Telemedicine on the Rise: Increased Deployment by Veterans Administration, MACRA, Plus Potential Expansion Under Legislative Proposals

Telemedicine has the potential to disrupt the health care delivery system by providing access to care at a lower cost than face-to-face visits. Telemedicine incorporates remote communications into the provision of health care through a variety of methods, including two-way communication, storage and subsequent transmittal of data, and remote patient monitoring. Among other things, telemedicine can help providers care for patients in the most efficient time, place and manner; enhance preventive medicine; support patient compliance with post-acute care treatment instructions; and reduce acute care episodes and readmissions to hospitals. Additionally, telemedicine creates opportunities for provider education, development of patient care protocols, and other advances in health care operations, which lead to advances in the quality of care at a lower cost.

Notwithstanding these potential benefits, Medicare currently limits coverage for telemedicine to patients in rural areas who can access telemedicine services only from an approved “originating site,” like a hospital or clinic, with certain types of providers, and only for designated types of medical services. Despite opportunities for improved quality and efficiency with telemedicine, progress will be slow until health care laws evolve to expedite its availability and reimbursement. The ECHO Act, passed and signed in November 2016, requires the Department of Health and Human Services to study the benefits of telemedicine and telehealth, and to submit a report to Congress by November 2018, but little action has been taken to support the expansion of specific technologies or services. Still, support for telemedicine continues to grow, with the recent formation of a caucus focused on telemedicine, new legislation proposed in the current Congress, expansion of the use of telemedicine in the Veterans Health Administration (VHA) and expansion by the Trump administration as a tool for combating the opioid crisis.

First, a growing, bipartisan group of congressional representatives has founded the Congressional Telemedicine Caucus, which is dedicated to stimulating reform to telemedicine laws at the federal level. This group is actively promoting the Medicare Telemedicine Parity Act of 2017 (MPTA) (as well as the other legislation described below). The MTPA aims to “modernize the way Medicare reimburses telemedicine services.” The MTPA would expand the use and coverage of telemedicine by expanding Medicare coverage of telemedicine services. Under current law, originating sites for telemedicine visits must be a health care facility, but the MPTA would allow originating sites to include patients’ homes. The MPTA would also expand the geographic limitations on telemedicine coverage to include counties in metropolitan statistical areas with populations above 100,000.

Second, in May of 2017, the Senate Finance Committee moved forward with the bipartisan Creating High-Quality Results and Outcomes Necessary to Improve Chronic Care Act (CHRONIC Care Act), which includes a limited expansion of Medicare coverage for telemedicine for monthly clinical assessments for patients on home dialysis or with stroke complications. Sen. Roger Wicker stated, “Medicare is behind the curve—limiting access to millions of seniors. The CHRONIC Care Act is a step in the right direction.” Hospital leaders continue to push for expansion of telemedicine beyond what the CHRONIC Care Act presently offers.

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Separately, as part of the 2015 Medicare Access and CHIP Reauthorization Act (MACRA), in a new effort to contain spending on physician services with renewed focus on quality, the Quality Payment Program replaced the Sustainable Growth Rate formula. Significantly, MACRA establishes telemedicine and remote patient monitoring for care management under its clinical practice improvement activities performance category. Including telemedicine in MACRA and demonstration projects signals recognition of its potential to drive quality and efficiency.

Third, telemedicine has gained ground as a potential solution for the Veterans Health Administration (VHA). In July 2016, all telemedicine services within the VA were reorganized into a new office of "Connected Care." On Aug. 3, 2017, President Trump, along with the Secretary of Veterans Affairs (VA), David Shulkin, M.D., introduced a plan to expand telemedicine services to the VHA. This plan—the "Anywhere to Anywhere VA Care" collaboration between the VHA and the White House initiative on American innovation—aims to improve veterans' access to providers, including specialists and mental health providers. Veterans would be able to access providers of all types anywhere in the country. However, on Aug. 30, 2017, at a House VA Subcommittee on Oversight and Investigations field hearing in Michigan, the executive director for Telehealth Services of the VHA, Dr. Kevin Galpin, testified that achieving the maximum benefit of the VA's video telemedicine services will still require legislative fixes. The VA supports the pending Veterans E-Health and Telemedicine Support Act that is pending in the Senate.

To move forward without congressional action, the VA published a proposed rule in the Federal Register on Oct. 2, 2017, that would expand the VA's ability to override certain state licensing requirements that restrict providers to providing services only in states where they are licensed to practice medicine and include them in a nationwide provider network. Currently, the VA can use providers to diagnose and treat patients across state lines only if both the VA physician and the veteran are physically in a federally owned facility or if state laws have been updated to enable the provision of direct care through a team of in-state and out-of-state licensed providers. The goals of expanding telemedicine through the VA and reaching veterans in rural areas, even in their homes, will need these regulatory changes to be fully realized.

Finally, on Oct. 26, 2017, President Trump declared the opioid crisis a national public health emergency. This declaration included an announcement that the federal government will expand the use of telemedicine to treat opioid addiction, including allowing remote prescribing of medications to treat substance abuse or mental health conditions. A rule or executive order implementing this expansion of telemedicine has not yet been announced.

Telemedicine is gaining momentum. The announcement that the VA will adopt and expand the use of telemedicine is an exciting sign that government programs may begin to pay for telemedicine encounters, and the Trump administration's inclusion of expanded telemedicine as part of its opioid response reflects broadening acceptance. Nonetheless, businesses seeking to operate in the telemedicine space face a myriad of expanded discussions of regulations requiring careful attention. An in-depth discussion on telemedicine law and policy issues can be found in the upcoming article by Shareholder Mike King, "Telemedicine: Game Changer or Costly Gimmick?," appearing in the Denver Law Review in early 2018.

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