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Several States Enact Telehealth Parity Laws in 2015

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States are continuing to debate the role telehealth services should play in the health care system. Thus far in 2015, several States have enacted parity laws requiring that certain telehealth services be reimbursed to the same extent as in-person services. While on the whole more states are moving toward parity and encouraging or requiring reimbursement for telemedicine, that trend is not universal, and many of the States with parity laws only extend parity to telehealth services that meet certain conditions.

In 2015, a handful of states have enacted important telehealth legislation:

- Last month Washington enacted an wide-ranging telehealth parity law requiring health plans to cover services delivered through “telemedicine” or “store and forward technology,” if: the plan covers the service when delivered in person; the service is medically necessary; and the service is “recognized as an essential health benefit” under the Affordable Care Act. The breadth of the law is impressive: it covers PPOs, HMOs, Medicaid MCOs, and entities that offer either disability insurance or health plans to state employees. On the other hand, the law does include several restrictions on telehealth reimbursement. It has a narrow definition of telemedicine that excludes telephone, facsimile, email, text or other telehealth methods that do not include a video component, which is a common statutory restriction found in other parity laws. It also only allows hospitals with patients receiving telemedicine services to rely on a

distant site's privileging decision only if the physician is licensed by the State of Washington. Finally, the law is silent on whether telemedicine payment rates must be identical to rates for the same services provided in-person (in fact, an earlier version of the law that would have expressly required parity in rates was not adopted).

- In March, Arkansas enacted a much more limited telehealth parity law. Arkansas' law covers physician services only and requires patients to establish a face-to-face relationship with the physician before telehealth services are eligible for reimbursement.

- In January, New York amended its preexisting parity law to broaden coverage for telehealth specialty care services. Most notably, it expanded the list of telehealth care providers that must be reimbursed at the same rate as in-person providers to include psychologists, social workers, speech language pathologists and midwives, among others. The law also clarifies that services that use of audio-only telephones, facsimile or email are still covered by the parity law so long as they are used in conjunction with telemedicine, remote patient monitoring, or store and forward technology.

- Colorado amended its telehealth parity law to require health plans to provide parity in coverage for urban residents by removing a restriction that had limited application of the State's parity requirements to coverage provided to individuals residing in counties with 150,000 residents or fewer.

- Texas is the only State thus far this year to impose additional limits on telemedicine. In April, the Texas Medical Board sharply curtailed the use of telemedicine by voting to prohibit doctors from treating patients through e-mail, text, or telephonic communication, unless another medical professional is physically present to examine the patient. This severely limits the effect of the state's existing parity law, which was enacted in 1997, and highlights how the existence of a parity law may not necessarily mean access to telehealth services. However, a suit has been filed to overturn the board's decision.

So what can providers, insureres, technology developers, and other interested parties take away from all of these developments in 2015?

First, states are increasingly encouraging or requiring health plans to reimburse for telehealth services to ensure access to health care, including by enacting or broadening the applicability of telehealth parity laws.

Notwithstanding these developments, the expansion of telehealth coverage in 2015 can also be described as two steps forward and one step back, as States are adopting *both* parity laws *and* restrictions to constrain reimbursement. For example, while Arkansas made progress by enacting a parity law, it also codified restrictions that will severely limit coverage. The Washington law, although not nearly as restrictive as its Arkansas counterpart, also limits the types of telehealth services for which health plans must provide parity. And the Texas Medical Board's decision is a major setback for parity advocates.

In addition, the jury is still out as to whether States will require telemedicine to

reach urban populations. For example, Arizona, Oklahoma, and Utah all still require private insurers to provide coverage only when the originating site is located in a rural region.

Finally, at least one area of coverage has been curtailed by several states: the use of telemedicine to prescribe “abortion-inducing drugs” was banned in Arkansas and Idaho in 2015, bringing the total number of states that have done so to 16. A similar restriction recently passed the Montana legislature, but it was vetoed by the governor. A case challenging the Iowa Board of Medicine’s actions to the same effect is currently being litigated before the Iowa Supreme Court.

On the whole, the expansion of telehealth services through parity laws has gained traction in 2015, but wide-scale adoption has been met with resistance in some states. Moving forward, special attention should be paid to the Minnesota, Pennsylvania, and Delaware legislatures, among others, where proposed parity legislation may be acted on in 2015.

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