



AMERICAN OSTEOPATHIC ASSOCIATION

1090 Vermont Ave, Suite 500, Washington, DC 20005-4949 ph (202) 414-0140 | (800) 962-9008 | www.osteopathic.org

STATEMENT FOR THE RECORD

HOUSE ENERGY AND COMMERCE COMMITTEE, HEALTH SUBCOMMITTEE: “Telehealth to Digital Medicine: How 21st Century Technology Can Benefit Patients”

MAY 5, 2014

Chairman Pitts, Ranking Member Pallone, and Members of the Committee:

On behalf of the American Osteopathic Association (AOA) and the more than 104,000 osteopathic physicians and osteopathic medical students we represent, we appreciate this opportunity to present our views on telemedicine and the associated factors that must be taken into consideration when exploring how this tool can be integrated into our evolving healthcare system. The AOA supports the concept of telemedicine, and believes that technology should be used to increase access to care for patients, while not diminishing its quality or its patient-centeredness. As well, the AOA recognizes the need to provide a broad framework establishing recommendations to address telemedicine at the national level, while providing enough flexibility for states to incorporate their own policies that meet the health care needs of their citizens.

AOA TELEMEDICINE POLICY STATEMENT

With the rapid pace of advancement in technology, telemedicine is an evolving practice – both in the scope of practice that is covered, and in the overall meaning of the term “telemedicine.” Telemedicine is a tool used not only to provide direct services to a patient via information technology, but also specialist and primary care consultations, the online storage and sharing of medical information, imaging services through digital transmissions and the interpretation of images, remote patient monitoring, and medical education.

The practice of medicine via electronic and technological means has been occurring for decades. As technology advances and the breadth of medical practice in this area expand, there is an increasing call to regulate patient care delivered through technological resources. Advocates for telemedicine argue that it provides improved access to medical care and services to patients in rural or distant areas. They also emphasize that it allows for easier access to care for immobile patients and those with limited mobility. Cost-effectiveness, through reduced travel times, is also noted as a cause for increased patient demand for health care services through telemedicine.

Despite its advantages, opponents raise concerns over the lack of regulation and oversight to control this practice. The primary issues involving telemedicine are: (1) licensure of out-of-state practitioners who use technology to treat patients in a state where they are not licensed to practice; (2) technological problems and barriers; (3) reimbursement issues regarding payment for services rendered; and (4) quality of care. Currently, thirty-nine states allow some type of reimbursement for

telemedicine services under Medicaid. Additionally, eighteen states grant expedited telemedicine licenses and forty states¹ have specific statutes addressing the practice of medicine over technologic networks.²

Access and Quality

Many see telemedicine as a solution to the access to care issues currently facing many in rural and underserved communities. In an effort to improve access to care in rural areas, CMS, in July 2011, instituted a new rule easing the burden of hospital credentialing for providers offering services via telemedicine.³ This change allows rural critical access hospitals to obtain consultations from a subspecialty provider or facility without undertaking the administrative burden of credentialing each provider individually.

While mostly supportive, concerns about the quality of care being provided through telemedicine do exist. Care deemed to be below the acceptable quality standard can be addressed either via the disciplinary action of a state medical board or via civil legal action (medical malpractice claims). Liability rules vary state by state and concerns exist over the determination of venue when a provider is utilizing telemedicine across state lines. Additionally, standard of care must be established and may vary between face-to-face encounters and telemedicine encounters; although, many providers argue against this variation.

Liability Concerns

One issue that arises under the discussion of advancing online medicine is the question of jurisdiction for liability cases. In cases of medical malpractice, where a physician licensed to practice in two or more states practices medicine over state lines through electronic means, and an adverse event occurs.

Current state and federal statutes and case law provide a remedy to overcome this barrier. Patients are provided a pathway to legal recourse in the state that the accident occurred, if there is a reasonable expectation for that harm to have occurred there. So long as the patient can provide evidence confirming that location, ex: location of the IP address, and did not attempt to deceive the physician as to their location. Under this established system, any time a physician is choosing to perform telemedicine, they should have the expectation that they are choosing to be held liable under another state's laws if an adverse event occurs.

Licensure

Telemedicine is a broad area and is not regulated by one specific board or oversight body. There is no standard for telemedicine education and no certification in the provision of telemedicine. Therefore, the burden of oversight currently falls on the state medical boards. Each board defines care that meets an acceptable quality somewhat differently. State licensure requirements also diverge with significant differences in testing, postgraduate education and continuing medical education requirements.

Additionally, scopes of practice vary by state with no overall standard in regards to prescription authority or practice rights. Finally, uniformity fails to exist in what constitutes a visit (establishment of the “physician-patient relationship”), with some states requiring a face-to-face visit before a

telemedicine relationship can be established. Due to these differences, some advocates have promoted the concept of national licensure. They believe that a national license for the practice of medicine would eliminate barriers that prevent widespread use of telemedicine.

The AOA supports state-based licensure and discipline oversight, believing that states should have the right to directly regulate and provide oversight for services being provided to their citizens. Concerns have been expressed about who would assume responsibility for disciplinary action against providers if a national medical license was initiated. Currently, protection of the residents of the state is a top function and core value of the state licensing boards.

The American Telemedicine Association (ATA) argues that state-by-state licensing, as it currently exists, restricts consumer choice and the free flow of services, protecting some markets from healthy economic competition.⁴ New Mexico, a state where 91% of the counties qualify as medically underserved, views telemedicine as a lifesaving mechanism to provide primary patient care and specialty consultation services. Senator Tom Udall (D-NM) believes national medical licensure for telemedicine will improve access to health care. Senator Udall has announced plans to allow physicians to provide care using telemedicine and in some instances, travel more freely across state lines to more remote rural areas by establishing a national licensure system.

Conclusion

The AOA recognizes the benefits of online technology to the medical field, and its ability to assist many patients who may not have access to medical care.

The AOA further recognizes the need to provide a broad framework that establishes recommendations to address telemedicine at the national level, while providing enough flexibility to allow each state to incorporate policies that meet the health care needs of their citizens.

The AOA believes that a physician is practicing medicine, in the absence of physical interaction, when medical services are being provided through simultaneous two-way communication, recognizing that some services may require appropriate and corresponding delays in said communication.

The AOA believes that the utilization of technology in patient care should be used to increase access to care, and must not be used in a way that would diminish patient centered comprehensive personal medical care or the quality of care being provided to the patient. To this end, the AOA supports the concept of telemedicine and advocates that public and private payers adopt payment systems that are inclusive of telemedicine.

The AOA believes that the standard of care provided through the use of technology should be equivalent to that of care provided when the physician and patient are within close physical proximity.

The AOA believes that the technological network being used to deliver patient care must have protocols in place that ensure the stability and security of that network to comply with applicable state and federal laws regarding patient privacy issues.

The AOA believes that the scope of care being delivered by the physician and other health care providers through telemedicine should not exceed education, training and applicable state and federal law.

The AOA believes that state-based licensure and the ability of states to govern activities within their borders is paramount and would oppose any national licensure or efforts to pre-empt state statutes.

The AOA believes that malpractice claims that arise from care provided through technological means, when the physician and patient are located in separate jurisdictions, should be adjudicated under the process currently utilized by the judicial system; whereby, the plaintiff has the ability to determine the venue where the case is filed, within the constraints of that system. The AOA believes physicians must provide complete transparency to their patients regarding their location, jurisdiction of licensure and any limitations of the technology used to deliver care.

The AOA believes that as physicians provide care in a variety of new ways, including telemedicine, advanced technology can be used to improve patient care. The AOA further believes that online medicine policies directly tie into the Patient-Centered Medical Home (PCMH) model for care, and recognizes that we must simultaneously implement advancements in telemedicine in order to be successful in that new model.

The AOA thanks you for the opportunity to share our views on this important issue. The Committee should be commended for undertaking a discussion of these technologies, as well as the positive and negative implications of their adoption. We believe discussions such as this are the vital steps to bringing this concept to fruition, and we look forward to working with this Committee to ensure that appropriate laws applying to this important issue are in place.

Sincerely,



Norman Vinn, DO
President

1 50 State Medicaid Statute Survey, Center for Telehealth & e-Health Law, February 2011, available at <http://www.ctel.org/expertise/reimbursement/medicaid-reimbursement/>

2 Humayun J. Chaudhry, Setting Expectations for Professional Behavior: MOL and Ongoing Clinical Competence, Federation of State Medical Boards, January 15, 2011, available at <http://www.osteopathic.org/inside-aoa/events/Documents/ome2011-chaudhry-setting.pdf>

4 Federal Register Volume 76, Number 87, May 5, 2011, available at <http://www.gpo.gov/fdsys/pkg/FR-2011-05-05/html/2011-10875.htm>

4 American Telemedicine Association, Medical Licensure and Practice Requirements, June 2011