Texas Legislation Opens Door to Internet Consultations by Physicians

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Texas has recently enacted legislation that may allow the Medicaid program to realize some of the benefits currently available from “e-health” technologies.¹ Texas Senate Bill 1188² (S.B. 1188) “directs the Texas Health and Human Services Commission [(HHSC or the Commission)] to make a number of reforms intended to streamline the administration of, maximize funding for, improve recipient outcomes in, and increase the cost effectiveness of the Medicaid program.”³ S.B. 1188 also amends Chapter 531 of the Government Code, adding provisions to address streamlining administrative processes.

HHSC is directed to improve the administration of the Medicaid program by any method the Commission determines to be cost-effective. S.B. 1188 specifically encourages the increased use of medical technology by providers, including electronic communications between patients and physicians as well as electronic prescribing tools “that provide up-to-date payer formulary information at the time a physician or other health care practitioner writes a prescription and that support the electronic transmission of a prescription. . . .”⁴

S.B. 1188 seeks to encourage the use of medical technology by Medicaid providers by authorizing HHSC to contract with a manufacturer for the operation of a pilot program to supply Medicaid providers with a “graphical electronic medical record system”⁵ and to evaluate the benefits and cost-effectiveness of the system, with a report of the results of the evaluation due from HHSC to the Texas Legislature by January 15, 2007.

S.B. 1188 also establishes within HHSC an Office of Medical Technology charged with exploring, evaluating and implementing new developments in medical technology where appropriate and cost-effective.⁶

Perhaps most importantly, S.B. 1188 provides for possible reimbursement for online medical consultations.⁷ S.B. 1188 authorizes HHSC “to provide Medicaid reimbursement for a medical consultation that is provided by a physician or other health

⁴ S.B. 1188 § 531.02411 (6).
⁵ Id. at § 531.02412 (b).
⁶ Id. at § 531.0081.
⁷ Id. at § 531.02175.
care professional using the Internet as a cost-effective alternative to an in-person consultation.\textsuperscript{8} However, such reimbursement may be provided only if the Centers for Medicare & Medicaid Services develop an appropriate “Current Procedural Terminology” code for medical services provided using the Internet.\textsuperscript{9}

Although not required to do so, HHSC may develop and implement a pilot program allowing reimbursement to physicians and other health care providers for Internet consultations.\textsuperscript{10} The pilot program would test the cost-effectiveness of Internet consultations compared to in-person Medicaid consultations. HHSC is authorized to expand the pilot program to allow reimbursement statewide for Internet medical consultations if the pilot program establishes such consultations are cost-effective.\textsuperscript{11}

Collectively, the above provisions represent an important step towards allowing the Medicaid program to realize some of the many benefits currently available from “e-health” technologies. The provisions allowing reimbursement for online consultations are particularly needed as insurance reimbursement has been a significant barrier to the growth of cybermedicine.\textsuperscript{12} In contrast to accountants, lawyers and some other professionals, physicians have historically not billed directly for their time, and private insurance has typically not been willing to reimburse physicians for Internet consultations.\textsuperscript{13} If HHSC elects to provide reimbursement for Internet consultations, private health insurance plans and employer-sponsored plans may follow suit. Also, if HHSC elects to establish the pilot program authorized by S.B. 1188, important lessons may be learned to help decide how better to regulate embryonic cybermedicine.

In some respects there may be greater barriers to implementation of online consultations within the Medicaid program than within the general population. Cultural barriers together with the “digital divide” may prevent computer-illiterate patients and others from seeking help online. Not all Medicaid patients have a computer, and even those who do may lack the software, hardware and technical expertise to conduct two-way video teleconferencing, the current “gold standard” for online consultations. A sophisticated personal computer and high speed Internet access are beyond the reach of many individuals, but economics is not the only reason for the digital divide. Some senior citizens may have adequate financial resources, but be simply overwhelmed by the complexity and unreliability of home computers.\textsuperscript{14}

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\textsuperscript{8} Id.
\textsuperscript{9} Id. at § 531.02175 (b).
\textsuperscript{10} Id. at § 531.02175 (c)
\textsuperscript{11} Id.
\textsuperscript{12} As used here, the term “cybermedicine” simply means telemedicine practiced via the Internet.
\textsuperscript{13} See Scott, supra note 1, at 448-9.
\textsuperscript{14} Id. at 446.