NATIONAL CONSORTIUM OF TELEHEALTH RESOURCE CENTERS

Telehealth Policy Issues
www.telehealthresourcecenter.org
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The ubiquitous adoption of telehealth continues to lag despite improved technology and increasing amounts of evidence of its ability to effectively provide health services. In the last few years telehealth has received attention as a means to achieving the goals of the Triple Aim: increased efficiency, better health outcomes, and better care. However, existing policy barriers on both federal and state levels contribute to the limited use of telehealth. Below are some of the major barriers that currently exist.

REIMBURSEMENT

Telehealth reimbursement policy varies greatly on the federal and state levels. Restrictions in the Medicare program include limitations on where telehealth services may take place, both geographically and facility-wise, the types of providers who may bill for services delivered via telehealth, a limited list of services that can be billed, and restricting, for the most part, to only allowing live video to be reimbursed. Each state dictates what their Medicaid telehealth policies are which creates a patchwork quilt of telehealth laws and regulations across the nation.

Over the last few years, states have also begun to pass legislation to either encourage or mandate private payers to reimburse for telehealth delivered services. These policies also vary across states and some contain their own limitations, depending on how the laws have been crafted. Additionally, the laws may also be written in such a way where there may be parity in coverage of services, but not necessarily parity in payment amount. In other words, a state law may require an insurer to pay for services if they are delivered via telehealth if those same services were covered if delivered in-person, but the law may not require the insurer to necessarily pay the same amount for that service in both cases.

LICENSING/REGULATORY BOARDS

Licensing is under the purview of states to control and regulate. The majority require a license from the state in order to provide services though a few exceptions exists in a few jurisdictions. Various national groups have worked to ease some of these issues. The enhanced Nurses Licensing Compact allows a nurse with a license in a compact member state to practice in another compact member state without having to obtain another state license. The Federation of State Medical Boards offered their own type of solution for physicians by creating model language for an Interstate Medical Licensure Compact that would allows member states to create an expedited process to obtain a license in member states. There is also a Psychologist Compact.

In addition to the licensing issue, regulatory boards also hold key control over other aspects that impact telehealth policy. Increasingly, regulatory boards are looking to develop regulations, policies, or guidelines on how providers they regulate utilize telehealth in their practices. Some of these guidelines have mirrored what licensees would need to do if they had provided the services in-person, others have included additional requirements.

CREDENTIALING/PRIVILEGING

CMS approved regulations to allow hospitals and critical access hospitals (CAH) to credential by proxy which allows a clinic (the originating site) to contract with another hospital, CAH or telemedicine entity (the distant site) to provide services via telehealth and credential those providers by relying on the credentialing work done by the distant site, if certain conditions are met. This creates a faster, more cost effective method for clinics and hospitals to access needed specialty care. The Joint Commission created parallel guidelines to the federal regulations. Both are optional to use and a clinic or hospital may still utilize a full credentialing process.

Delivering medical care at a distance

PRESCRIBING

The Ryan Haight Act dictates how telehealth (telemedicine is the term used in the Act) may be used to prescribe controlled substances. The Act provides specific scenarios on how the interaction between patient and provider must take place. States have control over how everything else is prescribed when telehealth is used and the policies vary across states. Some states have very specific rules for the use of telehealth in prescribing while others are more vague or silent. A relationship entirely built via telehealth may not be considered a valid means of establishing a relationship. Some of the rules center on whether telehealth is adequate to establish a patient-provider relationship which, again, varies across the states. This question of telehealth and prescribing has gained increasing attention in the last few years and will likely continue to be an area where states continue to develop their policies.

HIPAA/PRIVACY/SECURITY

The technology alone cannot make one HIPAA compliant. Human action is required in order to meet the necessary level of compliance that is required. HIPAA does not have specific requirements related to telehealth. Therefore, a telehealth provider must meet the same requirements of HIPAA as would be needed if the services were delivered in-person. However, to meet those requirements an entity may need to take different or additional steps that may not have been necessary if the service was delivered in-person.

Additionally, states may have their own privacy and security laws with which providers must be familiar. HIPAA is a baseline to protecting health information and some states may actually have a higher bar a provider must meet in order to be compliant. Additionally, states may have specific internet vendor laws that may not be directed at health services, but nonetheless impact them because they are services sold via the Internet. If a provider is offering services in another state, it would be prudent to look into the state laws covering these areas.

MALPRACTICE

There have been few cases that involve telehealth and many have revolved around teleradiology. The low number of cases, however, is likely due to the low adoption of telehealth. Additionally, there have been a few negligence cases that involve the non-use of telehealth. Telehealth malpractice cases are likely to increase the more it is widely used. However, one thing related to malpractice that providers should be aware of and which has become an issue to some providers is malpractice coverage. Not all carriers will provide malpractice coverage involving telehealth delivered services and not all coverage a provider has will be viable in another state. Additionally, some carriers will provide malpractice coverage, but may charge higher premiums. Very little policy has been related to addressing these issues. Providers should ensure that their malpractice insurance does cover telehealth delivered services and that it is viable in any other states they wish to practice in. A provider may find he or she will need to purchase additional insurance.

Center for Connected Health Policy
1331 Garden Highway, Sacramento, CA 95833

RayD@cchpca.org

Who is your TRC?
www.telehealthresourcecenter.org/who-your-trc

The National Consortium of Telehealth Resource Centers (NCTRC) is an affiliation of the 14 Telehealth Resource Centers funded individually through cooperative agreements from the Health Resources & Services Administration, Office for the Advancement of Telehealth. The goal of the NCTRC is to increase the consistency, efficiency, and impact of federally funded telehealth technical assistance services. This Policy Fact Sheet was made possible by 14 Telehealth Resource Centers and administered through grant #G22RH30365 from the Office for the Advancement of Telehealth, Federal Office of Rural Health Policy, Health Resources and Services Administration, Department of Health and Human Services.