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The State Of Digital Health Care's Pandemic Transformation

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It was in July 2020, during the heat of one of the first major waves of the coronavirus pandemic in the U.S., that then-President and CEO of Philadelphia-based Jefferson Health, Stephen Klasko, warned[1] us all:

If you are a provider and think you're going to go back to your business model solely being based on hospital revenue and not relevant to people who want care at home, I think you will be out of business … I think we were always wondering what the big disruption would be that got us to join the consumer revolution, and I think this is it.

Looking back almost two years later, Klasko was right in more ways than one. A December 2021 report[2] from the U.S. Department of Health and Human Services found that Medicare visits conducted via telehealth increased from approximately 840,000 in 2019 to 52.7 million in 2020 — nearly 63 times as many, for those counting at home.

Klasko predicted that health care would have its revolution in response to the pandemic, but the innovation did not stop there. In 2022, we are seeing some of the country's largest tech companies venture into the health care world through digital tech, wearables, remote monitoring, care delivery apps and many more media.

Silicon Valley Bank's Healthcare Investments & Exits Annual Report[3] revealed that health tech investment in 2021 doubled from amounts invested in 2020 — with over $80 billion in venture capital invested in health care last year alone.

Digital Health and the Delivery of Care

During the early stages of the pandemic, with hospitals functioning at or above capacity and the risk of contracting a virus with impacts then-mostly unknown at the forefront of our nation's collective psyche, providers were forced to change the ways in which care had traditionally been delivered.

A GoodRx Research survey released in November 2021[4] indicated that fewer than 20% of survey respondents had used telehealth prior to the pandemic. Nearly 50% of survey respondents reported that they used telehealth for the first time during the pandemic, and nearly 90% of survey respondents indicated that they intend to continue using telehealth in the post-pandemic world.

Pre-pandemic, providers and patients alike were hesitant to dive into remote care as a replacement to in-person

visits in fear that the quality of care would not be equivalent to in-person visits, or that out-of-pocket costs would be more burdensome.

However, due to advancements in technology and increased investment in telehealth platforms, along with widespread adoption and extensions for payment of telehealth services by government and commercial payors, the majority of survey respondents found that quality of care through telehealth could, in fact, be on par with in-person visits.

With government payors and third-party payors on board and accepting telehealth sessions as covered visits, the out-of-pocket costs of telehealth are now on the same level as in-person visits.

Above all, one element of telehealth is most evident to demonstrate its long-term implications and staying power within the industry: convenience. GoodRx survey respondents overwhelmingly indicated that telehealth visits are more convenient than in-person visits and that the scheduling burden of a telehealth visit is drastically less significant than their in-person counterparts. Gone are the days of waking up an hour earlier to squeeze in a primary care appointment or taking paid time off to go to a consultation.

Digital health tools are constantly evolving and developing, and the ways patients and individuals in general receive health care and interact with health care in their daily lives will change even more dramatically because of advancements in health technology.

Over the next few years, we should see a continued expansion of not only telemedicine, but other nontraditional or less traditional modalities by which health care is delivered, including:

- Digital therapeutics delivering through software for certain conditions;
- Improvements to consumer wearables monitoring activity and various digital biomarkers of health;
- Connected biometric sensors tracking vitals to help patients self-monitor;
- Web-based interactive programs delivering digital care programs, physical therapy, cognitive behavioral therapy programs for insomnia and other therapeutic interventions; and
- Health system disease management and consumer mobile applications.

Advancements in Value-Based Care

With the ability to see your doctor from the comfort of your living room, there is a good chance you are more likely to interact with health care providers more often. More than 40% of GoodRx survey respondents indicated that they have communicated with health care providers more due to the widespread adoption of telehealth.

As the health care industry moves away from the fee-for-service model, where health care services and payments therefrom are reactive in nature, and into the value-based care model, where the financial incentive for both patients and providers is dependent on patient wellness and quality of care, the accessibility of health care is more important than ever.

The avalanche of telehealth and digital health solutions in the past two years alone has created a watershed moment for value-based care. Be it by dismantling barriers to preventative care, channeling care delivery to appropriate sites of care, enhancing medical record keeping and data analytics capabilities, improving supply

chain efficiencies, or otherwise, health care providers and tech companies alike are finding new and innovative ways to improve patient care and outcomes.

A report from McKinsey & Company most recently updated in July 2021[7] opines that improving access to care and convenience of care delivery will be essential in achieving the most-effective value-based delivery system.

For example, by offering e-triage solutions allowing for easy access to care providers in times of need, costly emergency department visits will decrease and health care facilities will be able to provide more effective care to those in-person patients needing physical attention.

In addition, virtual health visits have greatly improved access to specialty care providers that would not typically be available in rural health clinics. Distance used to be a deterrent to those in rural areas receiving the care they need, but the advancement of digital health has allowed for specialists to provide niche services like neonatal care, neurology, and cardiology from miles away.

In particular, one industry has experienced dramatic growth in connection with increased digital health adoption: mental health.

A McKinsey consumer report from February found that nearly 65% of respondents participated in telepsychology or telepsychiatry visits remotely. Unfortunately, the increase in mental health treatment might have correlated with the pandemic itself, with reports of U.S. adults experiencing symptoms of anxiety or depression increasing from 11% from January to June of 2019 to 42% in December of 2020[8] according to a study by the Centers for Disease Control and Prevention.

In accordance with increased demand, the mental health industry experienced massive growth in 2021, with Becker's Hospital Review reporting that global funding for mental health tech startups exceeded $5 billion in 2021, an increase of 139% from 2020.

Mental health and value-based care are still in the early stages of their relationship, as work is still being done to determine characteristics on which to measure provider performance and success of treatment. However, this is an area where we might see expansion in the near future.

The National Council for Mental Wellbeing's Care Transitions Network conducted research from September 2015-2019 over the effect of sustained mental health treatment and increased focus on care coordination and care continuity.

The early research findings from that study indicated that over 75% of participating practices achieved "sustained or benchmark improvement on targeted clinical measures such as reducing readmissions, improving follow-up post-discharge and metabolic monitoring for clients with co-morbid physical conditions" in connection with an increased emphasis on mental health treatment.

In addition, the program found that the practices generated over $200 million in cost savings due to the deduction in hospital utilization.

Challenges Left to Overcome

The expansion of digital health through the pandemic has been great for some people, but it has not been sunshine and rainbows for all.

A survey conducted by Optum and published on Fierce Healthcare[9] in March found that nearly a quarter of providers rendering telehealth services found telehealth tools to be frustrating.

Part of the issue is that providers and health systems adopted telehealth on the fly in reaction to the pandemic. Services were, and often still are, provided through technology platforms not fully compatible with the systems' central information technology, or IT, systems.

As health systems have moved to cloud computing environments and utilized an ever-increasing number of devices to provide services, challenges have arisen with data protection and system continuity.

While federal and state laws govern certain health information privacy and security protections, as well as interoperability between certain interfaces, regulation and its enforcement significantly lag innovation.

The Health Insurance Portability and Accountability Act, which governs certain health information from health providers and plans, and the California Consumer Privacy Act, which governs resident's consumer information, are leading the privacy charge, but fast-paced growth and the nimble web of entities fueling digital health risks consistent with certain privacy requirements are leading to obstacles in this expanding environment.

For example, when providers are conducting telehealth services through local devices, the number of devices needing to be connected to a health system's central repository of data increases.

More devices mean more opportunity for inadvertent or inappropriate access, greatly increasing the risk of malicious cyberattacks that could lead to disruptions in care or leaks of protected health information. Accordingly, cybersecurity concerns have increased as the number of devices have increased. To put it simply, having more avenues for patient care also means having more avenues for cyberattacks.

Additionally, for telehealth to be a true equalizer, it must be accessible to the entire U.S. population, which can be challenging given that quality telehealth services rely upon high-speed internet and high-tech mobile devices or computers with high-quality video capabilities.

Last, but certainly not least, the regulatory concerns involved with digital health are only beginning to come into focus. As with expansion into previously uncharted territory, there is uncertainty surrounding regulatory compliance when providing healthcare services over digital media.

In September 2021, the U.S. Department of Justice's Criminal Fraud Section announced criminal health care fraud charges across the health care industry. The vast majority of these charges fell within the realm of telehealth, with more than $1.1 billion in false and fraudulent claims relating to the provision of telehealth services.

The DOJ emphasized that fraudulent claims are not the only focus of their ongoing emphasis — exploitation of the Centers for Medicare and Medicaid Services' relaxed policies surrounding provision of telehealth services as well as legitimacy of telehealth services provided are also in their sight lines.

With the growth of both digital attacks and the delivery of wellness through Web 3.0 (e.g., metaverses and virtual environments), privacy and security risks extrapolate, but there is also excitement over artificial intelligence and blockchain aiding security. Companies that put patient privacy first will find significant value-add, especially in an age of online distrust and savvy consumers.

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[1] https://www.beckershospitalreview.com/hospital-management-administration/this-is-healthcare-s-amazon-moment-dr-stephen-klasko-s-5-predictions-on-healthcare-delivery-post-covid-19.html.

[2] https://www.hhs.gov/about/news/2021/12/03/new-hhs-study-shows-63-fold-increase-in-medicare-telehealth-utilization-during-pandemic.html.

[3] https://www.svb.com/trends-insights/reports/healthcare-investments-and-exits.

[4] https://www.goodrx.com/healthcare-access/telehealth/state-of-telehealth-survey-2021?utm_medium=paid_referral&utm_source=fiercehealthcare&utm_campaign=fiercehealthcare.

[5] https://www.sheppardmullin.com/philkim.

[6] https://www.sheppardmullin.com/azablocki.

[7] https://www.mckinsey.com/industries/healthcare-systems-and-services/our-insights/telehealth-a-quarter-trillion-dollar-post-covid-19-reality.

[8] https://www.nature.com/articles/d41586-021-00175-z.

[9] https://www.fiercehealthcare.com/telehealth/optum-survey-providers-see-telehealth-convenient-frustrations-remain.

[10] https://www.sheppardmullin.com/sshanti.

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