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Does Delaware's New Telemedicine Law Foreshadow Broader Payment Parity?

By Nathaniel Lacktman

Nationwide, states continue to enact laws requiring commercial health plans to cover medical services provided via telemedicine to the same extent they cover medical services provided in-person. These laws are intended to promote innovation and care delivery in the private sector by catalyzing health care providers and plans to invest in and use the powerful telemedicine technologies available in the marketplace.

Delaware Telemedicine Commercial Insurance Requirements

Declaring ''liberty and independence'' from the constraints of brick and mortar health care, Delaware became the 29th state to enact a telemedicine commercial reimbursement statute. After unanimously passing both the House and Senate, the governor signed it into law on July 7, 2015, reflecting strong bipartisan support for telemedicine in Delaware. The new law takes effect immediately and positions Delaware to embrace efforts that will provide incentives for health insurers and health care providers to support the use of telemedicine and encourage state agencies to evaluate and amend their policies and rules to foster and promote the use of telemedicine services.

Delaware health plans now must cover services provided via telemedicine to the same extent the plan covers those services if provided through in-person visits. The law also protects patients against cost-shifting because health plans may not impose different deductibles, co-payments or benefit caps for services provided via telemedicine.

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Payment parity levels the field. It does not eliminate or impair opportunities for cost savings, as plans and providers can voluntarily contract for alternative payment models.

The changes to Delaware's Insurance Code are more provider (and patient) friendly than some other states because Delaware requires not only coverage parity, but payment parity. Health plans must pay for telemedicine services on ''the same basis and at least at the rate'' the health plan pays for the ''same service through in-person consultation or contact.'' Moreover, the payment must include reasonable compensation for the transmission cost incurred during the delivery of telemedicine services.

The law also addresses health care services provided through ''telehealth'' (a broader definition into which telemedicine is subsumed), requiring health plans to cover telehealth ''as directed through regulations promulgated by the [Insurance] Department.'' The forthcoming regulations will be important, as they will define the shape and scope of specific coverage and payment rules for telehealth services in Delaware.

Whether a service is considered ''telemedicine'' or ''telehealth,'' Delaware's payment parity provision levels the field for hospitals and health care providers to enter into meaningful negotiations with health plans as to how these services are covered and paid. Payment parity recognizes that telemedicine technology is a conduit through which health care services are provided; not a different specialty itself. Payment parity does not eliminate or impair opportunities for cost savings, as plans and providers can voluntarily contract for alterna-

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tive payment models. The new Delaware law does not prohibit health plans and providers from entering into at-risk, capitated, or shared savings methodologies, all of which are conducive to the benefits offered by telemedicine. These compensation models are real opportunities and should be meaningfully explored by plans and providers, alike.

The Power of Telemedicine in New Payment Models

Telemedicine technology is particularly suited to alternative payment methodologies because it allows the provider to better manage risk. Under a traditional fee-for-service (FFS) payment model, the payer (health plan) bears all the risk because the provider will get paid each time it performs a service. Under FFS, a provider has no incentive to manage the patient's health and the associated costs of care. Indeed, compensating a provider on a FFS basis incentivizes the provider to perform more services for more patients, as that is the only way for the provider to generate more revenue. This is compounded when health plans continue to seek ''cost savings'' by simply reducing the FFS payment rate.

Under a FFS model, payers manage risk through an extensive system of cost-shifting, audits, ever-increasing documentation rules, and complex coverage requirements. An entire industry has been born out of auditing, coding, and reimbursement appeals. These are real costs, as health plans and providers both maintain large claims auditing and appeals departments in a veritable arms race under the rubric of ''utilization management.''

The result: operating costs increase, margins narrow, doctors receive less compensation and take on greater patient volume, and patients are encouraged to ''listen to their body'' and become ''patient self-advocates'' navigating the health care system. A particular victim of the FFS model is chronic care management, and even CMS took steps this year to change this for the Medicare program.[1]

In contrast, under capitated, shared savings, or hybrid alternative payment models, the risk of loss is borne by the provider, who is responsible for managing the health of its patient population (hence the trending term ''population health management).'' Utilization management, arcane coverage rules, and ubiquitous auditing is no longer the centerpiece because the provider, not the health plan, is financially responsible for the costs of care after being paid a capitated rate by the health plan. This is one reason for the vast differences in encounter data reported under capitated models vs. FFS models.

So, how does a provider manage this risk? The old-fashioned way: increased communication with patients, meaningful information exchange, periodic monitoring, and ***developing the relationship*** in the ''doctor-patient relationship.'' Telemedicine is a powerful tool to accomplish this because it reduces barriers to accessing care, increases the convenience and likelihood a patient will visit the doctor, offers inexpensive remote patient monitoring tools to give the provider a stream of health information, draws on data mining, brings the doctor to the patient, and leverages specialist physician expertise. The increased patient 'touches' plus meaningful health information allows doctors to better assess and treat patient health on a long-term horizon. These are just a few ways telemedicine technology allows providers to manage risk far better than traditional brick and mortar practices. Telemedicine is the innovation of blending high-tech tools with ''old-fashioned'' doctor-patient relationships.

A number of Delaware hospitals and health care providers already offer telehealth services, and patients have been able to access virtual care as part of these health care delivery models. Surveys also indicate health care executives are optimistic on the benefits offered by telehealth.[2] The new law is expected to drive the Delaware commercial insurance market, allowing telehealth to be enjoyed by more patients across the State. Successes in Delaware will signal the promise of telemedicine coverage and payment parity as the remaining 21 states consider their own legislation.

[1] *See* http://www.healthcarelawtoday.com/2015/07/15/can-my-hospital-bill-medicare-for-telehealth-chronic-care-management/.

[2] *See* http://www.foley.com/2014-telemedicine-survey-executive-summary/.

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