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States Under Lobbying Pressure To Change Virtual Doctor Visit Rules, Laws

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By David Pittman

Virtual doctor visits are happening everywhere these days.

You can get long-distance medical consultations at Connecticut rest areas, at Rite Aid kiosks, even through apps on your smartphone. Major insurers like UnitedHealth are starting to offer them to millions of customers on the assumption that a conversation with the doctor via FaceTime will keep patients from burning through expensive emergency room visits when they aren't needed. Nearly half of large employers offer the visits, known as telemedicine, as a benefit — a number expected to grow to 80 percent within a few years.

This medical revolution isn't just technological. It's also a miracle of modern lobbying.

Telemedicine has entered the mainstream and become a policy buzzword thanks to massive, state-by-state lobbying by an army of corporate reps who have pushed state legislators and even sued a state agency that passed restrictive telemedicine policies.

Health care lobbyists have pulled down laws that had prevented doctors from treating or prescribing drugs to patients whom they'd never touched with a stethoscope. They've helped make telemedicine an unstoppable movement — although Congress has done relatively little to advance it, and the federal government is skeptical of its cost. Medicare covers telemedicine in very limited circumstances, and efforts to broaden those rules have so far met resistance.

That's not true in the states.

"Last year, there were five or six states in which there was some question [about whether telemedicine could be offered], and now that number is smaller," said Allan Khoury, a health expert with consultant Towers Watson. On-demand telemedicine companies like Teladoc, MDLive and Doctor on Demand can now offer consults by phone with doctors who are new to the patient in all but three or four states, he said. The ERISA Industry Committee, a trade group representing large employers like General Mills, Wal-Mart and FedEx, started this spring lobbying states for more telemedicine-friendly rules and laws. "We just like to make sure there aren't rules adopted state-by-state that put up hurdles that make the benefit something that either can't be provided or can only be provided under very limited circumstances," Chief Executive Annette Guarisco said in an interview.

Teladoc, the country's largest provider of doctoring by phone, has employed lobbyists to bring down barriers in Texas, North Carolina, Virginia, Georgia, Ohio and Arkansas.

With a few exceptions, telemedicine is winning.

Idaho had prohibited telemedicine as a basis to establish a patient-physician relationship, but the state Legislature earlier this year allowed it. Companies like Teladoc will start operating in Idaho this summer after being essentially kicked out by the state medical board last year.

Idaho's mental health community pushed for telemedicine as a way to get services to its often-isolated clientele. Teladoc and health plans "were equally interested in having the ability to offer the product their customers wanted," said Idaho state Rep. John Rusche, who carried the bill in the state House.

The Connecticut State Medical Society tried to limit telemedicine services to providers who have seen patients in-person, or are seeing patients at the request of a Connecticut provider who has already seen the patient in-person. That would have killed the Connecticut business of companies like Teladoc and health insurer Anthem, which offers the service, but the state's powerful insurance industry rallied with hospitals to pass a bill allowing out-of-state doctors to see Connecticut patients via the technology.

"We understand that the insurance companies are just trying to save money. They're trying to keep people out of the emergency rooms or urgent care centers. They believe these doctors on Skype who don't know the patients are capable of delivering quality care," said Connecticut State Medical Society President Bob Russo. "Of course, we don't."

Virginia state lawmakers in February, prodded by Teladoc's lobbying, passed a bill that would clarify state law covering telemedicine prescriptions by changing the legal definition of an appropriate exam. Some Teladoc doctors had been disciplined by the state for not conducting thorough exams before prescribing drugs.

The Tennessee medical board last year tried to halt telemedicine, but its proposal was overturned in an uprising that included the leading state doctors association as well as hospitals, schools, health insurers, prisons, mental health providers and technology vendors. The same coalition got the state legislature to pass a telemedicine-friendly bill this spring.

The number of states requiring health plans to reimburse for virtual doctor visits at the same rate they do in-person care has nearly doubled in the last three years. Now, 27 states and the District of Columbia require it. Six states have enacted laws this year and two more — Connecticut and Delaware — on their way.

"I think we're seeing growth in the number of states with parity laws because elected officials are realizing that this as the easiest thing to do," said Latoya Thomas, the American Telemedicine Association's director of state policy. Physicians have seen claims denied for virtual care, or consumers receive a large bill in the mail.

Nearly every Medicaid agency in the country pays for telemedicine to some degree. About a dozen states in the last year have enacted regulations making it easier for doctors to treat patients online. Supporters ranging from insurers to doctors see dollar signs when thinking about the technology — more savings and more reimbursement.

Commercial health insurers across the country believe that telemedicine is a convenient, user-friendly, low-risk way to make up for America's doctor shortage and keep people away from expensive hospital visits. A study last year put the size of the telemedicine market at $240 million in 2013, and estimated it will increase to $1.9 billion by 2018, a 50 percent annual growth rate.

"There has been a great, broad embrace of the concept that telehealth is not only a cost saver, but improves access and can greatly improve clinical outcomes," said Kofi Jones, vice president of public affairs at American Well, one of the county's largest telemedicine providers. "You have folks all over the health care ecosystem that saying 'yes' and are willing to fight for that yes." Telemedicine has had a rocky road in a few states.

In Texas, the state medical board has tried for years to keep out virtual doctor visits. Teladoc has repeatedly sued and helped create a Texas telemedicine lobby with employers. Teladoc and MDLive employed 15 lobbyists in the state this year, according to the Texas Ethics Commission. But lawmakers, turned off by the multiple Teladoc lawsuits, did not pass a bill this year.

In Arkansas, where Teladoc spent more than $11,000 on a Little Rock lobbyist this year, a Teladoc-backed bill friendly to telephone-based providers failed to clear the state Senate.

The opposition to telemedicine comes from "folks that want to protect your traditional brick-and-mortar health care facility way of delivering care," Thomas said.

Progress in the states contrasts with the stasis in Congress. A bipartisan working group met for months to craft a bill expanding Medicare payments — just $14 million last year — but telemedicine was left out of House's medical innovation bill, the 21st Century Cures Act. The Congressional Budget Office is convinced that telemedicine will create more ways for providers to bill the federal government rather than replacing unnecessary services. In declining to expand payments for the technology in accountable care organizations, which were created by the Affordable Care Act, CMS called wider adoption of telemedicine "untested or unproven" and said it could lead to "unintended consequences."

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