ALASKA STATE HOSPITAL & NURSING HOME ASSOCIATION

Telemedicine Legislation, Regulations, and Payment in Alaska
December 2014

The *American Telemedicine Association (*ATA) defines **telemedicine** as the use of medical information exchanged from one site to another via electronic communications to improve a patient's clinical health status. Telemedicine includes a growing variety of applications and services using two-way video, email, smart phones, wireless tools and other forms of telecommunications technology. Payers and regulators have particular responsibilities and interests in the practice of telemedicine. This paper explores the status and effect of current telemedicine policy in Alaska.

Recent Legislation

Alaska HB 281 allows a physician to prescribe medication without a physical examination, in certain circumstances, and prohibits board sanctions for such action.[1] HB281 passed both the Senate and the House during the 2014 session, then passed into law without the governor's signature and will become effective on November 28, 2014.

The Alaska State Medical Board (ASMB) issued guidance in 2012; "*Telemedicine may be practiced legally in the state as long as the physician holds a current active Alaska license and there is an appropriate (licensed) health care provider on the other side of the transaction (with the patient) to assist the physician with their examination and diagnosis processes. Without that element, the physician is relying only on patient-supplied information, which is considered unprofessional conduct*[2]*…")* ASMB will consider how to appropriately implement HB281 at their November 6-7, 2014 meeting.

Previous Alaska legislation included SB80, "An Act relating to the practice of telemedicine; relating to prescription of drugs by a physician without a physical examination; and relating to insurance coverage for telemedicine."[3] Introduced in 2013, it died in the 2014 legislative session. The bill included parity for private insurance coverage with the following language: ***Sec. 21.54.102. Telemedicine.*** *A health care insurer that offers, issues for delivery, or renews a health care insurance plan that provides coverage for telemedicine may not require that prior in-person contact occur between a health care provider and a patient before payment is made for covered services.* HB281 (described above) was similar to the part of SB80 related to prescription of drugs; but the parts of SB80 related to insurance coverage parity and general practice of telemedicine were not included in the version of HB281 that passed in 2014.

On the federal side, H.R.6719 was introduced in the U.S. House of Representatives in December 2012 to promote and expand the application of telehealth under Medicare and other Federal health care programs, and for other purposes. There has been no action on the bill.

Alaska Regulations for Specific Telemedicine Services

The majority of Alaska regulations on telemedicine address Medicaid payment policy, but there are a few instances of professional regulations unrelated to payment. Examples are described below.

Remote pharmacy (telepharmacy) licenses are granted by the Alaska Board of Pharmacy. The board will approve an application to provide pharmacy services through a remote pharmacy if the central pharmacy establishes that

[1] http://www.legis.state.ak.us/PDF/28/Bills/HB0281Z.PDF
[2] http://commerce.alaska.gov/dnn/portals/5/pub/MED_Guide_Telemedicine.pdf
[3] http://www.legis.state.ak.us/PDF/28/Bills/SB0080D.PDF

there is no access to a non-remote pharmacy within a 10 mile radius of the proposed remote pharmacy site (unless the non-remote pharmacy is prevented by Federal Law from providing pharmacy services to all the individuals within the 10 mile radius), per 12 AAC 52.423(b)(2). Tribally operated pharmacy services are not required to obtain state license.

12 AAC 54.530 establishes standards for the practice of tele-rehabilitation. An interactive telecommunication system may be used by a physical therapist in order to provide physical therapy to patients who are located at distant sites in the state which are not in close proximity of a physical therapist.

Payment Policy

Medicare: Medicare will cover a broad range of HCPCS/CPT codes provided via telemedicine. Services must be billed with the appropriate modifier (GQ or GT) to indicate that telemedicine was the mode of delivery of the service. As a condition of payment, an interactive audio and video telecommunications system must be used that permits real-time communication between the physician or practitioner at the distant site, and the beneficiary, at the originating site. Asynchronous (store and forward) technology is permitted only in Federal telemedicine demonstration programs conducted in Alaska or Hawaii.[4] The Tribally-operated AFHCAN program has been billing and receiving payment from Medicare for store and forward consultations for many years under this exemption.

On May 5, 2011, the Centers for Medicare & Medicaid Services (CMS) published a final rule (76 FR 25550), effective July 5, 2011, governing the agreements under which a hospital (including CAHs) may provide telemedicine services to its patients. These rules permit hospitals to provide telemedicine services to their patients through written agreements with a distant-site hospital or a distant-site telemedicine entity. The rule also specifies that hospitals may rely, when granting telemedicine privileges, upon the privileging decisions of a distant-site hospital or telemedicine entity with which they have a written agreement that meets Medicare requirements.[5]

In June 2013, CMS published a memorandum clarifying the Conditions of Participation for emergency services and EMTALA compliance[6]:

1. The requirement of having a physician available to be on-site within 30 minutes (60 minutes for CAHs in Frontier areas that meet certain conditions) "can be met by the use of a telemedicine MD/DO as well as by an MD/DO who practices on-site at the CAH."
2. The Emergency Labor and Treatment Act (EMTALA) is not a barrier to using telemedicine to extend CAH emergency services. Specifically, "if using telemedicine for emergency and other services, a CAH is not required to include the telemedicine physician on-call list mandated under the EMTALA regulations." The memorandum goes on to say that "this does not mean that physicians who practice on-site must be on-call and available to appear in person at all times."
3. The memorandum outlines the role of a Qualified Medical Person (QMP) and significantly, "the QMP on-site (at the CAH) conducting the required screening examination may be assisted or directed by a qualified telemedicine practitioner."
4. The memorandum concludes that "when a telemedicine physician is providing/directing diagnosis or treatment of individuals in a CAH ED, there is no requirement or expectation under EMTALA that the CAH must always require one of the local on-call physicians to come to the ED as well."

Medicaid: According to the American Telemedicine Association, which conducted an exhaustive survey of all 50 states' telemedicine policies[7], "telemedicine coverage under the Alaska Medicaid plan is broad and the least

[4] CMS MLN Rural Health Fact Sheet Series; "Telehealth Services, April 2014. http://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNProducts/downloads/telehealthsrvcsfctsht.pdf
[5] http://ctel.org/wp-content/uploads/2011/07/CMS-Credentialing-Privileging-Memo.pdf
[6] http://www.cms.gov. Critical Access Hospital (CAH) Emergency Services and Telemedicine: Implications for Emergency Services Condition of Participation (CoPs) and Emergency Medical Treatment and Labor Act (EMTALA) On-Call Compliance.

restrictive compared to other states." Alaska's Medicaid program ("the department") will reimburse for services specified in the following regulations[8], with selections quoted below:

Telemedicine Applications 7 AAC 110.625.
(a) The department will pay a provider for a telemedicine application if the provider provided the medical services through one of the following methods of delivery in the specified manner:

(1) **live or interactive;** to be eligible for payment under this paragraph, the service must be provided through the use of camera, video, or dedicated audio conference equipment on a real-time basis; medical services provided by a telephone that is not part of a dedicated audio conference system or by a facsimile machine are not eligible for payment under this paragraph;
(2) **store-and-forward;** to be eligible for payment under this paragraph, the service must be provided through the transference of digital images, sounds, or previously recorded video from one location to another to allow a consulting provider to obtain information, analyze it, and report back to the referring provider;
(3) **self-monitoring or testing;** to be eligible for payment under this paragraph, the services must be provided by a telemedicine application based in the recipient's home, with the provider only indirectly involved in the provision of the service.

Exclusions 7 AAC 110.635
(a) The department will not pay for the following services provided by telemedicine application:

(1) home and community-based waiver services;
(2) pharmacy services *(such as counseling or equipment)*;
(3) durable medical equipment services;
(4) transportation services;
(5) accommodation services;
(6) end-stage renal disease services;
(7) direct-entry midwife services;
(8) private-duty nursing services;
(9) personal care assistant services;
(10) visual care, dispensing, or optician services.

(b) The department will pay only for professional services for a telemedicine application of service. The department will not pay for the use of technological equipment and systems associated with a telemedicine application to render the service.

Private Insurance: 35 states have introduced or enacted legislation to establish private insurance parity for telemedicine payments, but no Alaska laws or regulations currently exist to prohibit private insurers in Alaska from denying coverage of telemedicine-provided services.[9] Regardless, most of the major private insurance companies operating in Alaska either plan to cover the service soon, or already cover it. Moda and Premera telemedicine policies are briefly described below.

As of 1/1/2015, Premera will cover telemedicine services for all members. Evaluation and Management codes must be level 2 or higher, be synchronous, and must be billed using the appropriate modifier for telemedicine.

---

[7] Thomas, Latoya, and Capistrant, Gary; State Telemedicine Gaps Analysis; Coverage and Reimbursement. American Telemedicine Association, Sept. 2014. http://www.americantelemed.org/docs/default-source/policy/50-state-telemedicine-gaps-analysis---coverage-and-reimbursement.pdf

[8] Alaska Medicaid Regulations 7 AAC 110.620-639; 7 AAC 135.290; 7 AAC 145.580.

[9] http://atawiki.org.s161633.gridserver.com/wiki/index.php?title=Alaska

Moda Health covers electronic visits (e-visits), defined as a structured, secure online consultation between the professional provider and the member. The plan covers e-visits when the following conditions are met:

A. Moda Health has approved the professional provider for e-visits;
B. The member has previously been treated in the professional provider's office and is established as a patient;
C. The e-visit is medically necessary for a covered medical condition.

Conclusions

Alaska's unique health care system has resulted in uneven and sometimes confusing policy development for telehealth. The Alaska Tribal Health System, the largest health care system in the state, has developed an extensive, sophisticated, and very successful telemedicine system to meet the challenges of isolated patient populations, far-flung geography, and chronic workforce shortages. This system is partially insulated from state regulations and payment policies, as it is federally-funded and does not rely on fee-for-service payments as much as other health care systems do. Medicaid is a significant payer to Tribal health organizations, and Medicaid policy is supportive of telemedicine service delivery.

The non-Tribal health system in Alaska faces barriers to the development of telemedicine services. The biggest barrier is the lack of clear and supportive state regulations. Legislation is needed to ensure that medical providers practicing telemedicine (under standards developed by respected organizations such as the American Telemedicine Association) cannot be censured for "unprofessional conduct." Legislation is also required to ensure that insurance companies will cover telemedicine services, and to outline the requirements for coverage.

Despite the thriving Tribal telemedicine system in Alaska, the rest of the health system remains significantly behind other states in the development of telemedicine. This is a problem given the potential benefit telemedicine could offer to rural residents and isolated communities. Telemedicine offers the opportunity to improve access and quality of care for Alaskans, but requires laws and regulations that support the development.

As part of the effort to support and advocate for telemedicine in Alaska, it would be beneficial to consider telemedicine an opportunity in payment reform rather than in the existing fee for service model. As part of larger reform, telemedicine could be a way to increase access to care, and to improve care coordination and home care monitoring if reimbursement is not focused solely on office-based encounters.