Telehealth Benefits on the Rise Despite Low Employee Utilization

Telehealth services are expected to become more common, but employees need to know the benefits exist and how to access them. Besides improving their education efforts, plan sponsors must be aware of state and federal legal and compliance issues.

by Lisa Schmitz Mazur
arge employers increasingly are taking more control over how health care is accessed and delivered to their employees in an effort to curb health care costs, according to the 2017 Health Plan Design Survey sponsored by the National Business Group on Health (NBGH). To temper these anticipated increased costs, the NBGH study reports that in 2017, 90% of employers will make “telehealth” services available to employees in states where telehealth is permitted, which is a sharp increase from 70% in 2016. By 2020, virtually all large employer survey respondents will offer telehealth services to their employees.
**What Is Telehealth?**

While the definition of telehealth varies significantly, it generally is defined as the delivery of health care services via technology (such as an Internet communication or a phone-video system). Telehealth is not a separate medical specialty but is the use of technology by a health care professional as a tool to deliver care. Telehealth includes telemedicine (the delivery of clinical services by a physician to a patient using technology to communicate), remote patient monitoring (the use of devices used to monitor the health of patients) and store-and-forward (the transmission of medical data, such as images, to a physician for assessment).

The most popular type of telehealth benefit offered by employers is referred to in the industry as direct-to-consumer telemedicine, which involves a patient accessing a health care provider via telephone or video-conferencing technologies for the treatment of acute, but non-emergent-type, conditions or the management of certain chronic conditions.

**Why Is Telehealth Popular With Employers?**

There are various reasons for this explosion in telehealth offerings by employers, including:

- **Lower cost.** Telehealth encounters often cost much less than in-person office visits. According to UnitedHealthcare data, a virtual visit is less than $50 while a primary care appointment is around $80, an urgent care visit costs $160 and a trip to the emergency room averages $650.¹

- **Healthier, happier, more productive workforce.** Allowing employees 24/7 access to a health care professional for treatment of nonurgent health issues, such as the stomach flu or a sore throat, or for management of a chronic condition, such as diabetes, using video-conferencing technologies on their smartphone, computers or tablets increases the likelihood of the employee receiving care when they need it—without worrying about sacrificing work or family time—which results in a healthier, more productive workforce.

- **Increased access.** Employees who are living in areas with limited health care providers can more easily access a physician, eliminating the need to wait several days for an appointment or travel significant distances to obtain care.

Employers that offer telehealth services to their employees are helping employees stay healthy by increasing access to timely, convenient and cost-effective health care.

**Why Are So Few Employees Using Telehealth?**

While the promise of telehealth is great and more employers are offering telehealth benefits than ever before, the NBGH study finds that very few employees are using telehealth. According to the NBGH study, in 2015, only 1% of employees who had access to telehealth services used it, and this percentage had only risen to 3% in 2016.

If telehealth has so much potential, why aren’t more employees using it? First and foremost, employees may be unaware that the benefit exists or may not understand how they can access the benefit. Second, some employees have reported a hesitancy to use technology to communicate with a health care professional with whom they do not have an existing relationship. Employers and telehealth providers must develop and implement (often in coordination) strategies for addressing these barriers in order to increase employee utilization. Specifically, employers must educate employees on the existence of the telehealth benefit and the process for accessing and using telehealth services.

A well-designed employee communication and education campaign on the telehealth benefit should provide employees with the following key information:

- How to register with the direct-to-consumer telehealth provider (and encourage the employee to do so before, rather than while, he or she is experiencing an illness)
- The type(s) of technologies used to access care (e.g., telephone, text messaging, Internet chat, kiosk at employer-based clinic)
- The types of health care services that can be obtained through the

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¹UnitedHealthcare data as of 2016.
telehealth provider (e.g., nutrition or weight-management counseling, diabetes management, treatment of nonemergent conditions such as sinus infections or sore throats)

- The qualifications of the health care professionals who will be available to provide telehealth services (e.g., describe the selection and credentialing process of the telehealth provider)
- The employee's financial responsibility for using the service, such as the amount of the copayment.

Deciding to offer a telehealth benefit and developing an effective communication campaign to “spread the word” on the benefits of telehealth are half the battle. The development and implementation of a successful telehealth offering also requires employers to analyze the legal and compliance issues associated with telehealth.

Legal and Compliance Issues

There are important legal and compliance issues that must be taken into consideration by employers seeking to provide telehealth through their employer-sponsored plans. An overview of these laws and regulations is provided below.

- **Employee Retirement Income Security Act (ERISA):** Employers acting as plan sponsors must take into account the qualifications of the provider, quality of the health care services offered, and reasonableness of the fees charged. Furthermore, plan sponsors must ensure that the compensation is reasonable in light of the services being provided. There is no guidance as to whether an ERISA-covered health plan must offer access to a telehealth provider to its Consolidated Omnibus Budget Reconciliation Act (COBRA) beneficiaries.\(^2\)

- **Tax issues:** Under the Internal Revenue Code, if telehealth services fall within the Section 213(d) definition of eligible medical expenses, the coverage will be tax-free.\(^3\) An individual can make and receive tax-deductible contributions to a health savings account (HSA) as long as any telehealth services (except for preventive care) are not provided free of charge or at a charge that is less than fair market value to the individual.\(^4\) Applicable participant cost sharing needs to be captured for purposes of the HSA-eligible individual's plan deductibles and out-of-pocket maximums.\(^5\)

- **Professional licensure:** For employers with employees located in multiple states, the telehealth provider will need to have arrangements with physicians who are licensed or registered (or exempt from licensure or registration) in each of these states.\(^6\) Given that telehealth providers often—and with growing frequency due to the growth of national direct-to-consumer telemedicine programs—are located in a different state than the patient, this may create the obligation for the telehealth provider to hold a medical license in multiple states, which is expensive and time-consuming. For this reason, medical licensure requirements frequently are cited as one of the largest barriers to multistate telehealth programs. That said, efforts currently are underway on multiple fronts to reduce or streamline the licensure requirements. One example is the adoption of the “Interstate Medical Licensure Compact” by states, which allows physicians who are licensed in a compact-member state to participate in a streamlined licensure process in other compact-member states.

- **Standard of care:** Care provided using telehealth technologies must meet the same standard of care as care provided in person and requires an established patient-physician relationship before any prescriptions are issued.\(^7\)

- **Use and quality of equipment:** Telehealth providers have a responsibility to use quality telehealth equipment and technology and to use such telehealth equipment and technology in a way that protects patient safety. Some states explicitly regulate the types of technologies used or may mandate that telehealth
cine equipment and technology be capable of providing, at a minimum, the same information to the physician as available in an in-person encounter to enable them to meet or exceed the prevailing standard of care for the practice of medicine.

- **Informed consent:** Certain states statutorily require the informed consent of patients prior to receiving telemedicine services. This requirement may apply to a specific specialty, all encounters that occur in the state or just to the Medicaid program. In these states, the patients often must be informed of both the risks and benefits of different treatment or procedure options and the risks and benefits related to receiving care via telemedicine, among other things. In the case of a patient who is a minor, the written, informed consent of the parent or guardian may be required.

- **Privacy and information security:** Telehealth models implicate state privacy and informed consent standards and the federal requirements under the Health Insurance Portability and Accountability Act of 1996 and other laws related to the preservation of the integrity and safeguarding the security of patient health information (PHI). If the program extends across state lines, multiple state privacy standards may apply. These laws require careful assessment in light of the facts specific to the telehealth arrangement. In addition, defining how PHI may be used, shared, stored and transmitted in agreements (e.g., entity-specific business associate agreements, confidentiality and privacy agreements) and policies, and integrating mechanisms and processes into existing operational procedures to confirm that patients are aware of their rights and responsibilities with respect to receiving care via telehealth technologies, and for obtaining the appropriate consent for treatment, is essential to comply with state and federal laws and limit liability exposure.

- **Medical record documentation:** The laws of certain states explicitly require that telemedicine services be properly documented by the health care professional, and that such documentation be maintained in accordance with the provider’s policies, procedures and any other applicable laws and regulations.

- **Medical malpractice liability:** It is important for the telehealth providers with whom the employers partner to offer services to their employees to maintain malpractice liability insurance that specifically covers the physician’s provision of telehealth services in the states in which the employees are located.8

The development and implementation of a successful telehealth program requires a well-designed employee education and communication campaign, as well as careful assessment of the above legal and regulatory compliance issues.  

**Endnotes**


3. Ibid.

4. Ibid.

5. Ibid.

6. Ibid.

7. Ibid.

8. Ibid.

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