Should States Embrace Telehealth Parity'

December 31, 2018 Neil Issar

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Parity in telehealth is the notion that health services provided via telehealth technology should be treated equally as health services provided face-to-face. This is consistent with coverage parity, which requires payors to provide the same level of insurance coverage for patient encounters and services, while payment parity (a.k.a. reimbursement parity) requires payors to pay or reimburse providers the same rates whether the encounter or service provided occurred in person or via telehealth.

Coverage Parity

There are 35 states, as well as the District of Columbia, that have *coverage* parity for telehealth services, and four states (Alaska, Massachusetts, Pennsylvania, and South Dakota) that have pending bills on the issue. Many coverage parity laws include provisions to protect patients from cost-shifting. For example, certain coverage parity laws prohibit health plans from imposing different deductibles or copayments or maximum benefit caps for services provided via telehealth.

Of course, while various states' laws share common features, no two state laws are exactly alike, and the precise language of a parity law can affect telehealth adoption and growth. For example, if a coverage parity law only requires payors to cover telehealth services "to the same extent" the service is covered in-person, services like remote patient monitoring will be excluded because most health plans do not have coverage of any in-person equivalent to remote patient monitoring. Conversely, more broadly drafted statutes that explicitly cover virtual care, remote patient monitoring, and novel telehealth services will likely foster growth in those areas, including the development of more companies that offer associated equipment, software, and applications.

Payment Parity

Enactment of *payment* parity laws is comparatively more limited, as only 10 states have some form of payment rate parity for telehealth providers, and some payors will only pay for telehealth encounters when the provider is in the payor's network of approved providers. These "narrow" networks may adversely affect patient continuity-of-care, possibly severing long-standing patient-provider relationships and denying patients access to some specialty care.

Further, some parity laws limit telehealth coverage or reimbursement to certain types of providers, services, modalities, and/or site locations, and such limiting language may create additional barriers to telehealth utilization. For example, Texas—one of the states with coverage parity but not payment parity—prohibits a health plan from excluding a telehealth service from coverage or from applying cost-shifting measures solely because the service is not provided through a face-to-face consultation.[1] But the state law has modality limitations as it excludes coverage for a telehealth service provided by synchronous or asynchronous audio-only interaction, including a phone consultation, email message, or fax.[2]

In contrast, Missouri provides coverage of and reimbursement for store-and-forward technology and remote patient monitoring but limits them to specific specialties and conditions—orthopedics, dermatology, ophthalmology and optometry in cases of diabetic retinopathy, burn and wound care, dental services that require a diagnosis, and maternal-fetal medicine ultrasounds.[3]

Proponents of telehealth applaud parity laws, as such laws encourage providers to embrace telehealth technology and innovation in their practices. Telehealth, in general, maximizes efficiency, improves access for patients, and reduces overhead for providers.[4] However, as more states push ahead with telehealth parity laws, critics argue that coverage conditions and reimbursement rates should be negotiated between providers and payors rather than mandated by the legislatures. In addition, they argue that the provision of telehealth services does not merit equal reimbursement because the cost of providing such services is already lower. Instead, the argument is that payors could reimburse providers less for telehealth services and pass on the savings to patients in the form of lower premiums. Further, payment parity laws effectively pay providers based on the volume of services—rather than on value or outcomes—and, thus, may encourage overconsumption of telehealth services.[5]

On the other hand, the counterargument would be that most states' payment parity laws do not, and are not intended to, prohibit health plans and providers from entering into at-risk, capitated, or shared savings contracts. For example, Kentucky recently enacted a law to impose both telehealth coverage and payment parity requirements for Kentucky Medicaid, Medicaid managed care organizations, and commercial health plans. However, the new law also allows a telehealth provider and payor "to contractually agree to a lower reimbursement rate for telehealth services."

Payors and providers alike should remain abreast of the telehealth parity landscape to determine whether applicable states' parity laws will help or hinder their business as the country transitions to value-based healthcare. We will continue to monitor telehealth legislation at the state and national levels and provide updates accordingly.

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[1] TEX. INS. CODE § 1455.004(a)–(b).

[2] Id. § 1455.004(c).

[3] R.S.MO. § 280.670.

[4] *See*, *e.g.*, Les Masterson, *Study shows telemedicine potential in EDs*, HEALTHCARE DIVE (Jan. 16, 2018).

[5] *See* Thomas B. Ferrante and Nathaniel M. Lacktman, *Kentucky's New Telehealth Law Expands Insurance Coverage and Reimbursement*, FOLEY & LARDNER LLP (May 23, 2018).