

CLIENT ALERTS

What is New in Telemedicine?

1.23.2018

WHAT IS NEW IN TELEMEDICINE?

In a previous Client Alert, we provided information on the growing trends in telemedicine. In 2017, that trend continued, as 34 states and the District of Columbia passed 63 pieces of telemedicine legislation. Nine states passed telehealth legislation mostly easing restitution. Nebraska, Washington, Tennessee and Maine passed legislation to join the Interstate Medical Licensure Compact, and 22 states now support this effort to streamline physicians licensing in multiple states. Two other states have delayed implementation and four more—including Michigan—still have legislation pending.

Much of the legislation provided for deregulation of telemedicine in some way. The professional licensure compacts such as the one noted above, and a similar nurse licensure compact, are examples of states adopting legislation to reduce barriers to telehealth areas. These compacts have received support from the Federal Trade Commission and the Department of Justice. The federal government has taken a similar approach with the passing of the Veterans in E-Health and Telemedicine Support Act of 2017.

34 states and the District of Columbia have a telehealth coverage parity law that requires a payor to cover a service delivered via telehealth if the payor covers such service when delivered in person. Further, Medicaid laws in 20 states were revised to ease telehealth coverage requirements or expand types of telehealth covered services.

The DEA has announced plans to reduce restrictions on the prescription of controlled substances via telehealth. One change may be the implementation of the “special registration” pathway for telehealth providers found in 12 USC Section 802(54) (E).

Related Services

[Health Care](#)

[Health Care Industry Team](#)

[Telemedicine & E-Health](#)

CLIENT ALERTS

In its final rule for 2018 Medicare Physician Fee Schedule, CMS added new telehealth codes covering health risk assessments, psychotherapy, chronic care management and interactive complexity. CMS further expressed a commitment to telehealth services which it believes will modernize Medicare payments to promote patient-centered innovations. The Senate also passed the Creating High-Quality Results and Outcome Necessary to Improve Chronic (CHRONIC) Care Act of 2017 that expands access to telehealth. CHRONIC awaits action in the House of Representative.

ENFORCEMENT ACTIONS

There were also increases in and anticipated increases in enforcement actions as telehealth becomes more prevalent. Therefore, compliance activity in any organization needs to cover its telehealth activities. The OIG 2018 Work Plan provides that if payment under Part B is made without a corresponding claim submitted by an originating site, the case will be the focus of a planned audit. Medicaid was also recently added to these audits.

ARTIFICIAL INTELLIGENCE AND MACHINE LEARNING

There are of course many new apps which we will not cover here, but one of the emerging trends is in the area of artificial intelligence and machine learning. Currently, the value of these capabilities appears to be improving workflows and administrative functions and creating research development functions.

The artificial intelligence and machine learning are ahead of many legal concepts needed and ahead of the regulatory framework. So caution should be used in undertaking these developments. We would that medical boards, societies and medical schools will begin addressing these technologies on health care delivery in the near future.

BUTZEL LONG PROGRAM

Please note that our second program, *The Autonomous Patient: Entrepreneurs Driving Health Care II*® will take place on March 13, 2018, at Automation Alley, 2875 Bellingham, Troy, MI 48083. Register for the event [here](#).

Robert H. Schwartz

248.258.2611

schwartzrh@butzel.com

Mark R. Lezotte

313.225.7058

lezotte@butzel.com