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Telemedicine Reimbursement Laws Challenge Insurers and Providers Alike

Health-care providers seeking reimbursement for telemedicine services have to navigate a network of state coverage and parity laws that are generally designed to encourage telemedicine adoption.

But while opinions differ on whether these laws always achieve their desired ends, attorneys and advisers who talked to Bloomberg Law said the laws often leave even the most prepared billing department unsure as to whether it will actually receive payment for telemedicine services.

''A properly drafted telemedicine coverage law is a good thing for patients and health-care providers, but some of these laws don't actually accomplish what a lot of health-care providers believe they do,'' Nathaniel Lacktman, a health-care attorney who chairs the national Telemedicine Industry Team at Foley & Lardner LLP in Tampa, Fla., told Bloomberg Law.

Lacktman said that state laws can suffer from a statutory drafting process that doesn't allow them to live up to the original intent of the law. ''Lawyers can do to language what a steam table will do to vegetables,'' Lacktman said. He said that lawmakers understandably want to pass laws that both providers and health plans can be happy with, ''but sometimes the final versions of these laws are so wilted that it simply confuses and frustrates health-care providers because they don't actually offer meaningful coverage or payment parity.''

In addition to the problems introduced by the myriad state laws addressing telemedicine reimbursement, the federal government has begun to make inroads into the payment arena, with a recent uptick in bills designed to extend coverage under Medicare Advantage and standard Medicare and Medicaid for telemedicine services. Most recently, those efforts include the CHRONIC Care Act, which passed the Senate in September and allows for increased coverage of telemedicine services under certain circumstances for Medicare Advantage plans.

Coverage vs. Payment Parity One of the main difficulties faced by state legislatures in developing telemedicine reimbursement laws comes from the different requirements of coverage parity and payment parity. Coverage parity laws involve efforts by legislatures to require insurers to cover telemedicine services to the same extent they cover in-person services. Meanwhile, payment parity laws require insurance companies to pay telemedicine providers the same amount as they would in-person health-care providers for the same service.

''Coverage parity is in some ways more flexible than payment parity because it raises fewer obstacles,'' Allison Wils, a health policy adviser from Cozen O'Connor Public Strategies in Washington, told Bloomberg Law. ''But I don't know if separate laws are necessary, because expanding telemedicine is a common sense solution to delivering health care, and we will get there without having parity laws on the books,'' she added.

But Lacktman said some coverage laws are important. ''Laws governing telehealth and telemedicine coverage are best characterized as addressing a consumer rights issue,'' Lacktman said. ''Health insurance is a contract between the patient and the insurance plan, under which the patient has little to no ability to negotiate options, and it is arbitrary for an insurance plan to cover a service in-person but refuse to cover that identical service simply because it is delivered via telemedicine technologies,'' he said.

Payment parity laws are more controversial. Their proponents say they are useful in encouraging physicians to provide telemedicine services because those services won't result in lower payments for the doctors. However, their detractors say payment parity laws artificially inflate the costs of telemedicine services and effectively eliminate the cost savings that telemedicine use is supposed to provide.

Rene Quashie, a health-care attorney with Cozen O'Connor in Washington, told Bloomberg Law a report from the Center for Connected Health Policy provided evidence that payment parity laws don't necessarily drive telemedicine utilization. ''The argument has been that the existence of payment parity laws was going to promote telemedicine usage, but the report shows that isn't exactly what is happening,'' he said. ''Payment parity laws aren't a panacea for the issue of telemedicine utilization,'' he added.

But Quashie also said the arguments against payment parity laws don't necessarily explain the low rates of telemedicine adoption portrayed in the report. ''I don't think telemedicine is being used to its full potential, and just why that is the case doesn't have as much to do with some of the issues of payment parity as it does with other issues such as lack of complete buy-in from various stakeholders concerning the clinical efficacy and the cost-saving potential of telemedicine.''

Quashie said the failure of health-care providers and insurers to buy in could be solved through efforts to better explain not just what telemedicine can accomplish, but also the longer term cost savings that it can help the stakeholders realize. ''We can do a better job explaining what telemedicine is and isn't,'' Quashie said. ''Patients just have to be better informed about what telemedicine can do as well as its limitations,'' he added.

Cost Savings and Utilization Another complaint with laws that require telemedicine coverage and reimbursement is that service providers haven't shown the cost savings and value that could overcome the excess health-care utilization that would result.

''The cost savings for telemedicine will likely be realized more in the long term,'' Emily Wein, a health lawyer with Baker, Donelson, Bearman, Caldwell, & Berkowitz PC in Baltimore, told Bloomberg Law. ''Because a patient saw her primary care physician through telemedicine, she received care early and her condition, which might have required more acute care and perhaps for a longer period of time, didn't get worse,'' she said.

Wein said the use of telemedicine to quickly diagnose and treat less acute symptoms means patients are not going to get scared and seek the same care in a costlier setting, such as in a visit to the hospital emergency room.

''This data is harder to track and present in support of the adoption of telemedicine because it is longer term risk avoidance and thus hard to value,'' said Wein, who is a member of a Bloomberg Law advisory board.

''It all depends on the population that you are targeting,'' Nadia de la Houssaye, an attorney with Jones Walker LLP in Lafayette, La., told Bloomberg Law. ''In targeting the aging chronically ill population, which accounts for the largest percentage of overall Medicare spending, early diagnosis and proactive disease management results in better outcomes and long-term cost savings. Prevention and management is essential to affordable health care and the sustainability of the Medicare program.''

De la Houssaye pointed to telestroke treatments or telecardiology treatments as examples of where the cost savings for telemedicine could be demonstrated not in their immediate cost to health plans but in their ability to keep patients out of later, more expensive treatments.

''Telemedicine is the only solution in diagnosing a health condition, when time is of the essence, like a stroke or a heart attack, and no physician specialists are available to timely treat the patient in person,'' she said. ''With large physician shortages, particularly in rural areas, a telemedicine platform makes the difference between life and death and a full recovery versus long-term disabilities with extended hospital stays,'' she added.

But, according to Wils, it is reasonable for insurers to consider whether telemedicine treatment provides sufficient value to justify cost parity. ''I don't think it's fair to vilify insurance companies,'' she said. ''If you are an insurer, you are really going to have to have a sound actuarial basis for what insurance products you offer, and health care can get very expensive so it is important to have certain guardrails,'' she said.

However, Lacktman warned about putting too much stock in fears by insurance companies that coverage for telemedicine will lead to a sudden rush by patients to use services they wouldn't otherwise use. ''We have not seen reports that health plans have had to increase their premiums as a result of an uptick in utilization from telemedicine in those states with coverage laws,'' Lacktman said. ''It is a fear-driven argument, which I believe has not been proven, that telemedicine coverage will trigger unchecked utilization and drive up premiums,'' he added.

Poorly Drafted Laws A lot of the problems with state coverage and payment parity laws come down to drafting errors, according to most of the attorneys who spoke to Bloomberg Law.

''A lot of these statutes are not well written, not well developed, and not well thought through,'' Quashie said. ''They likely need to be reviewed to see if they can be updated.''

Lacktman agreed, using three coverage laws as examples. The first, the Mississippi coverage law (Miss. Code § 83-9-351), says all health insurance plans in the state ''must provide coverage for telemedicine services to the same extent that the services would be covered if they were provided through in-person consultation.''

''This is an example of good drafting,'' Lacktman said. ''It is written in the affirmative, stating in a single sentence the insurer must provide coverage. It is very clear and if you are an insurer, a provider, or a patient, you know what is required under the law.''

As a contrast, Lacktman pointed to Georgia's coverage law (O.C.G.A. § 33-24-56.4) which requires payment for telemedicine services but qualifies that requirement by making the coverage ''subject to all terms and conditions of the applicable health benefit plan.''

''Mario Gutierrez was speaking out against these types of clauses before he passed away, calling them escape hatches for plans to avoid covering services delivered via telemedicine,'' Lacktman said, referring to the former executive director for the Center for Connected Health Policy who died in August after undergoing prostate cancer surgery.

According to Lacktman, these ''escape hatches'' can ''essentially eviscerate the statute'' undermining the impetus and legislative intent for coverage parity that the law was passed to accomplish in the first place.

Federal Legislation Recent movement from the federal government to increase reimbursement under its plans could lead to a drive by the states to take another look at their reimbursement regimes for telemedicine, the attorneys and policy advisers told Bloomberg Law.

Key among these efforts is the legislative activity surrounding the CHRONIC Care Act (S. 870), which was passed by the U.S. Senate Sept. 27 and sent to the House of Representatives for review. The House has referred the bill to the Ways and Means Committee and the Energy and Commerce Committee for consideration.

''This bill clears up a lot of the administrative difficulties to getting telemedicine services covered by the federal payers,'' Krista Drobac, the executive director at the Alliance for Connected Care and a partner in the consulting firm Sirona Strategies in Washington, told Bloomberg Law.

Drobac pointed to the inclusion of telemedicine in the basic benefits for Medicare Advantage plans as a key element of the law. ''Having telemedicine be a supplemental benefit made it much more difficult for Medicare Advantage insurers to include the benefits in their products,'' she said.

Drobac added that the House committees have already passed bills similar to some parts of the CHRONIC Care Act, even if the House committees haven't taken on the whole bill as passed by the Senate. De la Houssaye pointed out if the House does eventually pass the CHRONIC Care Act, it would go a long way toward pushing the commercial payers to start providing coverage parity even in states where the law doesn't require it.

''So much of the delay in telemedicine integration, particularly for the elderly, is Medicare's current and outdated reimbursement structure,'' she said. ''This bill essentially revamps the whole reimbursement model for Medicare and Medicare Advantage when it comes to telemedicine.''

According to De la Houssaye, the CHRONIC Care Act also ''provides great incentives to utilize accountable care organizations to use telemedicine, while empowering beneficiaries and their caretakers, at the home setting, to engage with the ACOs to create the continuum of care necessary for better health outcomes for this vulnerable population.''

There is some question whether the House of Representatives will pass something that adds to the federal government's health-care costs when the talk in Washington has been about tax and spending cuts, but Cozen O'Connor's Wils said this bill has a chance. ''Advancing telemedicine is a championed, bipartisan, bicameral cause, and you don't find too many of those nowadays,'' she said.

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