Private Payer Parity in Telehealth: Not Always All It's Cracked Up to Be

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Thirty-five states have passed telehealth parity laws,[1] requiring certain payers to cover and reimburse telehealth encounters the same as they would in-person medical encounters. And that number is growing. Fantastic, right? Not exactly.

Data proves that telehealth improves access, decreases cost, improves quality, and fills a critical consumer demand.[2] But state-enacted parity laws may have limited utility and may even set unnecessary obstacles to its use.

Background

While federal rules dictate Medicare reimbursement and states generally dictate Medicaid reimbursement, private payer payment for telehealth services, without parity laws, is a matter of contract. Insurance carriers set reimbursement rules, negotiate and execute agreements with health care providers, and pay covered claims for services provided to beneficiaries. States interested in advancing quality health care, especially to rural areas, have passed telehealth parity laws purportedly to require health plans[3] to cover and/or pay for analogous services, whether delivered in person or via telehealth. Unfortunately, among a myriad of other challenges, providers desiring to take advantage of telehealth face significant disparity among parity laws between states. Indeed, many are better than others.

The Good, the Bad, and the Ugly

The vast majority of parity laws include a coverage requirement, but few demand *both* coverage and payment parity. The few states that have adopted parity laws requiring not only *equal coverage* of telehealth services, but also *equal payment* of telehealth services, are the best of the bunch. If there is not *payment* parity and insurers are permitted to pay less for telehealth, the telehealth provider likely is still limited in its ability to offer the service.[4]

Of the state laws with a coverage parity requirement, some cover only a defined list of health care services, subject compliance to the payer's policies and procedures, restrict telehealth reimbursement to specific conditions, or—as in the case of a few curious "parity-lite" laws—mandate telehealth reimbursement *only if* the plan chooses to cover telehealth services. Arkansas, for example, only provides coverage when there is an in-person exam, undercutting the industry's progress in removing such requirements from telehealth practice standards.

Still, in the few states with both coverage and payment parity requirements, and that lack the restrictions described above, the laws address merely what is already covered in the in-person encounter scenario. As a result, they encompass remote patient monitoring services or store and forward transmissions only if the payers have extended benefits to cover such services, but many commercial payers have not. Good parity laws that rise to the level of "Golden" are those that not only include, but mandate coverage for these additional services, which are commonly considered important elements of telehealth.

Key Takeaways

- Because the approach to parity widely varies, providers must closely analyze each state's laws in concert with a payers' service contract, which will naturally vary from payer to payer.
- Recent increased attention on the effectiveness of parity laws has caused the industry to rethink the value and impact of these laws, and states to rethink their legislative approach.
- While some state laws may deter providers from adopting technology for fear of not getting paid, states that take a different approach can use parity laws to shape policy, foster technology, encourage integration of electronic medical records, and establish provider comfort with remote care.

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1 As of the date of this publication. *See* Am. Telemedicine Ass'n, 2017 *State Telemedicine Legislation Tracking* (July 24, 2017).

2 Healthcare IT News, *UC Davis tracks 18 years of telemedicine and finds benefits beyond the bottom line* (Mar. 23, 2017), *available at* http://www.healthcareitnews.com/news/uc-davis-tracks-18-years-telemedicine-and-finds-benefits-beyond-bottom-line.

3 In general, self-insured companies are exempt from state mandates under the Employment Retirement Income Security Act (ERISA). That said, many employers still do offer telehealth as a benefit to employees. National Bus. Group on Health, *Large Employers' 2018 Health Care Strategy and Plan Design Survey* (Aug. 8, 2016).

4 Arguments against offering payment parity include challenges for the need for equal payment if, as the industry touts, telehealth truly creates cost savings. Those asserting this position argue that if costs are truly reduced telehealth providers should have fewer costs. Proponents of parity argue that equal reimbursement is justified due to the consistent professional nature of the service added to the fact there are costs in upkeep of the technology. More practical arguments focus on the fact that telehealth offers additional benefits such as increased access, convenience, and efficiencies and providers will not grow to adopt the service model if they are paid less for doing so.