

Next Steps for Telemedicine in Texas ? Legislative Fix and Medicaid Policy Changes

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In the last several years, Texas has generated significant news stories related to the disagreements between the Texas Medical Board (“TMB”) and Teladoc, a telehealth medical provider. The original dispute centered around the right of telemedicine providers to treat Texas residents without an initial in-person visit, which some would argue circumvents the establishment of the practitioner-patient relationship. While the dispute and subsequent corollary issues linger in litigation, some telemedicine/telehealth (referred to generally in this article as “telemedicine”) providers have been in a holding pattern with their business operations in Texas. However, there may be legislative and regulatory changes on the horizon.

Legislative Fix

To respond to technological innovation and advances in patient care, stakeholders and advocates met earlier this summer in Austin to start developing telemedicine legislation. Bringing the parties together, including those that have been historically on opposite sides of the issue, to develop legislation prior to the January 2017 convening of the 85th Texas Legislature is significant. It will be important for telemedicine providers and their advocates to get bills passed during the five months of the legislative session—or they will have to wait another nineteen months for the next legislature to take action. For contextual purposes, during the 84th legislative session in 2015, over ten telemedicine bills were introduced, but only one passed.

Some highlights of the draft legislation include:

- Clarifying the appropriate practitioner-patient relationships to be established via telemedicine when certain criteria are met.
- Modifying the definition of telehealth and telemedicine and making conforming amendments to other Texas codes.
- Clarifying that health professionals and physicians must be licensed in Texas.
- Defining the criteria for when drugs can be prescribed through telemedicine.

In addition to the stakeholder legislation, there may be other legislative vehicles providing business opportunities for telemedicine providers. Both the Texas Lieutenant Governor and the Speaker of the House issued interim charges for committees to study improving access to care through telehealth and examining the adequacy of the technology infrastructure for use between healthcare providers.¹ After the committees complete their studies on these issues and draft reports on their findings, legislation is often introduced during the next legislative session. The committees will complete their reports by December of 2016.

Texas Medicaid – Medical Policy Changes & Network Adequacy Consideration

Texas has over four million residents on Medicaid and a conservative legislature, so Texas regulators have been forced to be innovative with their Medicaid program. With the goal of

controlling costs and quality improvement, the state has contracted with managed care organizations (“MCOs”) to deliver Medicaid services through managed care, while implementing the Texas Healthcare Transformation and Quality Improvement Medicaid Waiver (“1115 Waiver”) to incentivize providers to transform their service delivery practices.

Almost 20 years ago, the Texas Medicaid program began providing telemedicine medical services to clients, and has since expanded the services available via advanced telecommunications. A 2014 Texas Health and Human Services Commission (“HHSC”) Biennial Report on the effects of telemedicine in Texas Medicaid reported the progress that had been made for Medicaid clients and providers for the previous three years:

- 79 percent increase in the number of clients receiving telemedicine (from 9,748 to 17,416).
- 104 percent increase in the number of providers using telemedicine (from 98 to 200).
- 124 percent increase in expenditures (\$1.2 million to \$2.8 million).²

Further acknowledging the need for alternative healthcare access points, providers implemented over 80 telemedicine, telehealth, or telemonitoring projects under the state’s 1115 Waiver.³ These projects vary from implementing 24/7 crisis hotlines to extending telemedicine psychiatry services and the funding paid for the equipment, technology, and professional services. These projects will likely remain active until December 2017 or until the 1115 Waiver’s extension period ends.

As HHSC continues to explore options to improve quality for Medicaid clients, at the beginning of August, it issued draft changes to the Medicaid Medical Policies dealing with Telemedicine and Telehealth services for a short ten-day comment period.⁴ While Medicaid providers privately complained that these draft changes did little to allow for alternative methods of telemedicine/telehealth delivery, the changes did provide for facility fee reimbursement for Federally Qualified Health Centers and Rural Health Clinics as patient site providers and did clarify the limited circumstances when telemedicine can be used in a “patient’s home” (such as a group or institutional setting), the requirements relating to the initial and 12-month healthcare provider evaluations for mental health services, and other technical issues. Unless HHSC makes further alterations to these policies, there will be corresponding changes to the Texas Administrative Code in the upcoming months.

As previously mentioned in the July Haynes Boone *Health Law Vitals*, the Centers for Medicare and Medicaid Services (“CMS”) issued new Medicaid managed care rules that require states to consider telemedicine as one of several factors in provider access standards. Specifically, CMS encouraged states to consider how current and future technological solutions including telemedicine, e-visits, and/or other evolving solutions could impact states’ network adequacy standards.⁵ With the timing of these rules and the upcoming procurement of the Texas Medicaid Managed Care MCOs for the operational start date of March 2019, telemedicine providers will have an important role to play and will want to monitor the progress.

¹ [Texas Senate, Interim Charges](#) (Oct. 13, 2015); [Texas House of Representatives, Interim Committee Charges](#) (Nov. 2015).

² Telemedicine, Telehealth, and Home Telemonitoring Texas Medicaid Services – Biennial Report to the Texas Legislature as required by the Texas Government Code § 531.0216, Texas Health & Human Services Commission (Dec. 1, 2014), www.hhsc.state.tx.us.

³ Presentation to Senate Committee on Health & Human Services: Teleservices in Medicaid, Texas

Health & Human Services Commission (June 16, 2016), www.hhsc.state.tx.us.

⁴ Draft Texas Medical Policy Under Review for August 2016, www.hhsc.state.tx.us.

⁵ Medicaid and Children's Health Insurance Program (CHIP) Programs; Medicaid Managed Care, CHIP Delivered in Managed Care, Medicaid and CHIP Comprehensive Quality Strategies, and Revisions Related to Third Party Liability (CMS-2390-F), 81 Fed. Reg. 27,497, 27,663, 27,666 (May 6, 2016), [available here](#).