

Risk Alert

Risk Management Advisory Notes



Telehealth A Risk Management View

Jardine Lloyd Thompson Sdn Bhd

Background

In this new era of multimedia and information technology, telehealth is expected to be integrated into our lives, transforming the traditional healthcare system where health care services can now be provided to patients anywhere using information technology, without having to go to hospitals. In line with Malaysia's 2020 vision, the Ministry of Health Malaysia launched Malaysia's Telemedicine Blueprint in 1997 to meet the challenges of a changing pattern of disease from infectious diseases to lifestyle diseases, rural-urban migration, inequitable distribution of resources and rising healthcare costs.

The World Health Organization (WHO) defines telemedicine as "the delivery of health care services, where distance is a critical factor, by all healthcare professionals using information and communication technologies for the exchange of valid information for diagnosis, treatment and prevention of disease and injuries, research and evaluation, and for the continuing education of healthcare providers, all in the interest of advancing the health of individuals and their communities." Telehealth services are defined more broadly to include any type of health related services, medications or other information that is transmitted electronically. Patient consultations via video conferencing, transmission of still images, e-health including patient portals, remote monitoring of vital signs and blood glucose levels, continuing medical education, consumer-focused wireless applications and nursing call centres are all considered part of telemedicine and telehealth.

Challenges

Telemedicine is not without its risks. The following highlight some of the key challenges.

Security

Effective safeguards must be in place to ensure data security when transmitting and storing health data electronically. Electronic files, such as images or audio/video recordings, must be stored with the same precaution and care as paper documents. Telemedicine networks require technical

GROWTH AND SUCCESS OF THE INDUSTRY

Telehealth is expected to expand exponentially in the next few years with the largest growth expected to be in the Asia Pacific. Healthcare systems are facing increasing pressures and challenges to maintain sustainability and are looking to incorporate e-health into their strategic plans. The growth in telemedicine will be driven by a shortage of physicians in rural and remote areas, increased prevalence of chronic diseases, growing elderly population and increased availability of technology. In Malaysia, the growth of telemedicine platforms looks promising. Among them include Bookdoc, RingMD and U2Doc.

RISK MANAGEMENT TIPS

- Implement procedures that address administrative aspects of telehealth such as human resources, privacy and security, regulatory requirements, competencies, and confidentiality.
- Incorporate telehealth into the organization's quality and performance improvement program to monitor patient safety.
- Conduct a gap analysis to ensure compliance with relevant local, regional, and foreign (if applicable) regulations.
- Assess and manage commercial and legal risks. Risks may be addressed contractually both respect of the delivery of the technology and the "enabled" associated clinical services.
- Establish a process for ensuring patients and health professionals are aware of their rights and responsibilities

teams to run the systems, independent of medical staff. This presents privacy and security challenges by increasing the number of people with potential access to patient records. Establishing encrypted wireless networks and conducting data audits can help prevent security and data breaches. However, challenges exist when providers use unencrypted and unsecured personal devices.

Privacy and Confidentiality

Patients expect their privacy to be respected. Medical privacy and confidentiality issues extend to telehealth as well. Telemedicine clinicians have the same responsibility to protect patients' medical records and keep information regarding their treatments confidential. Privacy also extends to the remote location where the patient is receiving the service. However, the clinician providing the consultation may have limited control of this environment and thus potentially compromising the patient's confidentiality.

Technology

Effective telemedicine encounters rely upon the quality and security of telecommunication systems. Technology failures may result in incorrect information being transmitted between the patient and the provider. Vendor contracts often exclude responsibility for such circumstances. Unreliable connectivity, computer viruses, unauthorized network access, and limited bandwidth continue to present challenges as well as technology and equipment owned directly by the user that does not conform to regulatory standards. Moreover, if a cloud based solution is adopted, the commercial and contractual models for cloud computing typically transfer risks back to customers – risks that they may previously sought to outsource.

Regulatory

Telehealth services are expected to operate in a manner that is in accordance to each country's specific legislative and regulatory requirements. Inconsistent policies and procedures related to the management, collection and transfer of protected health information (PHI) could result in the transfer of personal information over publicly accessible networks and the information may be accessible by unauthorized entities. Systems and services that involve the storing or processing of personal data can raise a number of practical issues where customers' and suppliers' may not have the ability to comply with their own obligations under applicable data protection laws.

Licensure and Registration

Healthcare providers are likely to have an obligation to ensure that they are registered to practice or carry out regulated activity within a particular jurisdiction. The activities are also subjected to the laws and rules of that country in which they practice. Cross-border medical practice in certain countries may require doctor's completion of formal registration requirements in the countries in which the doctor intends to treat/advise patients. In contrast, telehealth services that crosses legislative boundaries may be almost free of regulation. Providers of telehealth services could escape regulation particularly when providing telecare services via the internet and or in countries that may lack healthcare regulations. This leaves the patient at potential risk for receiving care by an individual who may lack a medical qualification. Relying solely on written agreements from the originating facility may not be adequate in situations alleging negligent care. Moreover, bringing claims in foreign jurisdictions will be subjected to the requirements of local law and may be subjected to additional complexity.

Informed Consent

Patients ought to be made aware of the potential benefits and risks associated with telemedicine prior to participating in telemedicine services. It would be best for them to be advised of the inherent technical and operational issues that may impede effective communication or prevent prompt accurate diagnosis of patient conditions. Organizations often use existing consent tools and documentation processes which may not be comprehensive to afford the patient the choice to accept or decline telemedicine care.

regarding accessing and providing health care via telehealth technologies.

- Integrate telehealth into existing consent for treatment procedures.
- Ensure providers have necessary education and credentials to provide safe quality health services.
- Have a mechanism to ensure provider and patient identity to maintaining privacy and confidentiality.
- Conduct a security risk assessment to ensure devices and equipment, used for communicating and transmitting health information, meet appropriate security standards.
- Ensure safety and effectiveness of devices through ongoing maintenance of equipment.
- Evaluate insurance policies for adequacy of coverage for telemedicine exposures such as errors and omissions of a telemedicine practice, negligent credentialing, privacy breaches and disruption of telemedicine services due to equipment failures.

Physician – Patient Relationship

Generally, a physician does not owe a duty to a patient unless a physician-patient relationship has been established. In traditional medical encounters, the creation and termination of the patient-physician relationship is usually clearly defined and is based on simple contract or duty of care principles. The existence of the relationship becomes a question in common telemedicine encounters in which the physician and patient never meet each other or have a conversation and the remote provider is merely interpreting a diagnostic study. Assuming a physician-patient relationship is established, what standard of care will the provider be held in the event of a negligent act?

Further sources of information:

- TELEMEDICINE IN MALAYSIA – COMING OF AGE
<https://new.medicine.com.my/2016/05/telemedicine-in-malaysia-coming-of-age/>
- Malaysia Tele Medicine Blueprint
<http://www.moh.gov.my/images/gallery/Telemedicine/TelemedicineBlueprint.pdf>
- TELEHEALTH MALAYSIA WEBSITE
<http://telekesihatan.moh.gov.my/>
- CYBERTHREATS - MYTHS OR REALITY?
http://www.cybersecurity.my/data/content_files/13/69.pdf

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