

One Step Forward, But Many More to Go for Telemedicine

Shirley Svorny

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The Centers for Medicare and Medicaid Services recently released its final rule for the 2018 Medicare Physician Fee Schedule, including an increase in Medicare coverage for select telehealth services. CMS indicates that its aim is to transform “access to Medicare telehealth services by paying for more services and making it easier for providers to bill for these services.”

This is good for Medicare beneficiaries, and a promising step for the burgeoning practice of telemedicine. But a major obstacle remains: state physician licensing laws restrict the practice of interstate telemedicine.

According to existing state laws, to treat an out-of-state patient, a doctor has to be licensed in that state. To be available to patients in 50 states, the telemedicine doctor needs 50 state licenses. Some doctors already do this, but securing and maintaining multiple licenses is an expensive and time-consuming process. Distinct state-specific requirements for continuing medical education and questionable variations across states in medical practice standards add to the cost of compliance.

Don't take it from me: When the American Telemedicine Association surveyed health care executives in March 2017, they asked, “What are the key challenges you see with telehealth in the next three years?” Fifty-three percent of those surveyed picked “licensure/privileges” as a key challenge. A 2012 survey of telestroke programs funded by the U.S. Health Resources & Services Administration found “inability to obtain physician licensing/credentialing” as one of the most important barriers to the expansion of stroke-related telemedicine programs.

MedLicense.com, which helps physicians get state licenses, offers a discount for physicians who apply in more than 20 states at one time. Michael Brooks, MedLicense.com's managing member, says annual license renewal fees discourage many physicians from seeking additional state licenses.

Although state licensing requirements were first identified as a barrier to interstate telemedicine in the late 1990s, only one state has considered revising its law. In 2016, Florida lawmakers failed to pass a bill that would have allowed out-of-state telemedicine providers to offer services

in the state. Such a law would have facilitated continuity of care for the approximately one million seasonal residents who visit Florida each year.

Congress could solve the problem. Currently, the location of the patient determines the location of the practice of medicine. If lawmakers were to change the definition from the location of the patient to that of the doctor, doctors would only need one license to practice in multiple states. It has always been legal for a patient to travel to seek care from a physician in another state; this change would allow the same visit to occur remotely. Legal scholars suggest that the Commerce Clause of the U.S. Constitution would support congressional action on this front.

The current system not only results in problems with access to care but complicates matters for state medical boards. When a complaint is filed against a physician with a multi-state practice, the various state medical boards that license that physician must cooperate—a herculean task. In contrast, moving to a system that allows physicians to practice across states on the basis of their home-state license would be less complicated, with the physician’s home-state board receiving all complaints.

The benefits of opening state markets to out-of-state providers can be substantial. For example, care from out-of-state cancer specialists would no longer be reserved for patients with the financial wherewithal (and physical stamina) to travel. As for direct-to-consumer telemedicine, which offers patients care from their home, office, or mobile device, it is reasonable to expect the same increase in efficiency that followed the national expansion of retail chain stores and the end of regulatory barriers to interstate banking and trucking.

The time is ripe for reform. With the CMS moving to expand reimbursement of telehealth services under Medicare and the National Business Group on Health predicting near universal adoption of telemedicine by large employers by 2019, the benefit of eliminating state licensing barriers to interstate practice has never been greater.

Shirley Svorny is a professor of economics at California State University, Northridge, an adjunct scholar at the Cato Institute and author of the forthcoming study, “Liberating Telemedicine: Options to Eliminate the State-Licensing Roadblock.”