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TELEMEDICINE – Potential Expansion With Proposed Federal Legislation

Adoption of telehealth and alternative delivery methods is growing and could alter the health care delivery landscape, but it is still in the early stages. While there are risks that telehealth and alternative delivery methods are not worth the investment or may increase overall health care costs, a thoughtful but full adoption has the potential to improve patient access and health outcomes while greatly reducing health care costs.

The use of telemedicine—delivered via a hybrid of telephonic, electronic mail, and video chat modalities, often supported by remote monitoring devices—and related technology could be a game changer, getting patients healthier, faster and cheaper. However, regulators express concern that the expansion of telemedicine could merely lead to increased consumption of health care with limited efficacy, further straining already bloated budgets.

Telemedicine adoption is growing, but it is still in its early stages. Detractors argue that telemedicine is not worth the investment: they question its efficacy and claim it may increase overall health care costs, asserting that patients will utilize telemedicine in addition to, rather than instead of, in-person visits, creating new expenditures without offsetting savings. Proponents believe that a thoughtful, full adoption of telemedicine has the potential to improve patient access and health outcomes while reducing health care costs. Emerging telemedicine technologies and certain demographic and other factors favor its broader adoption helping to fundamentally change the health care system and achieve the “triple aim” of improving individual quality of care, improving population health, and lowering health care costs. For example, rural America and long-term care facilities present compelling opportunities for expanded use of telemedicine. However, systemic challenges impede widespread adoption of telemedicine: longstanding health care regulatory laws that prevent innovative delivery systems from expanding beyond their current “experimental” status, and reimbursement systems that undermine broad adoption of telemedicine, preventing expansion beyond limited niches and rural areas.

While more ambitious reforms toward payment models based on value and population health management would benefit telemedicine along with health care more broadly, the passage and implementation of proposed federal legislation would clarify conflicting regulations, reduce obstacles to effective implementation, and unleash the industry for rapid growth. To that end, several congressional representatives recently founded the bipartisan Congressional Telehealth Caucus, a growing group dedicated to reinvigorating telemedicine reform at the federal level, including through the Medicare Telehealth Parity Act of 2017. The act expands coverage of Medicare for telemedicine services, eventually allowing originating sites to include home telemedicine sites, and expanding qualifying originating geographic locations to include counties in metropolitan statistical areas with populations above 100,000, all in an effort to modernize Medicare’s reimbursement of telehealth services.

In May 2017, the Senate Finance Committee moved forward with the Chronic Care Act, a bipartisan, limited expansion of telemedicine in Medicare for consultations for monthly clinical assessments for those on home dialysis and for patients with stroke complications. Sen. Roger Wicker stated that “Medicare is behind the curve—limiting access to millions of seniors. The Chronic Care Act is a step in the right direction.”

Although the Chronic Care Act and Medicare Telehealth Parity Act are encouraging, they hold an uncertain future in a Congress with a very full slate, and each act takes only small steps toward expanding telemedicine. Even with federal legislation expanding access to reimbursement for telemedicine, entrepreneurs in the telemedicine space must navigate a thicket of general health care regulations that, while well-intentioned, nonetheless stifle innovation. Most prominent among various fraud and abuse laws, the Stark Law prohibits physician referrals to entities in which they have any economic interest, while the Anti-Kickback Statute prohibits the offer, payment, solicitation or receipt of any form of remuneration in return for, or with the purpose to induce, the referral of Medicare, Medicaid or other federal health care program patients.

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For more information on telemedicine reform, please see “Telemedicine: Game Changer or Costly Gimmick?” by [Michael W. King](#) as published in this month’s *Denver Law Review* (95 Denv. L. Rev. 289 (2018), available [here](#)).

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