



# BURR ARTICLE

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## The Changing Telehealth Landscape

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When healthcare providers and information technology (IT) appear together in the news, it is often for less than positive reasons. The cyber security issues that have plagued everyone have not left physicians and hospitals unscathed; ransomware has held health systems large and small hostage; and laws such as HIPAA and HITECH have imposed considerable liabilities on providers. Concern about cyber security and the complexities inherent in IT matters is not misplaced. In a 12-day span in April, two separate HIPAA settlements handed down by the Office of Civil Rights (OCR) directly involved IT issues--one, a phishing incident, led to a \$400,000 settlement, and the other, which involved a stolen laptop and a lack of safeguards for electronic PHI on mobile devices, led to a \$2.5 million settlement. Clearly, the presence of HIPAA and HITECH, combined with the prevalence of cyber security issues, creates a perilous IT landscape for providers.

However, there is more to IT than security threats and HIPAA liability. IT is not merely a pitfall, but also an opportunity--for better patient service, for fuller reimbursement, for higher standards, and for improved interoperability between different provider systems. Providers are updating and improving their IT systems, whether to maximize payments under MACRA or to streamline their healthcare operations. The federal government, across the spectrum of its agencies and departments, is by no means lagging behind on taking IT initiatives. For example, on April 24, 2017, the FCC released a public notice seeking comment on actions to accelerate adoption of broadband-enabled health care solutions and advanced technologies.

The Food and Drug Administration recently announced it would create a central digital health unit through the Center for Devices and Radiological Health. This digital health unit would, among other functions, develop expertise related to software as a medical device, software in medical devices, interoperable devices, and other digital health technologies. Such changes indicate that IT and digital health can be approached proactively. It is not merely an area of an organization where things are prone to go wrong.

One area where IT and digital health can go right--for patients in need of services, and for providers seeking to efficiently deploy their resources in order to provide those services--is telehealth. Telehealth is the provision of healthcare by means of long distance technological communication. The technology can range from mobile devices to elaborate video conferencing systems, and can include both direct, instantaneous patient-provider interaction and remote patient monitor. There are impediments to effective provision of telehealth services, both in the form of technological hurdles for providers and regulatory walls from state and federal bodies. Yet the ever-improving means to deliver needed evaluation, diagnosis, and care to patients in areas short on physicians--or who lack access to the best specialists--is an advantage that means telehealth is here to stay. While states impose various restrictions on the practice of telehealth within their borders, many states

have taken actions in recognition of the utility of telehealth. Alabama, for example, offers a special license for telehealth providers, whereas certain states have been more aggressive in easing the ability of out-of-state providers to offer such services within their borders.

The barriers to efficient telehealth delivery exist at the federal level too. A report from the Government Accountability Office (GAO) in April observed that telehealth is not being utilized in many cases due to Medicare reimbursement policies. This problem is one that is already on the federal government's radar, and there is reason to be hopeful that Medicare reimbursement for telehealth will improve in several regards. Three recent bills making their way through Congress are worth highlighting, as they demonstrate the timeliness of telehealth issues--and they risk being overshadowed by more systemic health law activity in Washington.

The first bill, introduced on February 1, is titled "Creating Opportunities Now for Necessary and Effective Care Technologies (CONNECT) for Health Act of 2017," and has received support from both sides of the aisle in Congress as well as from health care industry groups. It focuses on loosening restrictions on Medicare telehealth coverage and also seeks to assist providers in meeting certain MACRA requirements. The second bill, introduced on March 30, is called the "Creating High-Quality Results and Outcomes Necessary to Improve Chronic (CHRONIC) Care Act of 2017," proposes to expand telehealth access to sufferers from chronic diseases. The third bill, introduced on May 3, is titled the "Helping Expand Access to Rural Telehealth (HEART) Act." The HEART Act attempts to increase access to telehealth for residents of rural areas, in particular by improving remote monitoring of patients with chronic obstructive pulmonary disease and congestive heart failure.

These three bills, coming as they do in the context of the recent GAO report, are by no means an exhaustive survey of current federal activity regarding telehealth. But they serve as a reminder that the value of this form of healthcare delivery is being recognized at multiple levels, and that the problems affecting providers' utilization of the technology are being noticed and addressed. As technology enabling long-distance communications is continually improved and made more accessible--and, more importantly, as state and federal governments are catching up to these technological changes--telehealth is here to stay. For all that digital and communication technology imposes certain security and operational burdens on healthcare providers, it also affords opportunities for better and more efficient patient care. Staying abreast of the technological advances and changing norms, as well as the shifting legal landscape in such areas as telehealth, brings definite benefits for the healthcare provider.



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