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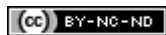
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A Telehealth Technicality: Pennsylvania's Outdated Insurance Reimbursement Policies Deter Investment in Modern Telehealth Technology

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A Telehealth Technicality: Pennsylvania's Outdated Insurance Reimbursement Policies Deter Investment in Modern Telehealth Technology

Gabrielle Lee*

INTRODUCTION

A Pennsylvania resident takes a half-day off work for a morning doctor's appointment. After commuting to the doctor's office, filling out paperwork, waiting in the lobby, meeting with the nurse, all of which lead up to only a few moments with the doctor, this resident barely makes it back to the office in time for lunch. On that same day, a New Mexico resident has a doctor's appointment scheduled as well. However, instead of taking time from work to commute to her physician's office, she closes her office door and logs onto her computer during the lunch hour. She is able to connect with her doctor via webcam and complete her visit with plenty of time to finish lunch.

Unfortunately, this is a common scenario for privately insured Pennsylvania residents. The average employee visits a physician's office 3.9 times a year,¹ often resulting in loss of productivity in the workplace.² In spite of the available technology, the majority of Pennsylvania residents are not able to take advantage of the convenience of telehealth services because private and state employee insurance providers are not required to and consequently do not cover these services.³

Telehealth is a quickly evolving care mechanism used all over the world by healthcare providers to increase the quality and availability of health care while

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¹ *Americans Are Visiting the Doctor Less Frequently*, Census Bureau Reports, UNITED STATES CENSUS BUREAU (Oct. 19, 2014, 6:04 PM), https://www.census.gov/newsroom/releases/archives/health_care_insurance/cb12-185.html.

² Daniel Castro, Ben Miller & Adams Nager, *Unlocking the Potential of Physician-to-Patient Telehealth Services*, THE INFORMATION TECHNOLOGY & INNOVATION FOUNDATION (Oct. 22, 2014, 12:00 PM), <http://www2.itif.org/2014-unlocking-potential-physician-patient-telehealth.pdf>.

³ See Latoya Thomas & Gary Capistrant, *State Telemedicine Gaps Analysis Coverage & Reimbursement*, AMERICAN TELEMEDICINE ASSOCIATION (Oct. 22, 2014, 12:00 PM), <http://www.americantelemed.org/docs/default-source/policy/50-state-telemedicine-gaps-analysis---coverage-and-reimbursement.pdf?sfvrsn=6>.

decreasing the overall costs.⁴ Despite statistics showing the benefits of this technology, Pennsylvania insurance laws do not require private insurers to provide coverage for any form of telehealth services.⁵ This lack of universal coverage deters hospitals and other healthcare providers from investing in telehealth technology. They are unable to reap the full financial benefits of the available service if the majority of patients' insurance providers do not provide reimbursement for the care.

Part I of this Article defines telehealth and explains the services that are generally included within the scope of the definition. Part II addresses the development of telehealth policy in the United States. Part III addresses potential improvements to the quality of health care for patients with access to telehealth technology and explains the financial benefits for patients, hospitals and insurance companies. Part IV analyzes current Pennsylvania law, which mandates coverage of limited services for Medicaid patients, and Pennsylvania House Bill 491, a proposal that would require all health insurance providers to cover telehealth services.⁶ Finally, Part V proposes an amended version of House Bill 491. The proposed revisions resolve the common concerns of insurance providers, such as increased costs and the unnecessary use of healthcare services by patients.

I. WHAT IS TELEHEALTH?

The definition of telehealth has changed nearly as frequently as the technology it defines. There is no consensus on a single, all encompassing definition. The Federation of State Medical Boards defines telehealth as “the practice of medicine using electronic communications, information technology or other means between a licensee in one location, and a patient in another location with or without an intervening healthcare provider.”⁷ However, the definition clarifies that telehealth is “not an audio-only telephone conversation, e-mail/instant messaging conversation, or fax.”⁸ The Telehealth Modernization Act cites a slightly contradicting definition that explicitly includes email, telephone, and Internet chat and requires a healthcare provider to be involved in this

⁴ See *Telemedicine: Its History, Uses and Benefits*, NATIONAL ASSOCIATION OF ACCREDITED INSURANCE PROFESSIONALS (Oct. 10, 2014, 12:00 PM), <http://www.naaip.org/telemedicine>.

⁵ H.B. 491, 197th Leg. (Pa. 2013).

⁶ *Id.*

⁷ *Model Policy for the Appropriate Use of Telemedicine Technology in the Practice of Medicine*, FEDERATION OF STATE MEDICAL BOARDS (Oct. 10, 2014, 12:07 PM), http://www.fsmb.org/Media/Default/PDF/FSMB/Advocacy/FSMB_Telemedicine_Policy.pdf.

⁸ *Id.*

communication.⁹ The definition states in relevant part, “[H]ealth care that a health care professional is authorized to deliver to an individual in person under state law, such health care delivered by . . . means of real-time video, secure chat or secure email, or integrated telephony.”¹⁰ Despite the various conflicting definitions, there are generally three primary categories of the technology: store-and-forward,¹¹ remote monitoring,¹² and interactive telehealth.¹³

Although often used interchangeably, telemedicine and telehealth differ in that telemedicine focuses solely on implementing information technology to aide healthcare professionals in delivering clinical services, while telehealth is a broader term that encompasses all remote healthcare services.¹⁴ For the purposes of encompassing all available technology, this Article uses the term telehealth for both curative and preventative medical technology.

II. DEVELOPMENT OF TELEHEALTH

The first documented use of telehealth occurred in 1897 when a physician diagnosed a child with croup, a mild virus characterized by a very distinct cough,¹⁵ during a telephone consultation.¹⁶ Nearly a century later, the interest in further developing telehealth was so prevalent that a national conference was held in Ann Arbor, Michigan.¹⁷ Unfortunately, the high costs and poor quality of the technology

⁹ Alexander Hecht, Andrew J. Shin & Abby Matousek, *Telehealth and Health IT Policy: Considerations for Stakeholders*, ASSOCIATION OF CORPORATE COUNSEL (Oct. 1, 2014, 12:00 PM), <http://www.lexology.com/library/detail.aspx?g=162e9782-aa80-4682-ab7f-d451680f7e5f>.

¹⁰ *Id.*

¹¹ Store-and-forward technology is defined as “the transmittal of medial data (such as medical images and bio signals) to a physician or medical specialist for assessment. It does not require the presence of both parties at the same time. . . .” Charles F. Willson, *Report of the Council on Medical Service*, SCRIBD (Oct. 22, 2014, 12:00 PM), <https://www.scribd.com/doc/234264178/AMA-Telemedicine-Recommendations>.

¹² Remote monitoring is defined as “to monitor a patient remotely using various technological devices.” *Id.*

¹³ Interactive telemedicine is defined as “face-to-face interaction between patient and provider (e.g., online “portal” communications). Telemedicine, where the patient and provider are connected through real-time audio and video. . . .” *Id.*

¹⁴ *What is Telemedicine?*, AMERICAN TELEMEDICINE ASSOCIATION (Oct. 10, 2014, 7:03 PM), <http://www.americantelemed.org/about-telemedicine/what-is-telemedicine#.VEIRakvWHwI>.

¹⁵ *About Croup Signs and Symptoms*, KIDSHEALTH (Oct. 22, 2014, 12:00 PM), http://kidshealth.org/parent/infections/bacterial_viral/croup.html.

¹⁶ ADAM WILLIAM DARKINS & MARGARET ANN CAREY, *TELEMEDICINE AND TELEHEALTH: PRINCIPLES, POLICIES, PERFORMANCE, AND PITFALLS* 7 (2000).

¹⁷ *Id.* at 8.

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available at that time was found to outweigh the benefits of healthcare efficiency, which resulted in many organizations withdrawing their support of telehealth development.¹⁸

Although the national telehealth conference was unsuccessful, telehealth still appeared to be a viable option for organizations that could not effectively utilize conventional health care methods. The National Aeronautics and Space Agency (“NASA”), Antarctic survey stations, offshore oil rigs, and the United States military all continued to develop technology for their employees who, because of work location and conditions, have limited access to quality health care.¹⁹ Decades later, interest in telehealth reignited in the United States due to the rapidly increasing costs of providing health care to prisons and rural areas.²⁰ In response to the need for more efficient rural area and prison health care, providers began using telehealth primarily for mental health, cardiology, and dermatology consultations.²¹ To further aid the success of these programs, a survey was taken from 72 institutions to determine which obstacles were hindering the success of their telehealth programs.²² Reimbursement was cited as the number one hindrance healthcare providers faced in their telehealth practice.²³

Supporters have urged state legislatures to require insurers to cover teleconsultations in the same manner face-to-face consultations are covered. Louisiana was the first state to mandate the coverage of telehealth services for private health insurance providers.²⁴ Since then, 20 states and the District of Columbia have followed suit.²⁵

In 2012, Pennsylvania introduced House Bill 491, which requires “an insurer that issues, delivers, executes or renews health care insurance in this Commonwealth” to also provide coverage for telehealth.²⁶ Recently, developments

¹⁸ *Id.*

¹⁹ *Id.* at 8–9.

²⁰ *Id.* at 11.

²¹ *Id.* at 12.

²² DARKINS & CAREY, *supra* note 16, at 13.

²³ *Id.*

²⁴ *State Policy Toolkit Improving Access to Covered Services for Telemedicine*, AMERICAN TELEMEDICINE ASSOCIATION (Oct. 22, 2014, 8:02 PM), <http://www.americantelemed.org/docs/default-source/policy/ata-state-policy-toolkit.pdf?sfvrsn=38>.

²⁵ *Id.*

²⁶ H.B. 491, 197th Leg. (Pa. 2013).

have been made in Pennsylvania regarding Medicaid coverage of telehealth.²⁷ However, changes in only one type of insurance provider is not sufficient to solve the reimbursement problem impeding the success of telehealth programs.

III. BENEFITS OF TELEHEALTH PROGRAMS

A. *Quality*

In the process of developing a more efficient healthcare system, patients and providers are understandably reluctant to sacrifice the quality of care available through traditional options. Fortunately, the availability of telehealth technology provides the opportunity for patients to conveniently communicate with a doctor without diminishing the quality of care received. There are, of course, certain medical issues and emergencies that are most effectively handled face-to-face at a physician's office or emergency room; however, the availability of telehealth as an option will make healthcare professionals more accessible for patients who do not require in-person medical attention.

According to a study by the Affiliated Workers Association, a non-profit organization that partners with Homeland HealthCare, Inc. to provide their members with access to low priced health benefits,²⁸ almost 70 percent of doctor's office visits can be successfully handled by telephone.²⁹ Eliminating face-to-face contact with physicians does not necessarily decrease the quality of the healthcare provided. Surveys show that telehealth patients have reported a very high satisfaction rate with the quality of telehealth services.³⁰ Healthcare systems that utilize telehealth technology generally improve the quality of the healthcare provided by increasing efficiency, resulting in faster access to healthcare professionals. The average Pennsylvania resident spends 27 minutes in an emergency room lobby before seeing a doctor, in addition to the two hours and six

²⁷ See *Pennsylvania Expands Medicaid Coverage for Telehealth Services*, iHEALTHBEAT (Oct. 22, 2014, 12:00 PM), <http://www.ihealthbeat.org/articles/2012/5/24/pennsylvania-expands-medicaid-coverage-for-telehealth-services>.

²⁸ *About AWA*, AFFILIATED WORKERS ASSOCIATION (Dec. 14, 2014, 12:00 PM), <http://www.affiliatedworkersassociation.org/about>.

²⁹ *Consult A Doctor*, AFFILIATED WORKERS ASSOCIATION (Oct. 20, 2014, 4:06 PM), <http://www.affiliatedworkersassociation.org/documents/23134/64983/AWA-Association-Health%20Programs.pdf/d6d6f7ae-fa1a-43a5-a0d4-c18db58a849d>.

³⁰ See Sheila Fifer, *Telemedicine MD Consultations: Satisfaction Rates and Use Patterns Among Working-age Adults*, MERCER (Dec. 11, 2014, 12:00 PM), <http://communications.teladoc.com/resources/mercer.pdf>.

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minutes until the patient is sent home.³¹ In contrast, the average wait to begin a telehealth consultation is 16 minutes.³² In addition to decreasing wait time on the day of the appointment, telehealth has the potential to decrease the average time a patient must wait to schedule an appointment. The average wait time for a new patient to see a physician for an in-person appointment is 18.5 days.³³ In some cities, the wait to see a family doctor is as long as 66 days.³⁴

The average emergency room and physician's office wait time is likely to increase dramatically when an estimated 32 million more Americans become insured as a result of the Affordable Care Act.³⁵ To meet this demand, there must also be a significant increase in new medical professionals. However, the number of medical school students entering the primary care field has decreased by 52 percent since 1997.³⁶ As a result, the American Academy of Family Physicians (AAFP) predicts a physician staffing shortage of 40,000 by 2020.³⁷ To combat this staffing shortage, one option is to use available technology that more efficiently allocates the increasingly precious time of our healthcare professionals.

Telehealth also increases the quality of care by providing continuous monitoring after hospital discharge. This feature is especially beneficial for those facing chronic illnesses. Nearly one in every two adults has at least one chronic illness, which equates to almost 75 percent of all healthcare costs³⁸ and 81 percent

³¹ *Patient Pathways Through This ER*, PROPUBLICA (Oct. 22, 2014, 12:00 PM), <http://projects.propublica.org/emergency/hospital/390067>.

³² Alex Nixon, *Virtual Doctor's Office Visits via Telemedicine to be Norm*, TRIBLIVE (Oct. 31, 2014, 12:00 PM), <http://triblive.com/business/headlines/4976316-74/doctor-patients-telemedicine#axzz3H5Eyc2th>.

³³ *Physician Appointment Wait Times and Medicaid and Medicare Acceptance Rates*, MERRITT HAWKINS (Oct. 22, 2014, 10:04 PM), <http://www.merrithawkins.com/default.aspx?aspxerrorpath=/uploadedfiles/merrithawkins%20surveys/mha2014waitsurvpdf.pdf>.

³⁴ *Id.*

³⁵ See Press Release, Healthcare Staffing Shortage Poll: Rough Waters Ahead, ASQ (Oct. 20, 2014, 10:09 PM), <http://embedded-computing.com/news/healthcare-rough-waters-ahead/> [hereinafter ASQ].

³⁶ See *Wireless Health: State of the Industry 2009 Year End Report*, MOBILE HEALTH NEWS (Oct. 10, 2014, 5:05 PM), <http://mobihealthnews.com/wp-content/Reports/2009StateoftheIndustry.pdf>.

³⁷ ASQ, *supra* note 35.

³⁸ *Chronic Diseases The Power to Prevent, The Call to Control: At A Glance 2009*, CENTERS FOR DISEASE CONTROL AND PREVENTION (Oct. 2, 2014, 10:04 PM), <http://www.cdc.gov/chronicdisease/resources/publications/aag/chronic.htm>.

of all hospital visits.³⁹ Home monitoring of chronically ill patients allows physicians to receive patient updates more frequently and detect potential problems earlier.⁴⁰ Many home systems allow patients to keep daily records of their weight, blood pressure, pulse, blood sugar, oxygen saturation, and automatically forward that information to a healthcare professional for daily review.⁴¹ If the patient displays abnormal results, she will be contacted by a physician or nurse and provided with instructions on how to improve her condition or a prescription that can be picked up at her local pharmacy.⁴² As a result, patients feel more comfortable and confident in their health condition knowing that their medical information is being frequently relayed to their physician.⁴³

B. Cost

One of the clearest indicators of savings when comparing telehealth consultations with in-person office visits is the difference in claims costs. When using telehealth technology, the average savings per consultation range from \$62 for a primary care physician (“PCP”) consultation to \$712 for an emergency room visit.⁴⁴ Many telehealth providers charge a flat fee regardless of the type of consultation offered.⁴⁵

The cost of claims increase significantly as a result of patients using the emergency room when they are unable to schedule an appointment within their PCPs’ office hours. The average cost of a PCP visit is \$100, considerably less than

³⁹ *The Growing Crisis of Chronic Disease in the United States*, PARTNERSHIP TO FIGHT CHRONIC DISEASE (Oct. 15, 2014, 12:00 PM), http://www.fightchronicdisease.org/sites/fightchronicdisease.org/files/docs/GrowingCrisisofChronicDiseaseintheUSfactsheet_81009.pdf.

⁴⁰ Kim A. Schwartz & Bonnie Britton, *Use of Telehealth to Improve Chronic Disease Management*, N.C. MED. J. (Oct. 18, 2014, 12:00 PM), <http://www.ncmedicaljournal.com/wp-content/uploads/2011/05/72311-web.pdf>.

⁴¹ *Id.*

⁴² *Id.*

⁴³ Allison Moore, *Telehealth Special Report: Remote Control of Care*, HEALTH SERVICE J. (Oct. 22, 2014, 10:00 PM), <http://www.hsj.co.uk/resource-centre/supplements/telehealth-special-report-remote-control-of-care/5071580.article#.VEmpEEvWHwI>.

⁴⁴ *Health Care and Business: Using New Technologies to Reduce Costs, Improve Access and Increase Employee Satisfaction*, TELADOC (Oct. 15, 2014, 12:00 PM), <http://communications.teladoc.com/www/Telehealth-Special-Report.pdf>.

⁴⁵ Lisa Zamonsky, *Telehealth Use Growing Amid Pressure for Convenient, Affordable Care Alternatives*, IHEALTHBEAT (Oct. 20, 2014, 10:00 PM), <http://www.ihealthbeat.org/insight/2014/telehealth-use-growing-amid-pressure-for-convenient-affordable-care-alternatives>.

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the \$750 cost for an emergency room visit.⁴⁶ A study completed by Truven Health Analytics found that 24 percent of patients admitted to the emergency room did not require immediate attention and 41 percent could have had their medical issue safely resolved at their PCP's office.⁴⁷ This, coupled with the fact that two-thirds of emergency room visits occur outside of normal physician's business hours,⁴⁸ further supports the implication that people are substituting standard PCP visits with trips to the emergency room. As a result, not only are emergency rooms becoming increasingly crowded, but claims costs also rise significantly. The availability of a telehealth option will decrease the unnecessary use of emergency services since telehealth generally provides extended hours and easier access to healthcare professionals.

In addition to decreasing the number of emergency room visits, telehealth will also decrease the number of yearly hospital readmissions. These readmissions account for approximately \$600 billion of annual healthcare spending in the United States.⁴⁹ That amounts to nearly 30 percent of the total U.S. healthcare expenditure.⁵⁰ A survey found that over 75 percent of hospital readmissions within the first 30 days of discharge were avoidable.⁵¹ Common reasons cited were poor communication and lack of understanding on the part of the patient or their home caregiver.⁵² Numerous studies report hospital readmission rate reductions ranging between 50 to 62 percent as a result of implementing telehealth programs.⁵³

⁴⁶ *Health Care and Business: Using New Technologies to Reduce Costs, Improve Access and Increase Employee Satisfaction*, TELADOC (Oct. 18, 2014, 12:00 PM), <http://communications.teladoc.com/www/Telehealth-Special-Report.pdf>.

⁴⁷ *Truven Health Analytics Study Finds Most Emergency Room Visits Made by Privately-Insured Patients Are Avoidable*, TRUVEN HEALTH ANALYTICS (Oct. 15, 2015, 12:00 PM), <http://truvenhealth.com/news-and-events/press-releases/april252013>.

⁴⁸ Peter Cunningham, Ph.D., *Nonurgent Use of Hospital Emergency Departments*, CENTER FOR STUDYING HEALTH SYSTEM CHANGE (Oct. 18, 2014, 10:05 PM), <http://hschange.org/CONTENT/1204/1204.pdf>.

⁴⁹ Stacy Force, *The Role of Telehealth in Reducing Readmissions*, READMISSIONS NEWS, Aug. 2013, <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0CDEQFjAA&url=https%3A%2F%2Fwww.hommed.com%2Fwp-content%2Fuploads%2F2013%2F08%2FReadmissions-News-Role-of-Telehealth-in-Reducing-Readmissions.pdf&ei=52JKVK29F9ityATPy4LgCA&usg=AFQjCNEIHFX13Eboh1FPlkqG0G9rE4oZ2w&sig2=hKZ2KwkT8qmGLPB3xnvIzQ&bvm=bv.77880786,d.aWw>.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ Joseph Conn, *Telehealth Reduced Readmissions, Hospital Days: Report*, MODERN HEALTHCARE (Oct. 10, 2014, 10:00 PM), <http://www.modernhealthcare.com/article/20130205/NEWS/302059954>.

Telephone and email communication can clarify many of the miscommunications causing these readmissions.

One of the biggest concerns regarding costs is the potential for misuse or overbilling for telehealth services. The constant development of medical technology understandably causes insurance providers to fear an increase in healthcare reimbursement costs. This problem has been addressed in many states by giving insurance providers the discretion to provide reimbursement only for services that are deemed medically necessary.

IV. PENNSYLVANIA MANDATED COVERAGE

The American Telemedicine Association published a detailed report evaluating each state's laws regulating Medicaid, private, and state employee insurance coverage of telehealth services.⁵⁴ Each state received a grade from A to F for each category based on numerous criteria.⁵⁵ Pennsylvania received the lowest possible rating in both its private insurance and state employee insurance coverage and received a C rating for its Medicaid coverage.⁵⁶

A. *Medicaid*

In a November 2007 bulletin, Pennsylvania's Department of Public Welfare ("DPW") announced that Medicaid recipients were now eligible to receive coverage for consultations "using telecommunication technology, including video conferencing and telephone, by enrolled maternal fetal medicine specialists, related to high risk obstetrical care, and psychiatrists, related to psychopharmacology."⁵⁷ This new Medicaid policy was created for a very specific purpose: to decrease neonatal intensive care unit admissions and birth complications.⁵⁸ As a result, the telehealth option was only available to mothers facing a high-risk pregnancy, a small percentage of the state's population.⁵⁹

⁵⁴ Thomas & Capistrant, *supra* note 3.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ Estelle B. Richman, *Medical Fee Schedule; Addition of Telehealth Technology Code and Informational Modifier for Consultations Performed Using Telecommunication Technology*, PA BULLETIN (Oct. 30, 2014, 12:00 PM), <http://www.pabulletin.com/secure/data/vol37/37-47/2125.html>.

⁵⁸ *Id.*

⁵⁹ *Id.*

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In addition to the obstetric services, this policy provided reimbursement for psychopharmacology consultations.⁶⁰ Again, this is a very narrow practice not utilized even by the majority of the population. The new policy announcement further restricted patient access by requiring them to be in the presence of their referring physician during the telehealth consultation.⁶¹ This requirement, hidden within the fee schedule instructions, forces patients to travel to a physician's office in order to have a telehealth consultation, minimizing many of telehealth's benefits.

In May 2012, Pennsylvania expanded reimbursement coverage to include telehealth consultations used to diagnose illness, monitor treatment, prescribe medication, and recommend further treatment and additional testing from all specialty physicians for the 2.1 million Medicaid prescribers.⁶² In this updated DPW bulletin, healthcare providers were notified that the Medical Assistance Program is:

1. Establishing telemedicine, which is the use of real-time interactive telecommunications technology that includes, at a minimum, audio and video equipment as a mode of delivering consultation services.
2. Expanding the scope of physician specialists who may render to [Medical Assistance] recipients using interactive telecommunication technology to include all physician specialists.
3. Removing the requirement that the telemedicine consultations be performed during the course of an office visit with participation by the referring provider.⁶³

The most drastic revision is the expanding coverage of consultations by all physician specialists. Patients will have more convenient access to physician specialists. The 2007 bulletin specifically identified only two specialists that would be covered for Medicaid recipients. This new expansion will allow more people to use telehealth for some of its most effective types of consultations: dermatologist and PCP appointments.

DPW eliminated the requirement that the consultation be conducted during an in-person office visit with the provider. Before this change, telehealth was a viable

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² Vincent D. Gordon, *Consultations Performed Using Telemedicine*, PENNSYLVANIA DEPARTMENT OF PUBLIC WELFARE (Oct. 22, 2014, 12:00 PM), http://www.dpw.state.pa.us/cs/groups/webcontent/documents/bulletin_admin/d_005993.pdf.

⁶³ *Id.*

solution for obstetrical emergencies that occurred while the patient was already in the care of another doctor.⁶⁴ This revision is essential for encouraging use of telehealth services. One of the factors that makes telehealth such an appealing alternative is that it eliminates the inconvenient and often time-consuming commute to a physician's office. Also, requiring a physician to be present during the telehealth consultation further restricts patient access because it limits appointment times to traditional office hours. Telehealth services frequently appeal to individuals who are unavailable during traditional office hours. Prior to DPW's new revisions, telehealth was not a practical alternative for those patients.

Although Pennsylvania Governor Tom Corbett describes this expansion as "fully embracing telemedicine," the law still imposes many restrictions on coverage.⁶⁵ As a part of this revision, DPW made further restrictions on the type of technology that may be used during a consultation.⁶⁶ All consultations must be two-way communications using both audio and video. As a result, telephone, email, and fax communications are not considered a form of telecommunication technology and therefore will not be reimbursed.⁶⁷

DPW has yet to expand Medicaid coverage to remote patient monitoring or store-and-forward services. As discussed previously, remote patient monitoring significantly decreases hospital readmission, resulting in decreased healthcare costs and higher patient satisfaction. Denying coverage for two of the three primary categories of telehealth services will prevent insurers and healthcare systems from fully realizing the potential savings provided through these programs.

Although this bulletin appears to be a step in the right direction, such restrictions will likely prevent healthcare providers from maximizing the benefits associated with a telehealth program. The bulletin emphasizes face-to-face consultations as the preferred method, and encourages the use of telehealth consultations only when an in-person consultation is not feasible.⁶⁸

The Pennsylvania legislature may be hesitant to further expand mandated coverage of telehealth services given the lack of use by Medicaid. Insurers and healthcare providers fear similar results once these services are made available to beneficiaries of private and state employee insurance plans. However, evaluating

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

only Medicaid patients' participation is not an accurate sample of future use of the entire population.

In Pennsylvania, Medicare coverage is only made available to elderly, disabled, and low-income individuals.⁶⁹ Although they are covered for certain telemedicine services, low-income individuals and the elderly are the two groups of people who are least likely to utilize health care technology.

An International Data Corporation survey found that patients age 35 and under were much more likely to utilize telehealth services than those 65 and older.⁷⁰ The Pennsylvania Medicaid program does not consider a financially stable individual eligible for Medicaid coverage until age 65,⁷¹ therefore, statistics will most likely show that individuals with access to the coverage still will not take advantage of it. In further support, only 53 percent of adults over the age of 65 use the Internet.⁷² Today's elderly population is statistically the least likely demographic to utilize smart healthcare technology, yet they are one of the few groups that have access to these services. Consequently, statistics related to current use cannot accurately reflect future use and success of telehealth technology.

Similar to the elderly, computer and Internet use by low-income individuals is significantly less than the rest of the population.⁷³ In 2011, only 56.7 percent of households who reported an annual income of less than \$25,000 have a computer in their home.⁷⁴ This number is significantly lower than the 90 percent of households reporting an annual income of over \$25,000 that own a computer.⁷⁵

Hospitals using Pennsylvania Medicaid statistics to predict their return on investment will likely refrain from investing in telehealth technology. Medicaid

⁶⁹ *Pennsylvania Medicaid Moving Forward in 2014*, MEDICAID.GOV (Oct. 15, 2014, 12:00 PM), <http://www.medicaid.gov/medicaid-chip-program-information/by-state/pennsylvania.html>.

⁷⁰ *Collaboration Needed to Boost Telemedicine Adoption, Report Finds*, iHEALTHBEAT (Oct. 22, 2014, 12:00 PM), <http://www.ihealthbeat.org/articles/2010/4/29/collaboration-needed-to-boost-tele-medicine-adoption-report-finds?view>.

⁷¹ *Medical Assistance General Eligibility Requirements*, PENNSYLVANIA DEPARTMENT OF PUBLIC WELFARE (Oct. 22, 2014, 12:00 PM), <http://www.dpw.state.pa.us/foradults/healthcare/medicalassistance/medicalassistancegeneraleligibilityrequirements/>.

⁷² Kathryn Sickuhr & Mary Madden, *Older Adults and Internet Use*, PEW INTERNET & AMERICAN LIFE PROJECT (Oct. 12, 2014, 12:00 PM), http://www.pewinternet.org/files/old-media/Files/Reports/2012/PIP_Older_adults_and_internet_use.pdf.

⁷³ Thom File, *Computer and Internet Use in the United States*, THE UNITED STATES CENSUS BUREAU (Oct. 22, 2014, 12:00 PM), <http://www.census.gov/prod/2013pubs/p20-569.pdf>.

⁷⁴ *Id.*

⁷⁵ *Id.*

patients' lack of access to computers and the Internet is a factor that should lead investors to believe that current telehealth use in Pennsylvania is not an accurate representation of the potential future use by private insurance beneficiaries.

B. Private and State Employee Health Plans

Pennsylvania currently does not mandate coverage of telehealth services for private and state employee insurance plans.⁷⁶ Although they are not required to, some employers and other private insurance providers reimburse for limited telehealth services.⁷⁷ Twenty-one states and the District of Columbia have mandated telehealth coverage for private insurers.⁷⁸ Many of these states require that private insurers cover telehealth services exactly as they would cover in-person consultations.⁷⁹

In February 2012, Pennsylvania Bill 491 was introduced, proposing an amendment to Title 40 of the Pennsylvania Consolidated Statutes to expand healthcare coverage for telemedicine services to any “insurer that issues, delivers, executes or renews health care insurance in this Commonwealth.”⁸⁰ Nearly two years after the bill was introduced, the legislature has displayed no positive efforts to expand coverage.⁸¹ In 2013, Representative Mark Cohen, an Assemblyman hailing from Philadelphia, reintroduced the bill in an effort to further expand telehealth services to the private market.⁸² Section 7202 of this proposed revision states in relevant part:

An insurer that issues, delivers, executes or renews health care insurance in this Commonwealth shall provide coverage for telehealth if the health care professional agrees to all of the following:

- (1) The use of telehealth is appropriate for the patient

⁷⁶ See Hecht et al., *supra* note 9.

⁷⁷ C.J. Rhoads, Gary Bankston, Justin Roach, Roger Jahnke & William Roth, *Telehealth in Rural Pennsylvania*, THE CENTER FOR RURAL PENNSYLVANIA (Oct. 22, 2014), <http://www.rural.palegislature.us/documents/reports/Telehealth-2014.pdf>.

⁷⁸ *Telemedicine Frequently Asked Questions*, AMERICAN TELEMEDICINE ASSOCIATION (Oct. 2, 2014, 12:00 PM), <http://www.americantelemed.org/about-telemedicine/faqs#.VERwRUu4III>.

⁷⁹ *Id.*

⁸⁰ H.B. 491, 197th Leg. (Pa. 2013).

⁸¹ *Id.*

⁸² *Id.*

- (2) The health care professional will be able to maintain proper direct examination of the patient or examination of the patient is not necessary
- (3) The use of telehealth is expected to result in lower health care costs than if it were not used.⁸³

The language of this bill implies that the healthcare provider, not the insurer, determines which services the insurer is required to pay for. This limits the insurer's ability to control claims costs. The phrase "appropriate for the patient" can be interpreted expansively to include all services that provide any benefit to a patient. This can include the use of weight monitoring and activity tracking mobile applications. Although communicating a patient's daily physical activity, weight, and heart rate to a medical professional can be beneficial in that the physician can suggest changes to help prevent the development of avoidable illnesses,⁸⁴ to some, this type of service may not be considered medically necessary, and instead view it as an abuse of medical billing. Insurance providers should have more influence in determining what types of services are medically necessary and will be covered. Therefore, greater restrictions must be in place to assist in such an outcome.

This expansion would require private, state employee, and Medicaid insurers to cover telehealth services used for the diagnosis, prevention, treatment, cure or relief of a health condition, injury, disease, or illness.⁸⁵ If implemented, this new law would trump the regulations issued by DPW, therefore providing a revised definition of telehealth that would not prohibit coverage for store-and-forward communications, remote monitoring, and telephone communication. The bill currently defines telehealth as:

The remote interaction between a health care professional and a patient through the use of any of the following:

- (1) A video camera transmission.
- (2) A computer video transmission.
- (3) An electronic health monitoring device.

⁸³ *Id.*

⁸⁴ See Castro et al., *supra* note 2.

⁸⁵ *Id.*

- (4) Another telecommunications device that delivers health information concerning a patient to a health care professional.⁸⁶

This definition adequately encompasses all three categories of telehealth: interactive, remote monitoring, and store-and-forward. While subsections one and two permit interactive video consultations, the catch-all phrase in subsection four would likely cover the remaining forms of interactive communication such as telephone conversations and instant messaging between a doctor and patient.⁸⁷ Subsection three, which includes an electronic health monitoring device as an acceptable form of telehealth, will not only require private insurers to reimburse remote monitoring, but will further expand Medicaid coverage that currently does not provide coverage for remote monitoring services.⁸⁸ Similarly, the catch-all in subsection four does not limit the telecommunications to live interactions.⁸⁹ Therefore, it can be interpreted to include coverage for store-and-forward services for private insurers and the Medicaid program.

V. ALTERNATE PROPOSAL

Many states that have successfully enacted telehealth parity laws, particularly those with exceptional ratings from the American Telemedicine Association, include very detailed statutory language, allowing for the use of a variety of smart telehealth technologies without being so expansive as to risk misuse and increase costs to insurance companies. Pennsylvania legislators must revise House Bill 491 to include a more limited definition of “telehealth.” More importantly, this definition must limit coverage only to medically necessary treatment. The current language of the bill leaves insurance providers in fear of increased costs resulting from coverage of unnecessary treatments.

In 2013, Mississippi passed a telemedicine parity law mandating health insurance and employee benefit plans to cover telehealth services, however this law permits providers to limit coverage for “only those services that are medically necessary.”⁹⁰ Services are classified as medically necessary according to “the terms

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.*

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and conditions of the covered person's policy."⁹¹ In addition to allowing providers to limit coverage to only medically necessary treatment, the state further limited coverage to "real-time consultations."⁹² This protects insurance companies from having to reimburse providers for emails and phone conversations between healthcare professionals and patients. This limitation protects the interests of insurance companies while still not hindering the development of new healthcare technology.

Similarly, Virginia has a telemedicine law that permits insurers to review non-urgent services to determine if they were appropriate for reimbursement.⁹³ This review must be consistent with the review made for an in-person treatment of an illness, condition, or disorder.⁹⁴ Allowing insurers to limit telemedicine use to medically necessary treatment promotes the underlying purpose of smart healthcare technology: to improve the quality and decrease the cost of healthcare for both the healthcare provider and the patient or insurer.

Pennsylvania insurance providers must have the discretion to limit coverage only to those services that are medically necessary in order to prevent an increase in healthcare claims costs. Decreased healthcare costs are primarily seen in states with telehealth statutes such as Virginia and Mississippi, which place limitations on acceptable services.

CONCLUSION

Healthcare technology is quickly evolving and making vast improvements to the quality and efficiency of care. Many Pennsylvania residents are at a disadvantage because hospitals and healthcare systems hesitate to invest in new technology when certain legal obstacles stand in their way. Reimbursement policy issues not only deter patients from using telehealth, but also hinder the development of the telehealth industry.⁹⁵ Researchers are finding that state insurance reimbursement policies are a key factor in determining whether or not a hospital will invest in telehealth technology.⁹⁶ Without broad reimbursement policies, hospitals will be less confident about a return on such an investment. Fully

⁹¹ MISS. CODE ANN. § 83-9-351 (West).

⁹² *Id.*

⁹³ VA. CODE ANN. § 38.2-3418.16 (West).

⁹⁴ *Id.*

⁹⁵ Rhoads et al., *supra* note 77.

⁹⁶ Erin McCann, *Telehealth Takes Off in Rural Areas*, HEALTHCARE IT NEWS (Oct. 22, 2014, 12:00 PM), <http://www.healthcareitnews.com/news/telehealth-takes-nationwide>.

implementing telehealth technology into Pennsylvania hospitals is necessary to combat the rapidly increasing healthcare costs. However, hospitals cannot predict a return on their investments without all insurers providing reimbursement for telehealth services. Consequently, Pennsylvania should mandate that all insurance providers cover telehealth consultations as they would for face-to-face consultations.