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Congress Requests Industry Advice on Telehealth Legislation

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As technology continues to advance access to health care in ways and in locations that were barely imaginable just 20 years ago, most people acknowledge that our legal framework has a long way to go to catch up. In light of this, on March 12, 2019, leaders of the Congressional Telehealth Caucus and a bipartisan coalition of Senators published a request for information (RFI) asking for help in "craft[ing] comprehensive telehealth legislation for the 116th Congress." The caucus is seeking public input related to its goal of "assembling a revised telehealth package that continues to expand access to vital, cost-efficient telehealth and remote monitoring services across the country." Comments are due April 1, 2019.

The RFI specifically requests input on recommendations that would:

- Expand access to telehealth and remote monitoring, especially in rural or otherwise underserved communities;
- Improve patient outcomes, whether by expanding access to specialists or other providers or by easing the day-to-day patient experience;
- Encourage easier and expanded use of existing telehealth and remote monitoring technologies, many of which suffer from low uptake rates; and
- Reduce healthcare costs for both patients and federal programs, including Medicare.

Industry stakeholders should take this opportunity to voice their concerns and recommendations on the legal obstacles that stand in the way of telehealth implementation and access. Although not an exhaustive list, the following legislative or regulatory actions would likely encourage wider telehealth adoption, promote access to care, and improve patient outcomes through technology-enabled health care:

Remove rural restrictions

The Social Security Act currently prohibits Medicare reimbursement of telehealth services except when an eligible telehealth individual is located at a qualifying "originating site" that is (1) located in an area designated as a rural health professional shortage area;[1] (2) located in a county not included in a Metropolitan Statistical Area; or (3) part of a telemedicine demonstration project. Notably, many state Medicaid programs have already removed similar restrictions, expanding telehealth services to patients in urban areas. Congress has even slowly chipped away at this restriction, removing geographic requirements for home dialysis end-stage renal disease and telestroke treatment effective January 1, 2019, and for substance abuse treatment effective July 1, 2019.

In fact, CMS has noted that the same barriers to health care faced by Medicare beneficiaries in rural areas are also faced by those in urban areas; patients in urban areas with high concentrations of minority populations lack access to providers and medical specialists, have difficulties finding child care, and often suffer from delayed care, resulting in absenteeism from work or school. Further expanding the services that are exempt from the rural requirement would be another step in the right direction, but it may be time for Congress to consider repealing the restriction altogether.

Bring consistency to remote patient monitoring

In the 2019 Physician Fee Schedule Final Rule, CMS announced that it would reimburse remote physiologic monitoring (RPM) under three new CPT codes, effectively opening the door to significant remote care and reimbursement potential. Despite initially stating that RPM services could not be reimbursed when provided by clinical staff, CMS recently reversed course, confirming that RPM will be reimbursed by Medicare when furnished by clinical staff "incident to" a practitioner's professional service. However, such services are still subject to direct supervision requirements (requiring the supervising practitioner to be in the same building or office suite). On the other hand, CMS has stated that the substantially similar chronic care management (CCM) services can be performed by clinical staff under only general supervision. Although CMS may be in the best position to address its inconsistent guidance and further refine these rules, achieving consistency among all types of RPM (either statutory or regulatory) could be helpful. Even without congressional action, highlighting inconsistencies and areas for improvement in RPM and CCM reimbursement may encourage further CMS action in this area.

Confirm physicians can reassign telehealth billing rights to institutional providers

Certain CMS guidance appears, at first blush, to call into question practitioners' ability to reassign their billing rights to both originating site and distant site hospitals. However, this interpretation contradicts subregulatory guidance discussing the purpose of these rules, CMS manual provisions on interjurisdictional reassignments, industry norms, and common sense. This apparent inconsistency has no doubt caused some providers hesitation regarding reassignment practices. Legislation clarifying the capability of institutional providers to submit telehealth claims on behalf of individual practitioners on a reassignment basis would bring certainty that could open the door to more telehealth providers and increase access to care.

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[1] A "'health professional shortage area' means an area in an urban or rural area (which need not conform to the geographic boundaries of a political subdivision and which is a rational area for the delivery of health services) which the Secretary determines has a health manpower shortage and which is not reasonably accessible to an adequately served area."

Highlight additional opportunities to increase adoption of telehealth and virtual services

Any additional ideas to boost the uptake of technology-enabled health care may also be suggested. For example, several commenters recently asked CMS to reduce cost-sharing for certain technology-based health care services, noting that "beneficiary cost sharing is a significant barrier" to interprofessional Internet consultations, virtual check-ins, and RPM and CCM services. This type of legislation would not be unprecedented; Congress has already authorized the Secretary of Veterans Affairs to waive the imposition of copayments for telehealth or telemedicine services provided to veterans. Although it could be viewed by Congress as a net cost to the government, waiving or reducing copayments for these services would likely improve access to care by lowering the financial burden on Medicare beneficiaries and providing better access to specialists, ultimately lowering health care costs by avoiding more acute care.

While these represent only a handful of potential ideas, any health care provider or technology vendor that utilizes or is considering telemedicine should take this opportunity to reflect on the legal barriers that Congress should address. If you have any questions or would like assistance preparing comments, please contact us today. The deadline for submitting comments is April 1, 2019, to Telehealth.RFI@mail.house.gov.

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