Telehealth use in the United States has increased by over 6,000% since the onset of the COVID-19 pandemic.

Medicare telehealth visits alone have increased by 63-fold, from 840,000 in 2019, to 52.7 million in 2020 alone, as

discussed by a Department of Health and Human Services (DHHS) report issued in December 2021 (<https://bit.ly/3N2t6dJ>).

Of the multiple health care waivers implemented throughout the public health emergency (PHE) both federally and in individual states, many believe that telehealth's rapid expansion has been beneficial to many Americans. Telehealth has been particularly useful within the nursing home space, helping to protect some of the most vulnerable, immunocompromised older patients and decreasing expenditures for ancillary services like transportation. In addition, the use of virtual visits in long-term care facilities has simplified specialty consults and can decrease unnecessary hospitalizations for residents while also reducing burdens on residents, family members, and staff. Timely diagnoses and treatment by specialty physicians and other providers for nursing home residents can enhance the overall quality of care and life for residents.

Telehealth provides a cost-effective option for residents who are limited by immobility, illness, or injury, or those who live extended distances from the needed medical care providers.

Telehealth Waivers

The telehealth waivers that surfaced at the start of the pandemic have provided residents with a more convenient and flexible modality of care. In March 2022, President Joseph R. Biden signed the Consolidated Appropriations Act (CAA) (available from <https://bit.ly/3xC47rZ>). This legislation extends Medicare telehealth waivers for an additional five months after the end of the PHE. The law prolongs waivers that eliminate facility and geographic restrictions for behavioral health services, and it permanently authorizes coverage of telehealth services from speech language pathologists, physical therapists, and occupational therapists. This permits telehealth to continue to be available for a myriad of services without limitations on where the service occurs.

Under the CAA, the Medicare Payment Advisory Commission (MedPAC) is required to conduct a study on the telehealth expansion for Medicare beneficiaries as a result of the ongoing public health emergency. MedPAC's study must analyze:

- The utilization of telehealth services under the Medicare program;
- Medicare program expenditures on telehealth services;
- Medicare payment policy for telehealth services and alternative approaches to this payment policy; and

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INTRODUCING

Dementia Care Specialist (DCS) Curriculum

What's included...

22 modules
8.5 contact hours available

Dementia Care Training Workshop
(6.5 contact hours, which include 1.5 hours of pharmacology credit).

15 total contact hours

With the support of The John A. Hartford Foundation and GAPNA, the UCLA Alzheimer's and Dementia Care program developed The Dementia Care Specialist (DCS) Curriculum. This program provides a basic knowledge base for Advanced Practice Nurses who are looking to advance their expertise in caring for patients with dementia. The curriculum includes two parts, The Fundamentals of Dementia Care Management is 22 modules Units A through F and the Dementia Care Specialist Clinical Skills Training Workshop.

The overall goal of this course is to provide Advanced Practice Nurses with knowledge necessary to provide high quality dementia care management.

The Fundamentals of Dementia Care Management

The 22 modules in this curriculum are divided into 6-units and offers 8.5 Nursing Continuing Professional Development Contact Hours:

- Unit A - Introduction to Dementia Care Management
- Unit B - Integration into Health System and Community
- Unit C - Essential Skills for DCSs
- Unit D - Initial Assessment and Care Planning
- Unit E - Ongoing Co-Management
- Unit F - Caregiver Training and Support

Dementia Care Specialists Clinical Skills Training

This workshop covers the topics listed below and offers 6.5 Nursing Continuing Professional Development Contact Hours which includes 1.5 hrs. of pharmacology credit:

- Background and Models of Dementia Care
- Advanced Practice Nurses as Gerontological Specialists and Dementia Care Specialists
- Management of Neuropsychiatric Symptoms
- Caregivers as part of the team
- Advanced Care Planning

To access the course visit gapna.org/dcs



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This educational activity is jointly provided by Anthony J. Jannetti, Inc. (AJJ) and the Gerontological Advanced Practice Nurses Association (GAPNA).

Anthony J. Jannetti, Inc. is accredited as a provider of nursing continuing professional development by the American Nurses Credentialing Center's Commission on Accreditation.

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OUR FOUNDATION

By James E. Lett, II, MD, CMDR, and David Smith, MD, CMD

Durable Medical Equipment, Pharmaceutical, and Practitioner Connections: A Formula for Better Delivery of Care

An important way the Foundation for Post-Acute and Long-Term Care (PALTC) Medicine advances its mission is by embracing and nurturing collaborative partnerships between practitioners and industry partners, both striving for better care for the patients and families we serve. We commend our Industry Advisory Board (IAB) members and highlight here how their support of your Foundation efforts fund many of our key initiatives.

We believe that PALTC medicine is a unique specialty — we practice in settings unlike any others and in a medically complex older population. Clinical practice in PALTC is not taught in medical schools nor in clinical rotations. It is learned instead through extensive experience, informed by AMDA — The Society for Post-Acute and Long-Term Care Medicine training. Recognizing this, the Foundation partners with IAB members to provide insights into PALTC medication and clinical practice issues to discern what information matters to PALTC clinicians regarding medication options. Why is this important? Over the years we have observed pharmaceutical companies offer beneficial products that did not reach their potential or even failed due to misunderstandings of patient needs or the clinicians involved or inability to reach those clinicians with

the crucial information that matters in PALTC care.

The Foundation has demystified PALTC to IAB members through presentations at face-to-face meetings both during the Society's Annual Conference and throughout the year. We provide specific contacts with practicing Society members and its knowledgeable staff so information is only a phone call away.

Don Pouliot, regional account director of PALTC with Sunovion Pharmaceuticals, shared, "Over the last five years, the Industry Advisory Board for AMDA has allowed us to gather experts in multiple disciplines to better understand how we can serve patients/residents all along the growing geriatric care continuum. As senior care has evolved, we have been able to evolve along with it. The IAB team has consistently delivered value to Sunovion in building national and local relationships."

Susan Manganello, the lead for public affairs and patient advocacy with Sanofi's U.S. Vaccines unit, offered, "Sanofi has been a member of the IAB since its inception. Important discussions around management of conditions with a specific lens to the frail elderly in post-acute and senior care have taken place in these meetings. These conversations have been valuable as we all work together to take care of the aging population."

The Foundation currently funds initiatives in education and training, workforce development, clinical resources, and research efforts. We are promoting a better understanding of the uniqueness of the PALTC setting.

Perhaps the crucial issue of our time is the growing shortage of experienced, trained staff across all PALTC settings. The availability of physicians, nurse practitioners, physician assistants, pharmacists, therapists, and other disciplines has reached a crisis point. The Foundation is addressing this need with funds developed from the support of IAB members and our membership.

To date the Foundation has invested over \$1mm in the Futures Program and has worked with more than 1,300 clinicians.

The crown jewel of the effort to increase the supply of clinicians is the Futures Program. This one-of-a-kind effort brings in remarkable individuals from medicine, nursing, therapy, and pharmacy training programs during the Society's Annual Conference. They have a specific day of training in PALTC,

meet with current practicing peers, and are matched with mentors with whom they interact for as long as they desire as they plan a career in PALTC. The attendees are then able to attend all the Annual Conference presentations. To date the Foundation has invested over \$1 million in this program and has worked with more than 1,300 clinicians over the twenty years of the Foundation's existence.

Additionally, with the help of IAB members and individual donors, your Foundation is driving research by practitioners in PALTC: this year we launched an initiative to award grant funds to investigators across the country. Currently the funding proposal committee led by Dr. Barbara Zarowitz and other Society leaders is reviewing more than 25 innovative research proposals to advance how we think about and deliver care to our patients.

Integral to our shared success is developing the relationship between durable medical equipment and pharmaceutical providers and clinicians or students in training at the beginning of their careers. These relationships establish mutual respect, professionalism, and goodwill, which will bear fruit throughout their careers.

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Telehealth

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- The implications of expanded Medicare coverage of telehealth services on beneficiary access to care and quality of care (Consolidated Appropriations Act, Pub. L. No. 117-103 [2022]).

The CAA also requires the DHHS Office of Inspector General (OIG) to issue a report by June 2023 regarding the program integrity and risks associated with Medicare telehealth services. The OIG's report must include recommendations to prevent fraud, waste, and abuse. The CAA also requires the Centers for Medicare & Medicaid Services to begin publishing data to its website on July 1 and quarterly thereafter related to telemedicine services.

This upcoming OIG report should provide information for the provider, regulatory, and legal communities to identify areas in the requirements where improvements are needed to prevent telehealth fraud or abuse.

Telehealth and Malpractice

As with all emerging and changing health care areas, filing of malpractice actions and other litigation is often delayed after the time of service. Before the pandemic, telehealth malpractice claims were limited because of the limited scope of services that were allowed, which meant few claims were being presented to payors, both governmental and private. We should expect an increase in telehealth litigation in the next few years.

Missed or misdiagnosis is a frequent type of medical malpractice claim, and it would be expected that the telehealth claims will be no different as litigation increases in the upcoming years. Variations in the types of missed or misdiagnoses often depend on the type of medical care being rendered. A *JAMA Internal Medicine* article (2013;173:418–425) cited the most common conditions with a missed or misdiagnosis for primary care were pneumonia, decompensated congestive heart failure, and acute renal failure.

The types and frequency of malpractice actions being filed and significance of the settlements and jury verdicts

related to telehealth visits will play out as more actions are filed and time passes as the litigation makes its way through the court systems. Insurance companies will be carefully watching when a significant wave of malpractice actions hit their radar.

The Future of Telehealth

In February 2022, the Telehealth Extension and Evaluation Act (Senate Bill 3593) was introduced in the U.S. Senate. This bipartisan legislation as drafted would extend Medicare coverage for telehealth services for two additional years after the PHE ends, allowing Congress to establish a study on the efficacy of telehealth and whether broad access should be permanent. Other bills or potential future legislation concerning telehealth will likely include safeguards to prevent misuse and to ensure that patients are receiving adequate and appropriate care based on their needs throughout the country.

Currently, all 50 states and the District of Columbia reimburse for live video services provided to beneficiaries enrolled in their Medicaid program (National

Conference of State Legislatures, State Telehealth Policies, April 2022, <https://bit.ly/3xwINEe>). The services, provider types, and locations eligible for reimbursement vary within state Medicaid programs. The states individually continue to refine their telehealth reimbursement policies as well as private payer laws on an ongoing basis. Many states plan to continue all or some of these expanded telehealth policies after the pandemic, especially insofar as they have impacted behavioral health visits.

At its peak throughout the pandemic, telehealth represented 40% of all mental health and substance abuse outpatient visits in the United States (Justin Lo et al., "Telehealth Has Played an Outsized Role Meeting Mental Health Needs During the COVID-19 Pandemic," Kaiser Family Foundation, March 15, 2022; <https://bit.ly/3tFMcPU>). Telehealth has changed the health care landscape, providing individuals with access to behavioral health services that would have otherwise required offsite transportation.

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According to the Census Bureau, currently 24% of the U.S. population is over 60 years old, and one in every five Americans will be 65 or older by 2030. Aging Americans often experience more complex diagnoses and multiple comorbidities. Telehealth provides aging individuals and family members a versatile way to take control of their own multidisciplinary care, resulting in a higher quality of life both in a

nursing facility setting or when residing at home.

Studies by [Telehealth.org](https://www.telehealth.org) in 2021 illustrated that the implementation of a telehealth program in nursing homes can address roughly 80% of all resident issues after hours and can decrease the rate of hospital readmissions by up to 70%. Telehealth throughout the pandemic has changed the health care landscape for the better and facilitates more positive outcomes for some of the most vulnerable patient populations.

According to *McKnight's Long Term-Care News*, occupancy in skilled nursing facilities (SNF) is growing (Danielle Brown, "SNF Occupancy Growing — and So Is Level of Patient Needs," June 6, 2022, <https://bit.ly/3tInChb>). SNF occupancy in March 2022 reached 77.2%, the highest level in almost two years. With occupancy slowly increasing, staffing shortages continuing, and some facilities struggling to have adequate physician and advanced practice provider coverage, telehealth can

help to fill the gaps and meet some of the needs for nursing home residents. Using reliable and reputable telehealth providers can allow nursing homes to supplement their on-site physician and advanced practice provider services to meet many of the medical and diagnostic needs of residents on an ongoing basis. 

Ms. Feldkamp is a partner at Benesch, Friedlander, Coplan & Aronoff LLP. She frequently assists post-acute and acute care providers with regulatory, survey and compliance issues. Her extensive health care experience includes licenses as a registered nurse and nursing home administrator with experience as a state regulator and provider. She is also a member of the Editorial Advisory Board for *Caring for the Ages*.

Ms. Pokryfky is a registered nurse, a former army officer, and a graduate of the Case Western Reserve University School of Law. She is currently a law clerk in the Healthcare+ Practice Group at Benesch Friedlander Coplan & Aronoff in the Cleveland Office.



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Supplements

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Toxicity. Toxicity is a risk for some fat-soluble vitamins, which accumulate in the body. For instance, excessive amounts of vitamin A can lead to liver damage, and high daily doses of vitamin D can cause hypercalcemia. Symptoms of toxicity include nausea, vomiting, weakness, headaches, and skin changes.

Herbal supplements. While some herbal products may be harmless and have minor positive benefits, such as promoting relaxation (e.g., herbal tea), many herbal supplements have little to no clinical benefit, and some are even harmful. St. John's wort, for example, can interact with medications. Due to this risk for harm, herbal supplements should be discouraged.

Individual Needs

Ultimately, nutritional supplements should be determined on an individual basis after considering whether nutrient needs are being met, the dietary intake is adequate, and the person is receiving any oral nutritional supplements that may already contain vitamins, minerals, and other nutritional components such as antioxidants. Collaboration with the community's registered dietitian for nutritional supplement recommendations is advised. 

Ms. Famularo is senior manager nutrition services with Sodexo Seniors and is on the *Caring for the Ages* Editorial Advisory Board.