



SPOTLIGHT

How Washington Finally Enacted a Telemedicine Law

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EDITOR'S NOTE:

Chelene Whitaker is Policy Director for the Washington State Hospital Association. In that position she was instrumental in shepherding Washington's recently enacted telehealth parity law through the State Legislature. This article relates the process of moving a law from concept to enactment.

When the idea of working on a telemedicine law was raised back in 2012, no one around the table would have guessed it would take Washington State three years to enact a law. The problem was clear: Insurers

were placing geographic restrictions or refusing to contract for services delivered through telemedicine technology. The solution was solid: Enact legislation that would require payment for telemedicine and bring needed health care services to rural and underserved patients. The benefits were obvious: Patients would get necessary services faster and more efficiently, which we believe will save lives and money.

Yet, the Byzantine journey of this law reminded us of many lessons

one learns in civics class. These are lessons we could all use a quick reminder on when thinking about proposing or working to enact legislation.

For states still debating a law, here are the top six things that made the difference in Washington State.

1. BUILD A COALITION. Identify and create an advisory group that helps think through the tough decisions that will need to be made, but can also help provide stories

about why the legislation is needed. The advisory group can be the start of a grassroots coalition that can help advocate for the law. We had a broad group of our members, along with the Washington State Medical Association, to help with this work.

2. IDENTIFY IMPACTED ORGANIZATIONS OR PROVIDERS.

The biggest beneficiaries of telemedicine are the patients – children with autism, people with Parkinson’s disease, people having a stroke. Restrictions on telemedicine have real consequences for patients. Gather those stories early. The hospital association worked to identify those who could convincingly tell the impact of limited telemedicine take-up. Work with these individuals before the legislative session starts, so they are ready to engage in advocacy.

3. IDENTIFY STRONG LEGISLATIVE CHAMPIONS.

This is as important as building the coalition. Having an elected official who is “on-fire” for this cause is crucial. One of our champions was also the person who told us we had more work to do on the legislation in 2013 after our bill died. She told us to negotiate with the insurers and bring her back a piece of legislation that both of us could support. Our other champion legislator is married to a child psychiatrist and clearly saw the benefit of the law for the children his wife treats. Both these legislators were key to getting the bill to the finish line.

4. DON’T GIVE UP. Passing this bill took three years of hard work and heartbreak. It took significantly longer than we expected, and in the second year was derailed at the eleventh hour by a concern that telemedicine would lead to “webcam abortions.” This was a concern that took us completely by surprise. It was an ideological issue we could not overcome in a short time frame near the end of the legislative



session. But we persevered and found a solution to address the issue – tying telemedicine coverage to the federal essential health benefits package. The concept of “webcam abortion” is a concern about telemedicine worth knowing about and researching in order to respond to objections. The concern issue is a national issue for groups opposing abortion and it has now surfaced in states other than Washington. We would recommend that advocates adopt the same solution

5. BE WILLING TO COMPROMISE. While our law is not the most progressive law in the country, it is a major step forward in health care for patients. If we had dug in our heels and refused to compromise, I would be writing a very different article. Knowing when to move to a middle ground is key.

During our first year of work, the telemedicine bill died in the Senate Health Care committee. Not making it very far in the legislative process in the Senate told us that we had problems with the proposal that would not solve themselves. The commercial insurers strongly

opposed the bill because it required payment rate parity, not just parity in coverage of services. The definition of telemedicine was also called into question, as were the originating sites.

Unless there is a change in legislative makeup, or the facts have significantly shifted on an issue, running the same legislation over and over again is not typically a recipe for success. We had neither a shift in legislative power or a major shift in the fact base.

After the 2013 legislative session, we entered into negotiations with the three major commercial insurers in our state. We also added our state’s Medicaid program to our legislation, which we had overlooked the first time around, to bring the number of health plans to negotiate with to nine. We had to give up ground in the negotiations, but what we received in return was all nine health plans being supportive or neutral of the bill. The same insurers who had worked hard to kill the bill in 2013 became some of our best allies and testified repeatedly in favor of the bill in 2014 and 2015.

6. SOMETIMES, YOU NEED TO SAY “NO.”

Throughout the process, and especially when the bill was poised to pass, we had various groups trying to tack their issue onto our bill – asking us to add home visits, or specifically identify nurse practitioners, or any number of other provisions that would have upset the negotiated agreements we had struck on the bill. While we agreed that the bill could go farther and payment for home visits would be great, we knew we were politically at the edge for maintaining support for the bill. We had several tough conversations where we told advocates no. Getting a law passed that requires payment for telemedicine is an enormous victory, and we were unwilling to snatch defeat from the jaws of victory.

WASHINGTON STATE'S TELEMEDICINE LAW

By 2017, Washington State's law requires commercial, Medicaid, and public employee health plans to reimburse for covered health plan services provided through telemedicine. The law defines telemedicine as “the delivery of health care services through the use of interactive audio and video technology, permitting real-time communication between the patient at the originating site and the provider, for the purpose of diagnosis, consultation, or treatment. Telemedicine does not include the use of audio-only telephone, facsimile, or email.”

In order to trigger reimbursement for a service delivered through telemedicine a patient must be in one of the seven originating sites. The sites include a hospital, rural health clinic, federally qualified health center, physician's



ABOUT WSHA:

The Washington State Hospital Association is a membership organizations of 99 hospitals and health systems and their continuum of health care services. WSHA represents our members to our state legislature and regulating bodies. We have worked on countless laws, either proposing them, refining them, or defeating them. Learn more at www.wsha.org.

or other health care provider's office, community mental health center, skilled nursing facility, or renal dialysis center, except an independent renal dialysis center.

The law explicitly prohibits geographic restrictions on a patient's location for reimbursement purposes. Specific to hospitals, it also clarifies that an originating site hospital may rely on a distant site hospital's decision to grant or renew clinical privileges when the two facilities have a written agreement in place.

Lastly, the law recognizes use “store and forward” technology for commercial and public employee plans, but does not require reimbursement unless the service is in the negotiated contract. For Medicaid plans, this recognition may be the avenue for allowing services delivered through store and forward to be included in the actuarial rate setting for the plans, something that is not recognized currently. Changing the incentive for Medicaid plans to pay for store and forward will be an important shift for our state.

MOVING FORWARD

Our telemedicine law is a big step forward for the delivery of care for patients with strokes, psychiatric illness, heart problems and so many others. While we did not get everything we wanted in the law, we made significant headway. In the future, if we seek to expand the law, it will take many of the steps I described above. We are encouraging our providers to get more aggressive about contracting with insurers. Return on investment for the coverage of services is key to showing how technology will transform health. Use of store and forward, as well as remote patient monitoring, are two areas we are beginning to see roll out with pilot projects.

Legislators remain interested in continuing to discuss other areas important to the use of telemedicine, including licensing compacts and state-endorsed advisory committees to help guide the next steps. There will also be important work in monitoring how the telemedicine law gets implemented.