

April 2017 Telehealth Alliance of Oklahoma (TAO) Meeting Minutes

4/4/2017

Attendance: *Reji Varghese, Pam Forducey, Dawn Watson, Josh Braziel (remote), Sandra Harrison, Cassiday Heit, Brent Wilborn, Marcy White (remote), Ariel Lufkin, MD (remote), Angela Surratt (remote), Derek Dobbins, Lane Hooton, Martha Gragg (remote), and Lyle Kelsey.*

Welcome/Opening Remarks: The meeting was called to order at 10:01 a.m. by Mr. Reji Varghese. Introductions were made of all in attendance, and a quorum was present.

Educational presentation by Christa M. Natoli, Deputy Executive Director, and The Robert J. Waters Center for Telehealth and e-Health Law: Ms. Natoli gave a very informative presentation on what CTeL does, current policy and legislation overview both state and federal, and current reimbursement issues as related to the government CBO. (Please see attachment for details)

Meeting minutes: The meeting minutes from March were presented by Scott Bumgarner. A misspelling of the word February was noted by Mr. Varghese. After further review, a motion to approve was made by Ms. Pam Forducey, and seconded by Mr. Lane Hooton. The motion to approve was passed.

Treasurer's report: Ms. Sandra Harrison presented the treasurer's reports for March. There was discussion regarding possible members. Mr. Bumgarner promised to check back with Mark 5 on their renewal. Mr. Brent Wilborn asked if there were any restrictions on who could join. The group generally agreed that there were not, but decided to have further discussion about that. A motion to approve the report was made by Mr. Bumgarner, seconded by Mr. Derek Dobbins, and the motion to approve was passed.

Legislative report: Ms. Harrison updated the group on the status of bills of interest to telemedicine. She mentioned HB 1216 which had minor application to TAO, HB 1377, which creates the Twenty-first Century Corporation Commission task force, to determine if the Oklahoma Corporation Commission is properly structured for the future. Ms. Harrison noted that consumers and industry members have not been historically invited to participate with the OCC. HB 1893,

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an ARRP sponsored bill relating to remote monitoring and reimbursement, will be is still under discussion, and hoped to be started off with a pilot study, new codes assigned, and then see how they work.

Discussion of SB 726: Ms. Harrison discussed the status of the bill. We went over the changes suggested, which deletes the word “asynchronous,” and adds “store and forward technology in three other places, which is felt will protect radiology and teledermatology. The bill is sponsored by Senator A.J. Griffin, and requested by the Teladoc Company, who is pushing to get telephonic only telemedicine services approved in Oklahoma. OHA had engaged the services of CTeL to help with this effort, and also has the support of the OSMA, OHA, and OOA. If Rep Mulready does not agree to the attached changes to SB 726 than we have informed him that we will oppose the passage of SB 726 in Committee. SB 726 is currently assigned to Rep Enn’s committee, House Health Services and Long Term Care.

Update of Telehealth Survey: Ms. Kellbach and Mr. Kusi were not able to attend the meeting, but had sent survey results electronically to members. There was a brief cursory discussion of the data, and desire to aggregate it further for study. Ms. Harrison also mentioned the upcoming ASTHO/CCHP webinar that Ms. Kellbach had informed us about, Friday, April 21st, from 12-1PM, dealing with establishing a telehealth program.

Miscellaneous items: Future Education components for TAO meetings. Mr. Varghese shared that he is talking with Care Innovations about home health and remote patient management, and asked the group if they would want them to do an educational presentation for TAO, and the group agreed. Ms. Watson also encouraged the group to share any ideas they have for other educational presentations so we can get them on the calendar. Governance committee: Mr. Varghese noted that 4 members of the board are due to end their current roles, and that Mr. Lane Hooton is the sole member of the governance committee. Mr. Hooton agreed to begin preparation for voting on new members in the existing roles.

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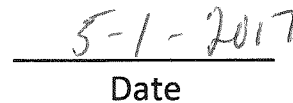
Meeting adjournment: The meeting was concluded at 11:20 a.m. and a motion to adjourn was made by Ms. Harrison; a second was made by Mr. Derek Dobbins, and the motion to adjourn was approved by the group.

Upcoming TAO meetings at Oklahoma State Medical Board offices from 10:00 to noon:

- May 9th, 2017* On site: 101 NE 51st St, Oklahoma City, OK 73105

Minutes signed by Scott Bumgarner, Secretary


Signature


Date

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Attachment A: presentation by Ms. Christa Natoli of C-Tel

Ms. Natoli's presentation began with objectives which included an introduction to what C-tel is, state telehealth policy overview, telehealth reimbursement overview, and Q&A.

C-tel (or the Robert J. Waters Center for Telehealth and e-Health Law) began in 1995, and was formed by attorney Robert J. Waters as a neutral, unbiased, non-profit 501c resource for information regarding the new field of telehealth. It later established a commercial, for-profit arm, cTel Innovation. Historically, from 1961 to 2006, early attempts at telehealth tried to duplicate tradition models of diagnosis and treatment, mostly via the military. In 2006, due to technology improvements and business models coming out of Silicon Valley, a new wave of innovation took place, forcing the technology and business models to be adapted by health care facilities and private companies, ushering in disruptive direct to consumer models. This in turn has given rise to a sub-specialty of health law, telehealth law.

Laws beginning in 2006 in all 50 states required a physical exam to establish the patient-provider relationship, and all 50 states prohibited a telephone exam counting as the initial exam which signaled the beginning of the p-p relationship. Today, how that physical exam is viewed is the "elephant in the room," and while states still require it, virtual care advocates and companies provide exams via text, audio, audio/video, etc. **How are the able to operate in states that require this?** By aggressive state lobbying by these vendors and their lawyers to change laws, or board policy, that would allow them to legally operate in that fashion. Ms. Natoli mentioned 3 red flags to look for in the language and intent of any proposed changes: 1) "by any electronic means necessary": this would allow the P-P relationship to be established by any electronic means, including text or phone. 2) "Asynchronous with store and forward": this means a phone call with a questionnaire would be allowed; and 3) "the on-call loophole": this means the patient can self-designate the on-call privileges of the physician to the vendor's chosen physician. The issue with this is that patients do not have the right to dictate physician privileges.

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Potential impact of these red flags: 1) increased liability, increased tort liability, potential opening for reimbursement of text, phone calls, etc., which results in increased costs by insurance companies. 2) “Asynchronous” really means a phone call with a questionnaire. We want to still protect teleradiology and telederm, and remove the word asynchronous completely, or redefine it to specifically not to apply to a phone call and a questionnaire. 3) Ms. Natoli felt that in Oklahoma since patients don’t have the right to designate physicians being on-call, that we were OK.

What happens if these come to pass? 1) A greater responsibility for the licensure board, more staffing needed and more cost. 2) Passing this can create a greater lack of uniformity or consistency in the way patient care is given, as well as the way vendors provide opportunities for. There is already a cooling off of telemed implementations by larger health systems and employers. 3) This would open the door for capitol hill to step in, if they see inconsistencies in patient care. They will come in and try and take control. 4) increase in tort liability.

What can be done to prevent this? 1) Get a 2nd opinion regarding proposed language (keep in mind to follow the money—why does this need to be changed?) 2) Educate yourself and your team, which we have done by engaging c-Tel. Telemed law is complicated and new. There are only 10 or so practicing attorneys specializing in telehealth. Be cautious of law firm surveys, as they are designed to represent the viewpoint of their clients. 3) CBO: provide data to the CBO that shows telehealth provides cost savings or at least is cost neutral. Data needs to be complete, not piecemeal, and cannot come from a vendor or trade association.

Reimbursement: In 2001, when telehealth legislation was on the hill, it was mis-scored by the CBO due to inaccurate and incomplete data, which resulted in only rural areas being designated to be paid. It has remained that way until recent years, and C-tel has helped form the Telehealth Reimbursement Coalition, which over the last 18-24 months has begun the process of studying how to gather appropriate data to present to the CBO by a deadline of October 2017. She offered 3 ways for anyone to participate, including the cores research team, the data collection team, and the expert advisory team. The goal is to present data which proves telehealth can provide health care cost savings, or at least be cost neutral, and to increase reimbursement. She encouraged all to participate where

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they can, but stating upfront that it's been agreed that the time will be donated, not charged for by anyone.