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Congress of the United States

U.S. House of Representatives

Committee on Small Business

2361 Rayburn House Office Building
Washington, DC 20515-0515

Memorandum

To: Members, Subcommittee on Health and Technology
From: Committee Staff
Date: July 28, 2014
Re: Hearing: "Telemedicine: A Prescription for Small Medical Practices?"

On Thursday, July 31, 2014 at 10:00 a.m., the Small Business Subcommittee on Health and Technology will meet to receive testimony on the use of telemedicine and its effect on small and solo physician medical practices.

I. Introduction

Telemedicine and telehealth are the use of medical information exchanged from one site to another via electronic communications to improve a patient's health.[1] Telemedicine usually refers to medical diagnosis and patient care when the patient and provider are separated by distance.[2] Telemedicine also includes the storage and transmission of diagnostic images, remote patient monitoring, and remote consultations with medical professionals.[3] Telehealth is usually a broader term, and may include telemedicine as well as educational, research, and clinical uses.[4]

Generally, the adoption of telemedicine and telehealth technology has been slow, but its use is increasing. With the continued pressure to hold down the cost of health care, telemedicine may be seen as a way to expand the reach of small practices. The Committee will consider the current use of telemedicine by small physician practices and the outlook for its use by them in the future.

II. The Use of Telemedicine

According to those in the telemedicine industry, data on telemedicine is scarce.[5] Anecdotal evidence has shown that because of economies of scale and reimbursement policies, telemedicine has most often been used by large institutions.[6] Large hospitals, particularly teaching hospitals, are using

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[1] AMERICAN TELEMEDICINE ASSOCIATION, TELEMEDICINE DEFINED [hereinafter TELEMEDICINE DEFINED], *available at* http://www.americantelemed.org/about-telemedicine/what-is-telemedicine.
[2] LEIYU SHI & DOUGLAS A. SINGH, DELIVERING HEALTH CARE IN AMERICA: A SYSTEMS APPROACH 166 (5th ed. 2012) [hereinafter DELIVERING HEALTH CARE IN AMERICA].
[3] W. ANDREW H. GANTT, E-HEALTH, PRIVACY, AND SECURITY LAW (2nd ed. 2011).
[4] DELIVERING HEALTH CARE IN AMERICA at 166.
[5] Email from Gary Capistrant, Senior Director, Public Policy, American Telemedicine Association, to Committee staff, May 13, 2014, on file with the Committee.
[6] *Id.*

interactive video to give rural health clinics access to specialists and the latest treatments.[7] These hospitals' interactive video also serves large urban areas where physicians in certain specialties are not available. Telemedicine's use varies by medical specialty, with more frequent use by radiologists, neurologists and mental health professionals.[8]

Telemedicine is helping to bridge the problems of access to medical services in rural areas, the shortage of certain physician specialties, and even weather issues.[9] For small and solo medical practices, which face the financial difficulties of operating a small business, telemedicine may offer a way to expand their reach and broaden their practice. Some experts have said that telemedicine can allow small medical practices to serve as effective "hubs" for health care delivery, coordinating the various providers.[10] Telemedicine encourages the sharing of data, so small practices may be able to provide revenue-producing services, such as laboratory or other tests, which could be shared with other providers.[11]

However, small practices can face numerous obstacles in the adoption of telemedicine.

III. Barriers to Implementation of Telemedicine by Small Practices

Small and solo practices in rural areas may use telemedicine to provide patient services throughout that area. Small practice physicians in larger areas may offer telemedicine services to rural or underserved areas. They may want to link with distant colleagues, diagnostic services or hospitals. The adoption of telemedicine, particularly by small and solo practices, has been slowed and complicated by numerous impediments, some of them seemingly overwhelming.[12] Several of these issues are addressed below.

A. Cost and Payment Issues

Because many small practices are experiencing financial distress,[13] these practices are unlikely to have the resources available to purchase costly telemedicine equipment. Large health care companies are partnering with small practices to create a telemedicine physician network.[14] This helps small practices defray the cost of installing and training on the technology.[15]

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[7] Laura Landro, *The Specialist Will See You Now, on Video*, WALL ST. J., *available at* http://online.wsj.com/news/articles/SB10001424052702304081804579557770525373400.
[8] *Id.*
[9] DELIVERING HEALTH CARE IN AMERICA at 166.
[10] Andrew Watson, M.D., *Telehealth: Enabling Small Practices to Serve as "Hub" for Healthcare Delivery*, Healthcare IT News, October 2011, *available at* http://www.healthcareitnews.com/news/telehealth-enabling-small-practices-serve-%E2%80%9Chub%E2%80%9D-healthcare-delivery [hereinafter Telehealth and Small Practies"].
[11] Telehealth and Small Practices.
[12] Email from Karen Rheuban, M.D., Medical Director, Office of Telemedicine, University of Virginia, to Committee staff, May 28, 2014, on file with Committee staff [hereinafter Email from Karen Rheuban, M.D.].
[13] This topic was considered by the Committee as a 2012 hearing. *Health Care Realignment and Regulation: The Decline of Small and Solo Medical Practices? Hearing Before the House Comm. on Small Business,* 112th Cong. (2012).
[14] These companies include WellPoint and American Well. Melinda Beck, *Where Does it Hurt? Log On. The Doctor is In.* WALL ST. J., May 5, 2014, *available at* http://online.wsj.com/news/articles/SB10001424052702303678404579536284129494564.
[15] Telehealth and Small Practices at 2.

One of the most significant barriers to telemedicine expansion is the lack of a reimbursement model.[16] In addition, some have pointed to the lack of data verifying telemedicine's cost effectiveness.[17]

Many provider organizations have adopted policies that support the use of telemedicine. For example, the American Academy of Family Physicians' policy states "...payment should be made for physician services that are reasonable and necessary, safe and effective, medically appropriate and provided in accordance with accepted standards of medical practice. The technology used to deliver the services should not be the primary consideration; the test is whether the service is medically reasonable and necessary."[18] Some have raised the concern that the Centers for Medicare and Medicaid Services (CMS) has limited provider reimbursements for telemedicine services for Medicare beneficiaries, in part because of CMS' rules restricting the originating sites for telemedicine.[19] States also have differing Medicaid reimbursement laws for telemedicine.[20]

In addition, there are differing laws covering private insurance payment for telemedicine services. Twenty states and the District of Columbia have laws mandating reimbursement for telemedicine services; the others may or may not cover them.[21] Insurers may or may not reimburse for telemedicine services at the same rate as services provided in a clinic or office.

There has been no agreement about whether the use of telemedicine would reduce the cost of health care delivery or increase utilization and drive spending.[22]

A. Broadband Availability

The cost of the equipment needed to provide telemedicine services is often out of reach for small and solo practice physicians, particularly at a time when they are required to adopt electronic medical records and comply with the health care law's requirements.

Video technology has improved rapidly and is less costly, but many areas still have inadequate bandwith for telemedicine. In fact, one of the most significant barriers to its wider use has been the cost of the bandwith required for video conferencing.[23] As additional bandwith becomes available, more providers may use video technology, but it is likely to take small and solo practices longer than larger institutions to use telemedicine.

The Federal Communications Commission's Universal Service Fund (USF) provides industry-funded support for rural telecommunications. The USF has a rural health care component that assists health care professionals by offsetting the cost of telecom service. Another component of USF, the high cost program, helps to ensure that consumers in rural and high cost areas have access to communications

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[16] DELIVERING HEALTH CARE IN AMERICA at 167.
[17] *Id.*
[18] Email from Kevin Burke, Director, Government Relations Division, American Academy of Family Physicians, to Committee staff, March 4, 2014, on file with Committee staff [hereinafter Email from Kevin Burke]..
[19] In 2013, reimbursements for Medicare beneficiaries totaled less than $12 million nationwide. Email from Karen Rheuban, M.D.
[20] NATIONAL COUNCIL OF STATE LEGISLATURES, STATE COVERAGE FOR TELEHEALTH SERVICES, *available at* http://www.ncsl.org/research/health/state-coverage-for-telehealth-services.aspx.
[21] *Id.* The states which require insurer reimbursement for telehealth services are Arizona, Colorado, Georgia, Hawaii, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, Missouri, Montana, New Hampshire, New Mexico, Oklahoma, Oregon, Texas, Vermont, Virginia, and the District of Columbia.
[22] David Pittman, *With Billions on the Line,Congress Starts to Love Telemedicine*, POLITICO, June 6, 2014, at 10.
[23] JEROME H. CARTER, M.D., ELECTRONIC HEALTH RECORDS 48 (2nd ed. 2008).

networks that are comparable to those in urban areas. Eligible carriers who serve high cost areas may recover some of their expenses from the USF.[24]

B. Rules and Regulatory Requirements

1. State Rules

Currently, there are varying Board of Medicine requirements for telemedicine, particularly those determining whether a doctor-patient relationship has been created.[25] This has caused confusion among providers about the requirements they must meet in order to deliver telemedicine. Most states require physicians to be licensed by the originating telemedicine practice site's state.[26] Telehealth practices that cross state lines may find that they require additional licensing paperwork.[27]

The Federation of State Medical Boards recently approved model guidelines, which urge states to hold virtual physician visits to the same standard of care as in-person visits.[28] They also recommend that physicians be licensed in the state of the patient's residence.[29]

2. Federal Regulation

The United States Food and Drug Administration (FDA) regulates medical devices, including the hardware and software used in telemedicine. In 2012, Congress passed the Food and Drug Administration Safety and Innovation Act, which required the Secretary of Health and Human Services to work with the Commissioner of Food and Drugs and in consultation with the National Coordinator for Health Information Technology (National Coordinator for Health IT) and Federal Communications Commission (FCC), to develop a proposed strategy and recommendations on an appropriate, risk-based regulatory framework pertaining to health technology.[30] In 2014, the FDA, FCC and National Coordinator for Health IT released what they termed "a risk-based regulatory framework"[31] for mobile health and telemedicine technologies to promote innovation, protect patient safety and avoid duplication.[32] FDA said it would regulate these technologies based on the level of patient risk associated with the product, designating Class I products as posing the lowest risk, so they will receive the least

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[24] FEDERAL COMMUNICATIONS COMMISSION, UNIVERSAL SERVICE FOR HIGH-COST AREAS – CONNECT AMERICA FUND, *available at* http://www.fcc.gov/encyclopedia/universal-service-high-cost-areas-connect-america-fund.

[25] Email from Karen Rheuban, M.D. *See also* TELEHEALTH RESOURCE CENTERS, LICENSURE AND SCOPE OF PRACTICE 2-3, *available at* http://www.telehealthresourcecenter.org/toolbox-module/licensure-and-scope-practice.

[26] HealthIT.gov, http://www.healthit.gov/providers-professionals/faqs/are-there-state-licensing-issues-related-telehealth.

[27] *Id.*

[28] FEDERATION OF STATE MEDICAL BOARDS, MODEL POLICY FOR THE APPROPRIATE USE OF TELEMEDICINE TECHNOLOGIES IN THE PRACTICE OF MEDICINE 4, *available at* http://www.fsmb.org/pdf/FSMB_Telemedicine_Policy.pdf.

[29] *Id.*

[30] P.L. 112-144, 126 STAT. 993, *available at* http://www.gpo.gov/fdsys/pkg/BILLS-112s3187enr/pdf/BILLS-112s3187enr.pdf.

[31] UNITED STATES FOOD AND DRUG ADMINISTRATION, HEALTH IT RISK-BASED FRAMEWORK, *available at* http://www.fda.gov/MedicalDevices/ProductsandMedicalProcedures/ConnectedHealth/ucm338920.htm.

[32] UNITED STATES FOOD AND DRUG ADMINISTRATION, UNITED STATES FEDERAL COMMUNICATIONS COMMISSION AND THE OFFICE OF THE NATIONAL COORDINATOR FOR HEALTH INFORMATION TECHNOLOGY, FDASIS HEALTH IT REPORT 4, *available at* http://www.fda.gov/downloads/AboutFDA/CentersOffices/OfficeofMedicalProductsandTobacco/CDRH/CDRHReports/UCM391521.pdf.

burdensome regulations; Class II products as moderate risk, receiving more regulation, and Class III products as highest risk, with the highest level of regulation.[33] Telemedicine equipment and mobile applications that are lowest risk and do not involve patient monitoring would be classified as Class I devices. Those that involve patient monitoring would be classified as Class II or Class III devices.

There are federal resources for those interested in implementing telemedicine. The United States Department of Health and Human Services funds the National Telehealth Policy Resource Center and 14 regional resource centers to assist rural and underserved areas in all aspects of telemedicine. Its services include identifying appropriate technology, obtaining funding, clinical applications and workforce education.[34]

In addition, the American Telemedicine Association issued a set of core standards to assist practitioners, health care institutions, vendors and others in overcoming any barriers and promoting uniformity in care delivery.[35] Similarly, the American Medical Association adopted a list of guiding principles on the coverage and payment of telemedicine services, stating that telemedicine can strengthen the patient-physician relationship and improve access for patients to receive care services remotely.[36] Associations representing various physician specialties, such as the American Academy of Family Physicians (AAFP), are beginning to adopt telemedicine policies for their members.[37]

IV. Conclusion

Although adoption of telemedicine has been slow, its use is increasing. This hearing will provide an opportunity for Members to learn more about telemedicine, the ways small and solo medical practices may benefit from it, the barriers to its adoption, and the possibilities for the future.

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[33] *Id.*

[34] NATIONAL TELEHEALTH POLICY RESOURCE CENTER, *available at* http://telehealthpolicy.us/about-program.

[35] http://www.americantelemed.org/docs/default-source/standards/core-standards-for-telemedicine-operations.pdf?sfvrsn=4.

[36] AMERICAN MEDICAL ASSOCIATION, *available at* http://www.ama-assn.org/ama/pub/news/news/2014/2014-06-11-policy-coverage-reimbursement-for-telemedicine.page.

[37] AAFP's policy states: "The technology used to deliver the services should not be the primary consideration the critical test is whether the service is medically reasonable and necessary." Email from Kevin Burke.