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Telemedicine's Role in Workers' Compensation post COVID-19

Health care will be forever changed by the pandemic. Although telemedicine was becoming more widely accepted in the workers' compensation arena prior to 2020, COVID-19 has made it more of a required offering. This course will discuss the recent increase in adoption of telemedicine since COVID-19, how employers and employees are responding to telemedicine treatment, the cost/benefit analysis of telemedicine, and the legal ramifications of that adoption.

Overview

COVID-19 has impacted workers' compensation in many ways, not the least of which is an injured employee's medical treatment. Certainly, advances in technology were already forcing parties in claims to reconsider how best to approach the medical treatment process. However, with the advent of the pandemic in early 2020, telemedicine became a more attractive, and at times 'necessary' option. It is worth noting that the recent increase in such practices may have implications which are not yet fully realized. This includes both pros and cons of employees undergoing "virtual" medicine vs. traditional visits to "brick and mortar" medical facilities. There could also be legal consequences, dependent on state workers' compensation laws. Ultimately, while the hope is that an increase of vaccines and treatment of COVID-19 will allow everyone to return to some level of "normal", the most likely scenario is that some part of telemedicine will be here to stay.

Historical Considerations and the Increase of Telemedicine in WC

Throughout the last fifty years, there have been several barriers in the adoption of telemedicine technology and remote healthcare services, particularly in the WC industry. Traditionally, outside of first aid, the common practice following a work-related injury was for an injured employee to seek emergency treatment or authorized medical care at a hospital, urgent care facility, or occupational medicine clinic. Depending upon state law, and the nature of the injury, the employee might next pursue follow-up care with a specialist. This would necessarily entail scheduling of appointments, travel to and from those appointments, and possible wait time and delays associated with those visits.

Over time, financial, regulatory, and technological challenges have made it seemingly difficult to advance newer telemedicine options. However, current healthcare reforms have brought changes in the adoption of telehealth. In more recent years, both healthcare reforms and federal legislation have pushed forward the use of telemedicine technology, electronic prescribing, and mobile health tools.

As a result of the COVID-19 pandemic, the use of telemedicine has increased dramatically thanks to both payment and regulatory changes designed to make it easier for patients to get high-quality care in the comfort of their own homes or private workspaces. The reality is that due to COVID-19, “traditional” medical care options under state workers’ compensation systems are no longer always practical or even the best solutions. This has led to a sharp increase in online/virtual medicine. Indeed, due to concerns by employees of contracting COVID in a clinic setting, telemedicine alternatives – where available – have risen to the forefront. According to one study, there was a 91% increase in telemedicine visits between the first week of March 2020 and the first week of April 2020. <https://riskandinsurance.com/5-keys-to-sustaining-effective-wc-telehealth-usage-beyond-the-pandemic/>

Present day, with increased technology and modern application use, consumers have integrated their devices into everyday tasks, including visits to the doctor. Thus, the use of telemedicine has had a significant impact and push on employers’ perspectives on health, helping to bridge the gap between health care and workforce strategy. Employers, workers’ compensation insurers and third-party administrators are embracing the ability to provide remote medical care to injured employees using the video technology embedded in smart phones, tablets, and computers. While data is still being gathered, the hopeful net effect is to allow injured workers quicker and easier care so that they can safely return to the workforce, with fewer roadblocks and delays caused by the traditional medicine approach.

How Employers and Employees Are Responding to Telemedicine

There is a growing recognition that telemedicine can offer an ideal platform for companies looking to keep their workforce healthy. The recent increase in the adoption of telemedicine has begun to transform how patients obtain outpatient healthcare services. With benefits for both employers and employees, telemedicine is a service that more employers are including in their health plan coverage. Telemedicine has the potential to transform the workers’ compensation industry by providing immediate assessment of a workplace injury, diagnosis, consultation, treatment, education, and care and case management, if applicable. However, when it comes to utilizing telemedicine, employers, medical practitioners and claims adjusters must strike a balance between the use of telemedicine and in-person care to ensure the best treatment outcome for injured employees.

For employers, the use of telemedicine can help mitigate both health insurance plan costs and claim costs. Telemedicine appointments generally bill for less than comparable in-office services. In addition, an injured employee can receive treatment at home or at the workplace, allowing for near-immediate return to work, if appropriate. Current evidence suggests that this works best for smaller, less severe injuries. Although there may be, in some instances, less oversight and supervision by healthcare providers (e.g., more emphasis on home therapy vs. supervised physical therapy), overall, the response from employers to telemedicine has been favorable.

From the employee side, the accessibility of telemedicine saves time by potentially eliminating trips to the emergency room, treatment clinics or doctor's offices. It is also convenient. This is especially true when seeking after-hours care, trying to manage childcare and/or work needs. Negative experiences with telemedicine from the employee perspective are usually tied to technology and connectivity issues. User experience is important, as well as ensuring that telemedicine is appropriate for the type of work-related injury involved.

The Cost/Benefit Analysis of Telemedicine

Telehealth/Telemedicine offers benefits to both health and convenience for both patients and providers. Advantages to patients include comfort and convenience, control against infectious diseases such as COVID-19, and better assessment as providers can observe patients in their home environments. There is also the benefit of allowing for family connections who can attend telemedicine appointments with patients, ask questions and take note of providers' answers. Telemedicine also allows for potentially more regular visits with primary care physicians as it is easier to connect with a doctor or nurse practitioner.

Other benefits of telemedicine include lower costs, especially in secondary expenses such as medical mileage reimbursement and attendant expenses (e.g., parking) that might be owed per jurisdictional requirements. Benefits for providers are equally important. They include reduced overhead costs such as office space or salaries for front desk support or scheduling assistants, additional revenue stream wherein providers can give care to more patients, less exposure to infections and illnesses, especially in the current COVID-19 pandemic, and patient satisfaction – when a patient does not have to travel or wait for healthcare, they may be happier with the provider.

There are also disadvantages to telemedicine that need to be taken into consideration. For patients, not all insurance covers telemedicine. However, whether telemedicine appointments are covered under workers' compensation is still being tested. Medical data can also be at risk from breaches, especially if a patient is accessing care through a public network or an unencrypted network. While it would not be recommended to access telemedicine for emergency care, there is always the risk that a patient might do so, delaying any urgent care they need.

Another potential disadvantage that needs to be considered is whether a patient is compliant with the recommendations a provider gives, such as a home exercise program from a physical therapist. Without the in-person and hands-on involvement of a therapist, a patient could perform those exercises incorrectly or not at all, hindering recovery. This may lead to increased claim costs. There is also a disadvantage for lower income and rural households that do not have access to the technology required for telemedicine. In these instances, telemedicine may not be a workable solution.

Disadvantages are not as numerous for providers, but can still create roadblocks in patient care, such as finding the right technological platform, the inability to physically examine patients, and having to rely on self-reports to get a comprehensive picture of a patient's health and complaints. There can also be state licensing issues which might not allow providers to practice medicine across state lines. This may impact claims where a patient has moved from the state of

his injury to another state but must continue treating with a physician that follows the original state guidelines and fee schedule.

Legal Ramifications of Telemedicine

One of the foremost legal concerns with the onset of telemedicine is HIPAA/privacy issues. While the benefits of telemedicine are clearly there, having the right technology platform is essential. Nationwide, there are countless stories about how Zoom or similar platforms have been interrupted or “hacked” by unauthorized users. Therefore, it is critical that data security measures are in place by the medical provider. If an injured worker’s private medical information becomes disclosed outside of those entitled to know its contents, this could have legal repercussions for not only the parties but also the medical providers in question.

Another potential legal concern might be the definition of what constitutes an “examination”. For example, in at least one jurisdiction, the suspension of weekly indemnity benefits is based upon the treating physician having “examined” the employee within the past 60 days. See, O.C.G.A §34-9-221 and Board Rule 221(h)(4)(a), Rules and Regulations of the Georgia State Board of Workers’ Compensation. Specifically, Board Rule 221(h)(4)(a) provides that when “suspending benefits for release to return to work without restrictions... the employer/insurer shall attach to the Form WC-2 a copy of the supporting medical report forms the employee’s authorized treating physician, who must have examined the employee within 60 days of the effective date of the release”. (Emphasis supplied). Traditionally, this has been construed to mean that the doctor has physically examined the employee, even though the word “physically” does not appear in the statute. Thus, if a treating physician pronounces an injured employee to be “full duty” at an appointment conducted via telemedicine does this legally suffice to qualify as an examination? While an employer/insurer would certainly contend that it does, especially if the telemedicine appointment were chosen by the employee, potentially an argument could be raised that the doctor did not actually “examine” the worker. This could lead to legal challenges from the employee and/or their attorney.

A potential beneficial legal ramification to telemedicine could be a decreased risk of injuries or additional injuries/diseases during an employee’s treatment. Depending on state laws, an injured worker who sustains additional injuries while traveling to or from “traditional” medical appointment can receive medical benefits (and possible disability benefits) for these new injuries/conditions under the original WC claim. Obviously, this can prolong the resolution of the case. For example, if an injured worker must travel 30 minutes each way to an authorized provider and becomes involved in a motor vehicle collision while going to or coming back from that appointment, any injuries sustained in that accident may also be held compensable. Yet, this risk will be inherently eliminated if the worker conducts that follow-up appointment via telemedicine.

Of course, there will still be some types of medical appointments, including diagnostic testing, injections, and surgeries, which do not justify telemedicine as an appropriate vehicle for treatment. However, aside from privacy/data security concerns and certain state law statutory provisions, the potential legal consequences for telemedicine may be well worth the risk. From decreased travel/wait time experiences to a lowered risk going to and from “traditional” office appointments to fewer days of disability, telemedicine has proven that its usefulness may well outlast the pandemic.

Conclusion

Even before the COVID-19 pandemic, telemedicine was gaining traction. However, beginning in March of 2020 the reality of injured employees needing quick and accurate diagnoses and treatment options forced telemedicine to rise to the forefront within the WC industry. While the hope is that increased vaccines and fewer cases of COVID-19 will allow for a return to “normal” medical treatment, the likelihood is that some version of telehealth will be a permanent fixture for WC claims moving forward. Ultimately, it will be dependent upon the cooperation of employees, employers, insurers/TPAs, and healthcare providers, along with state legislatures and regulatory agencies, to find the right balance for medical treatment in the months ahead.