



## TELEMEDICINE TODAY AND THE SIU RESPONSE

By Jeffrey G. Rapattoni, Esquire & Panel



### INTRODUCTION

COVID-19 required health systems to implement telemedicine services in an exponential way. Telemedicine quickly became a mainstream medical service in 2020, with new legislation and regulatory requirements enacted on a rolling basis at all levels. There are numerous jurisdictional considerations to be had for certain, leaving us all with the question of whether is this really the future of healthcare.

With all the emphasis on the evolution of the SIU these days, I sat down and asked a panel of experts their thoughts on how telemedicine is reshaping the SIU.

### 1. Is telemedicine a “fad” and/or purely a “Covid response,” or is this here to stay?

“I think it is fair to say that telemedicine will mimic today’s consumer needs. Consumers as a whole want fast and easy services. With an increasingly transient population, the idea of consulting with a doctor by phone or a video call, completing paperwork on-line in advance of an appointment or even ordering prescription refills through a smart phone app become part of managing one’s health in an easier and effective manner. Covid may have accelerated usage, but consumer trends show telemedicine is here to stay.”



- Steven Friedman, Liberty Mutual

“Telemedicine is here to stay. It offers convenience to all patients, including those that are immobilized and those that have a common illness such as a cough, cold or other common symptoms. The drawback of telemedicine is the inability to properly diagnosis all non-common form of illnesses that require lab or other diagnostic testing to diagnose the illness. Telemedicine is not the remedy for every patient.”



- David Borum, Swiss Re

“Telemedicine quickly became a mainstream medical service in 2020, with new legislation and regulatory requirements enacted on a rolling basis at all levels.”

“Telemedicine has been around for a while and is predominately used in the healthcare and workers compensation areas. Due to the pandemic and shelter in place state orders, there has been an increase in medical providers using telemedicine to provide medical treatment to injured car accident victims. Recognizing the ease and convenience, I think telemedicine is here to stay, providing auto accident patients with access to medical treatment through video technology. Medical providers have grown increasingly comfortable with providing telemedicine treatment to patients and are more likely to continue after the pandemic subsides. Everyone has devices with internet/video conference capability, allowing for doctors to chat with patient’s real time. Telemedicine is customer experience oriented, meaning it’s easy for someone who is juggling work and life responsibilities to fit in a video call with their doctor.”



- Jack Couperus, MetLife

## 2. What are the most challenging aspects of telemedicine from a Claims and SIU perspective?

“Identification is first and foremost. Instead of investigating a local claim and or fraud scheme, you are now looking at services that can be rendered from any state or even country. The rule of thumb used to be the doctor providing care had to be licensed in the state where the treatment occurs. With Covid, individual states have established their own rules as to what constitutes proper care. This can prove challenging in terms of setting depositions, serving subpoenas, and in some cases, identifying corporate practice of medicine concerns. We also are challenged with fully understanding what services are being rendered. Take for example physical therapy. Is the patient receiving one on one care or are they part of a group of patients in a video conference? If they are part of a group, how should that be billed and is the care based on patient need or driven by profit? Throw in the amount of coding changes (new codes are being added regularly), the increase in DME products being sold, diagnostic demands (MRIs etc.), identifying specialties that don’t lend themselves to online care (Ophthalmology, Cardiology etc.) and the increase in compound meds and prescriptions being prescribed – carriers have their hands full.”



- Steven Friedman, Liberty Mutual

“The most common challenge of telemedicine for any insurance company is the accuracy of the billing components on the HCFA Form, more specifically the CPT and ICD9/10 codes and modifiers. There are specific CPT codes and specialized modifiers that must be used when a medical professional bills for a telemedicine visit. In addition to the billing component, you have the traditional billing schemes that are always present in the claims environment: billing for services not rendered, upcoding, phantom billing, unbundling, billing under a physician’s CPT code and a Nurse Practitioner, Physician Assistant or even a Registered Nurse performing the telemedicine service which should be billed at a lower reimbursement rate compared to what was billed.”



- David Borum, Swiss Re



“The most challenging aspect from a claims perspective is reviewing medical records with minimal documentation regarding the patient’s physical exam. As medical providers are not physically examining patients, they are unable to provide an “objective observation” or measure objective findings of range of motion, strength etc. Without objective observations, medical records only record the patient’s own subjective complaints which can be vastly different from a physician’s review. As a result, it is difficult to then determine when treatment should be concluding or even medically necessary/related to the car accident. This also makes it difficult to address when an Independent Medical Examination or Independent Medical Review is appropriate. Another challenge is medical providers billing in-person treatment codes when the medical records or patient advised it was provided via telemedicine. What do you reimburse the medical provider based on? From a SIU perspective the challenges are to identify who the actual provider of the service is, and if he or she is a licensed professional, then whether he or she is the “true owner” of the medical practice providing the service. With telemedicine, the treating service provider can be located anywhere, providing the medical treatment remotely to an injured party. Is the telemedicine provider properly owned or overseen by a licensed medical professional? Is the telemedicine provider in compliance with state regulations where its patients are located? It’s much easier to get away with a “Doc in A Box” scenario or absentee medical director and independent medical providers of service when there is no physical building location. During a routine medical clinic investigation, SIU would conduct a clinic inspection and meet with the owner medical doctor/ layperson or medical director who oversees the facility at the location. The clinic inspection would also identify who the providers of service are at the location and confirm they are employees of the medical provider. It’s more challenging to investigate and identify who really controls a telemedicine provider and the relationships with the service providers submitting billing.”



- Jack Couperus, MetLife

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### 3. How does SIU evolve to better investigate telemedicine?

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“I believe it starts with education. Many of the schemes coming to light are variations or even the evolution of schemes that have been investigated by SIUs for decades. Utilizing audits to identify statistical outliers in coding, understanding the CPT codes and what appropriate usage looks like (specifically appendix P and 95 modifiers), exploring AI solutions as well as utilizing state licensing and corporate practice of medicine laws are all part of a good fraud fighting strategy. The challenge lies in that this is not solely an SIU issue, but a companywide challenge. Groups like analytics, claims, bill review companies and legal should be working in conjunction with SIU to incorporate a comprehensive strategy that addresses both investigation and deterrence.”



- Steven Friedman, Liberty Mutual

“Education and training! The approach all SIUs must take is educating staff on the traditional billing schemes, as well as understanding the CPT billing component.”



- David Borum, Swiss Re

“SIUs should look at telemedicine in the same light as they do medical provider investigations and injury investigations today but with greater scrutiny. Investigators need to be able to review medical terminology on exam reports or modifier codes on billing to identify if it’s consistent with telemedicine or hands-on injury diagnosis by the medical professional. SIU investigators need training on telemedicine regulations for the states they handle. They need to be technologically savvy to identify devices being used by the patients and medical providers and incorporate questions during patient interviews regarding those devices. SIU investigators should look for methods to verify the telemedicine is being provided through the devices as a source to determine if the treatment is being provided as billed/coded. Is there video of the treatment being provided and if so, where it is stored?”



- Jack Couperus, MetLife



#### 4. What advice can you offer a carrier who is seeing an uptick in telemedicine claims?

“Taking a look at your company’s current First Notice of Loss (FNOL) practices is something to explore. Strong FNOL questions would assist all claims handling, not just SIU. A simple upfront question concerning what type of care are you receiving – face to face or in person – would help with identification. Tracking IP addresses is another way to get a better understanding of your insureds and or customers. A proper review of SOAP notes and HICFA forms in conjunction with medical questions surrounding care are some foundational approaches that carriers can consider implementing.”



- Steven Friedman, Liberty Mutual

“A company who is seeing an uptick of telemedicine claims should be vigilant of potential organized crime. We have to remember that organized crime syndicates are constantly looking for new ways to circumvent the insurance claims marketplace. We have recently seen a number of federal cases prosecuted by Health and Human Services, Inspector General’s Office, for federal healthcare fraud in regard to telemedicine. The most common method of investigation is to contact the recipient of the services and ask them what services were done on that particular date of service, and then compare with what was billed.”



- David Borum, Swiss Re

“Seek input from your injury claim teams regarding what they are experiencing and work with them collaboratively to identify any trends with telemedicine. The injury claim adjusters are the front line with insight of the trends/patterns many times before the data reflects it. For example, adjusters have noted patients who are receiving telemedicine treatment, but the medical provider is billing for in-person treatment. We have found that working on a new trend with the injury claim teams involvement truly builds a ground up strategy. They also have data that SIU investigators may not be aware of and how it can be utilized to assist in investigations of telemedicine claims.”



- Jack Couperus, MetLife

## CONCLUSION

Collaboration with our claim partners, our IT specialists and our senior leadership to be better prepared for dealing with telemedicine claims is paramount.

“Telemedicine is here to stay.”

It seems clear that telemedicine is likely here for good if for no other reason than its convenient. Of all the great comments made herein, I think the common element that unites them all is that of collaboration and training. Collaboration with our claim partners, our IT specialists and our senior leadership to be better prepared for dealing with telemedicine claims is paramount. Likewise, as this is a moving target, robust training in the months to come will enhance new investigatory processes as we hopefully return to the office. As such, in closing, I invite you all to continue the conversation moving forward, with your staff, your industry friends and leaders. After all, preparing for the future is never a topic that closes.

*Jeffrey G. Rapattoni joined Marshall Dennehey in 2008 and serves as the chair of the firm’s PIP Litigation Practice Group, co-chair of the firm’s Fraud/Special Investigation Practice Group and is a member of the Board of Directors. He focuses his practice on insurance fraud, bad faith and SIU related matters working with carriers both in the US and internationally.*

*Jeffrey litigates insurance fraud and fraud-related matters throughout the state of New Jersey and many other jurisdictions. He acts as national coordinating counsel to several insurance companies and helps clients develop strategies for defending complex litigation related to medical provider fraud, PIP and other emerging insurance issues. In addition, Jeffrey frequently consults with insurance carriers across the country to help integrate internal analytical platforms, create risk management protocol and conduct fraud-related investigations.*