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COMMENTARY

American Medical Association Offers New Telemedicine Recommendations

During this week's annual meeting, the American Medical Association's ("AMA") House of Delegates approved its Council on Medical Service's report setting forth recommendations regarding the practice of telemedicine. The report, which comes on the heels of the Federation of State Medical Boards' ("FSMB") new model telemedicine policy (the "FSMB Model Policy"),[1] provides an overview of key topics specific to telemedicine, including reimbursement, known practice guidelines, and telemedicine use cases, and establishes a number of new AMA policies and recommendations regarding telemedicine services. The report signals a significant departure from some of AMA's previous policies regarding the use of telemedicine and reflects a growing recognition in the industry that consistent standards and guidelines are needed to support the efficacy and growth of telemedicine.

Overview of AMA Report

In addition to the AMA policies recommended in and adopted through the report, the report provides an overview of a number of significant topics relevant to telemedicine.

Definition of "Telemedicine." While the AMA acknowledges in the report that a lack of consensus exists with respect to the definition of "telemedicine" or "telehealth," unlike the FSMB Model Policy,[2] the report does not propose a single definition of "telemedicine" and instead addresses telemedicine within three broad categories of telemedicine technologies: store-and-forward telemedicine, remote monitoring telemedicine, and real-time interactive telemedicine services.

Coverage and Payment for Telemedicine. The report provides a summary of current telemedicine coverage policies for Medicare, Medicaid, and some leading private insurers—a topic of increasing significance as providers try to determine how they can get paid for services provided outside of traditional hospital or office-based settings.

The report describes the current "relatively narrow" reimbursement available through Medicare for telemedicine services but notes that Medicaid Advantage plans are currently exempt from limitations placed on telemedicine reimbursement to Medicare fee-for-service beneficiaries. It also states that there is "increasing momentum in Congress" to similarly exempt physicians and other health practitioners who participate in alternative payment models. The report further notes that 46 states and the District of Columbia ("DC") offer some form of Medicaid payment for telemedicine

services, and 19 states and DC have adopted laws requiring private payers to cover telemedicine services (although such services vary by state). The report also addresses the current state of private payor reimbursement for telemedicine services, noting that some leading private health insurers do provide coverage and payment for telemedicine and/or have partnered with telemedicine companies that offer health consultations with a diverse array of technology models and standard operating procedures for physician–patient interactions.

Other Guidelines and Position Statements on Telemedicine. The report recognizes that standards of care and practice guidelines applicable to telemedicine continue to evolve, and it notes that the AMA has surveyed national medical specialty societies and state medical associations with respect to such standards of care and practice guidelines. In addition to providing an overview of some of the available standards and guidelines, the report also predicts that national medical specialty societies will assume a greater role in developing and approving telemedicine clinical practice guidelines going forward.

Existing AMA Policies on Telemedicine. The report also provides a summary of AMA's existing policies regarding telemedicine with respect to payment, clinical standards, licensure, and ethical guidance. Among the existing policies discussed in the report is a 1994 AMA opinion[3] prohibiting physicians from providing any clinical services via telecommunications. Notably, the report states that "this opinion may no longer be consistent with the best ethical analysis or strong practice in the rapidly evolving area of telemedicine"[4] and that the AMA will review and update its Code of Medical Ethics "as appropriate."[5] The report further states that a report examining ethical guidance in the area of telemedicine is "in development."

New AMA Telemedicine Policies

By approval of the report, the AMA adopted a number of policy recommendations of its Medical Council Service.

Telemedicine Standards. Telemedicine services should be covered and paid for, provided that such services adhere to the following standards.

Establishing a Valid Patient–Physician Relationship. A *valid* patient-physician relationship must be established prior to providing telemedicine services and can be established through: a face-to-face examination, where a face-to-face encounter would otherwise be required for providing the same service in person; a consultation with another physician who has an ongoing patient–physician relationship with the patient and agrees to supervise the patient's care; or, meeting standards of establishing a patient–physician relationship included as part of evidence-based clinical practice guidelines on telemedicine developed by major medical specialty societies, such as those of radiology and pathology.

Although this recommendation does not explicitly describe what it means by "face-to-face examinations," the full report provides that "[t]he face-to-face encounter could occur in person or virtually through real-time audio and video technology."

Notwithstanding the three-prong test AMA offers for establishing a valid patient–physician relationship for telemedicine services, the AMA recommendation also identifies on-call, cross coverage, emergency medical services, and other exceptions that "become recognized as meeting or improving the standard of care" as delivery circumstances where the three-prong test is not applicable or necessary for establishing a valid patient–physician relationship for telemedicine services. This indicates that such delivery situations could incorporate telemedicine without further consideration of the AMA test for establishing a patient–physician relationship.

Further, the recommendation highlights the need for telehealth providers to assist patients in developing a medical home if a medical home does not exist, so such patients can obtain treatment where in-person services can be delivered in coordination with the telemedicine services.

The FSMB Model Policy also requires the establishment of the patient–physician relationship prior to providing telemedicine services and, rather than setting out a specific test for when the physician-patient relationship is established, the FSMB policy simply requires that the same standard of care for both in-person and telemedicine services be met.

State Licensure. Physicians and other health practitioners delivering telemedicine services must abide by state licensure and medical practice laws and requirements in the state where the patient receives services. The FSMB Model Policy likewise requires that providers be licensed according to applicable state requirements.

Licensure in State Where Patient Receives Services. Physicians and other health practitioners delivering telemedicine services must be licensed in the state where the patient receives services, or be providing these services as otherwise permitted by that state's medical board.

Choice of Provider. Patients seeking care delivered via telemedicine must have a choice of provider. Also, the delivery of telemedicine services must be consistent with state scope of practice laws.

Information on Provider Credentials. Patients receiving telemedicine services must have access to the licensure and board certification qualifications of the health care practitioners who are providing the care in advance of their visit. A similar requirement is also found in the FSMB Model Policy, but it appears as part of a recommended informed consent process.

Consistent Standards and Scope. The standards and scope of telemedicine services should be consistent with related in-person services. The FSMB Model Policy similarly applies the same standard of care to both telemedicine and in-person services.

Compliance with Evidence-Based Practice Guidelines. The delivery of telemedicine services must follow evidence-based practice guidelines, to the degree they are available, to ensure patient safety, quality of care, and positive health outcomes. The FSMB Model Policy does not directly address compliance with evidence-based practice guidelines. However, it does encourage providers to comply with nationally recognized health online standards to the extent they are available and advocates parity of ethical and professional standards applied to all aspects of a physician's practice.

Transparency. Telemedicine services must be delivered in a transparent manner, including patient and physician identification prior to the delivery of service, cost sharing responsibilities, and limitations of drugs that can be prescribed via telemedicine. The FSMB Model Policy requires that the physician's identity and credentials be established as part of an informed consent process, but it does not discuss cost-sharing.

Patient History. The patient's medical history must be collected as part of the provision of any telemedicine service. The FSMB Model Policy also establishes guidelines regarding the collection of medical history.

Documentation. The provision of telemedicine services must be properly documented and should include a visit summary provided to the patient. FSMB's Model Policy likewise sets standards for documentation of services.

Care Coordination. The provision of telemedicine services must include care coordination with the patient's medical home and/or existing treating physicians, which includes, at minimum, identifying the patient's existing medical home and treating physician(s) and providing the physician(s) with a copy of the medical record. The FSMB Model Policy also stresses the importance of continuity of care.

Emergency Referral Protocols. Physicians, health professionals, and entities that deliver telemedicine services must establish protocols for referrals for emergency services. The FSMB Model Policy also requires that providers establish protocols for dealing with emergency situations.

Overall, the AMA guidelines for telemedicine services are similar in many respects to the requirements established in the FSMB Model Policy. Unlike the FSMB Model Policy, however, the AMA guidelines do not specifically address standards for prescribing, patient informed consent, or issues relating to physician financial disclosures or conflicts of interest.

Other New Policies Relating to Telemedicine. In addition to the standards for telemedicine described above, the AMA also adopted the following:

- That AMA policy be that delivery of telemedicine services must abide by laws addressing the privacy and security of patients' medical information.

- That the AMA encourage additional research to develop a stronger evidence base for telemedicine.
- That the AMA support additional pilot programs in the Medicare program to enable coverage of telemedicine services, including, but not limited to, store-and-forward telemedicine.
- That the AMA support demonstration projects under the auspices of CMS Innovation to address how telemedicine can be integrated into new payment and delivery models.
- That the AMA encourage physicians to verify that their medical liability insurance policy covers telemedicine services, including those provided across state lines, before delivery of any telemedicine service.
- That the AMA encourage national medical specialty societies to leverage and potentially collaborate in the work of national telemedicine organizations, such as the ATA, in the area of telemedicine technical standards, to the extent practicable, to take the lead in the development of telemedicine clinical practice guidelines.
- That the AMA reaffirm Policies H-480.974, H-480.968, and H-480.969, which encourage national medical specialty societies to develop appropriate and comprehensive practice parameters, standards, and guidelines to address the clinical and technological aspects of telemedicine.

As with the telemedicine standards described above, many of these new AMA policies reflect similar concerns and positions taken by the FSMB in its Model Policy. The AMA policies above do, however, reach several issues not addressed by the FSMB Model Policy, including medical liability insurance considerations, the encouragement of additional research, and participation in pilot programs to support the case for telemedicine.

Conclusion

The development of recommendations specific to telemedicine and alignment of AMA's report and recommendations with FSMB's Model Policy is no small step and, notably, indicates a new and positive direction for AMA as it relates to telemedicine. As a strong stakeholder, AMA's endorsement of telemedicine policies similar to those put forth by FSMB may encourage health care providers' integration of telemedicine into their practices or at least provide more comfort and direction in how to adopt telemedicine appropriately into the routine delivery of health care services.

In addition, the emergence of the FSMB and AMA policies provide state medical boards and other regulators with consistent examples as they consider appropriate state-specific regulations and guidance on the topic. Such alignment could provide an opportunity to bridge current inconsistencies in telemedicine policy across jurisdictions, although it is too soon to tell whether states will choose to go in this direction or whether health care providers and technology companies will need to continue juggling multijurisdictional inconsistencies in the telemedicine arena.

Lawyer Contacts

For further information, please contact your principal Firm representative or one of the lawyers listed below. General email messages may be sent using our "Contact Us" form, which can be found at www.jonesday.com.

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Endnotes

1 Fed'n State Med. Bds., "Model Policy for the Appropriate Use of Telemedicine Technologies in the Practice of Medicine (2014)," *available at* http://www.fsmb.org/pdf/FSMB__Telemedicine__Policy.pdf. *See also* "State Medical Board Delegates Promote New Model Policy on Telemedicine," *Jones Day Commentary*, May 2014.

2 In its model telemedicine policy, the FSMB offers a definition of "telemedicine": "the practice of 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."

3 Opinion E-5.025.

4 As stated in Board of Trustees Report 22-A-13.

5 AMA Policy D-480.974.