Telemedicine and the Health Care Industry

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Introduction
The shift in the health care industry toward greater efficiency and a higher level of quality of care is leading to innovation and the popularity of new delivery methods, such as telemedicine. The challenge for telemedicine is that the innovation is outpacing the regulatory environment in many respects. In this article, we will review the opportunities and challenges that are presented by telemedicine in Medicare, Medicaid and private insurance.

The term “telemedicine” is often used interchangeably with the reference to “telehealth” and both terms are generally defined as the use of technology to deliver remote clinical care. Telemedicine includes the use of numerous technologies to exchange medical information from one site to another via electronic communications, which include:

- patient consultations via live video conferencing;
- transmission of still images (also known as “store-and-forward”);
- patient portals in which patients access their health records and participate in discussion groups with other patients online;
- remote monitoring of conditions and vital signs; and
- continuing medical education

Both primary and specialized care may be delivered through telemedicine. For example, a primary care doctor may have a live interactive video chat with a patient for the purposes of viewing a skin rash, or a specialist may view diagnostic images sent in order to render a diagnosis. Remote patient monitoring is another service provided via telemedicine whereby a provider has the ability to place a device in a patient’s home or nursing home to remotely collect data for interpreting blood glucose or heartbeat activity, for example.

Patient portals and online discussion groups also fall under the category of telemedicine. Patients may now use the internet and wireless devices to obtain personalized health information and participate in discussion or support groups. Telemedicine also facilitates remote medical education in which health professionals may participate in medical education seminars in remote locations while earning continuing education credits.

Opportunities and Challenges
Telemedicine presents many opportunities for providers and patients; however, it is important to keep in mind that reconciling the regulatory scheme with innovation in this field is essential. Below are a few examples of the benefits of telemedicine:

- enables physicians to expand their geographic footprint and manage their patient-population from afar, while using their time more efficiently;
- increases access to care;
- links providers and specialists from remote areas and can fill provider shortage gaps; and
- reduces the cost of care by enabling better management of chronic conditions and preventing hospital admissions

Patients who are homebound or those residing in a nursing home have greater access to care through telemedicine. Patients have the ability to connect with doctors and specialists without having to travel or take time off of work. Through the use of telemedicine, a doctor in a rural area with a particular specialty has the ability to send images or information to a specialist thousands of miles away and obtain their advice and opinion.

Telemedicine also presents some inherent challenges. The use of this discipline requires providers and patients to have the infrastructure to support telemedicine and knowledge to use its technology. For example, a computer with a video function and internet connection are required for both parties to facilitate a live consultation. This could be a challenge for low income individuals and the elderly, as well as provider practices considering an investment in infrastructure.

Additionally, there are a number of regulatory challenges for telemedicine in that the existing regulatory scheme is struggling to maintain pace with innovation. Medicare, Medicaid and private insurance provide varying degrees of coverage and requirements for telemedicine, presenting a hurdle to implementation and reimbursement.
For example, policies regarding permitted uses of and payment for telemedicine vary according to a number of factors, including: what services are covered, payment methodology, distance requirements, eligible patient populations and health care providers, authorized technologies, and patient consent.

Further, according to the American Telemedicine Association, forty-seven state Medicaid programs have some type of coverage for telemedicine and no two states are similar when it relates to coverage of specialty services under Medicaid. In the commercial, private insurance context twenty-two states have implemented varying state laws governing telemedicine. The state laws generally address, among other things:

- Who can deliver the services (i.e., whether in-state licensure is required);
- What services can be delivered (i.e., primary care, mental health, radiology, etc.);
- Whether health insurance plans must extend coverage for telemedicine services and whether such coverage is to the same extent that the services would be covered if they were provided in-person;
- Whether reimbursement for telemedicine must be at least equal to reimbursement for in-person services; and
- Whether patient cost-sharing can be applied (i.e., co-pays and deductibles).

State laws present unique licensure challenges and while most states allow physicians to perform telemedicine within their scope of practice many states have not implemented any clear requirements yet. The state laws and licensure requirements may also dictate whether an in-person exam is required and how to establish a doctor-patient relationship in telemedicine. They will also set forth any restrictions or limitations on the services or diagnoses that can be delivered and whether remote prescribing is permitted.

Recent Developments

Medicare recently improved access to and payment for telemedicine, and there is a bill pending in Congress to phase-in further expansion of telemedicine coverage under Medicare.

On October 31, 2014, the Centers for Medicare and Medicaid Services (“CMS”) released its calendar year 2015 Physician Fee Schedule. The Fee Schedule increased Medicare payments for telehealth services by 0.8 percent and provided new procedure codes that cover additional telemedicine services, including psychotherapy services, annual wellness visits and a new code for chronic care management.

However, CMS did not eliminate a requirement for patients to be located in a rural area in order to receive telemedicine services and Medicare still only reimburses for telehealth that is conducted in real-time. The “real-time” requirement leaves out the services by providers who usually review images on a “store-and-forward” basis, such as pathologists, radiologists and dermatologists. Medicare also requires that real-time telehealth visits be conducted while a patient is at a medical facility, thereby obviating the telemedicine benefit of increased access to care for home bound patients.

A pending bill known as the “Medicare Telehealth Parity Act of 2014” proposes a three-phase rollout of changes. Each phase applies for a two year period with gradual expansion of those who will be authorized to provide telemedicine services, where they may be provided or what technologies will be permitted. The first phase would expand coverage for certified diabetes educators, speech language therapists, audiologists, respiratory therapists, occupational therapists and physical therapists. The second phase adds coverage for video conferencing and store-and-forward technologies in counties located in metropolitan statistical areas with populations of 50,000-100,000. Phase three extends the same for video conferencing and store-and-forward technologies for counties located in metropolitan statistical areas with populations over 100,000.

Privacy and Security

Telemedicine is governed by the same privacy and security laws as all health care data and information, making privacy and security compliance a necessity.
The Health Insurance Portability and Accountability Act ("HIPAA") governs the privacy and security of protected health information and applies equally to telemedicine as it does to traditional medicine. However, telemedicine presents unique privacy and security issues due to the increased use of technology and the potential for security breaches during the transmission and storage of information, as well as the increase in the number of people with potential access to patient information (including technology vendors). Furthermore, the electronic transmission of information lends itself to hackers and other potential exposure. Providers must ensure the technology they use is secure and that electronic files, images or videos are treated the same as other protected health information, in accordance with HIPAA.

Telemedicine in Action

Organizations throughout the country are now implementing telemedicine as part of best practices. Walgreens is launching a virtual doctor visit feature on its mobile app in California and Michigan, with anticipated rollout to other states within the next few years. This type of virtual visit is for nonemergency health conditions and usually last about 10-15 minutes. Last year, Walgreens launched a Pharmacy Chat feature on its app that allows users to instant message with pharmacy staff.

The Mayo Clinic began a virtual visit pilot program in October 2014 whereby a patient has the ability to conduct a virtual visit with a doctor from a kiosk with a 32-inch video screen and several medical devices used to gather data, as well as a UV light used to sanitize itself. Data gathered during a kiosk visit will be sent to that patient’s electronic health record if the patient is with the Mayo Clinic and if a patient’s primary-care provider is outside the clinic’s network, the patient can send his or her records to a doctor. The Mayo Clinic recently extended the pilot program by placing kiosks in a public school in Minnesota.

In December 2014, a representative of Kaiser Permanente’s health IT strategy and policy said that Kaiser’s regional systems are already performing greater than 50% of visits virtually—through mobile, or secure messaging, or video. Finally, Doctor on Demand and HealthTap are two startups that have already made telemedicine available nationwide.

Providers and Telemedicine

Incorporating telemedicine into a medical practice requires a strategic plan that includes, among other things:

• compliance with state laws and Medicare/Medicaid rules
• adherence to private insurance requirements
• development of clinical standards
• data storage standards
• staff education and
• billing rules

Conclusion

The concept of telemedicine has been in existence for years; however, we are now experiencing a broad expansion of innovation and adoption throughout the United States. The current laws and requirements applicable to telemedicine vary significantly from state to state and the Medicare and Medicaid regulations struggle to keep pace with the technological advances of this approach to care. As a result, different rules will undoubtedly apply to the same telemedicine services depending on the location of the patient and nature of coverage for this form of care. It is critically important for providers to remain abreast of changes in the law and seek legal counsel to understand the requirements for the implementation of a telemedicine practice, as well as to ensure compliance and appropriate reimbursement.
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