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States, telemedicine companies in critical fight

By **DAVID PITTMAN** | 01/23/15 12:44 PM EST

Even the best doctors can't distinguish strep throat from flu over the phone. And you can't diagnose an ear infection without looking into the ear.

Yet such practices are the meat and potatoes of companies with growing clout in Washington, where their lobbying has won over politicians who see them as part of a digital revolution that will improve medical care and cut the federal budget.

One of these companies, Teladoc, is engaged in a pitched battle with Texas medical authorities, who want to drive it out of the Lone Star State for practicing what they see as bad medicine. The fight there is an example of the struggle between new-age health providers like Teladoc and state medical officials trying to sort out regulation

of electronic medical tools.

Teladoc continues to see patients in Texas after receiving a restraining order this week from a state judge against an “emergency” Texas Medical Board rule that would have effectively banned the company. The rule stated that that doctors must see patients in person or through video before treating them over the telephone. Roughly 90 percent of Teladoc’s visits are via telephone and treat first-time patients. The two sides have been tussling since 2011, and an appeals judge threw out an earlier medical board action in a New Year’s eve decision.

The Texas two-step is emblematic of the tension between state medical authorities and companies like Teladoc that want to push the limits of how far their doctors can treat and prescribe over the telephone. In Texas and other states, medical boards are concerned that the phone docs practice medicine in an irresponsible and potentially dangerous way.

So-called telephone medicine companies mostly treat minor injuries like ankle sprains and ailments such as colds, flus, sinus infections, allergies and the like. The appeal of health insurers and employers who work with these businesses is that they prevent patients from running to the emergency room — an expensive and inefficient place to seek care — which drives up the health bills everyone pays.

Teladoc doctors rely on the self-reported symptoms of patients, sometimes asking them to feel their own lymph nodes to check for swelling or feel for pain around a certain joint to rule out a broken bone. Patients can also submit photos and videos over smart phones.

But that practice scares more traditional doctors.

“Personally, I wouldn’t prescribe drugs for a total stranger,” said Jean Sumner, former president and medical director for the Georgia Composite Medical Board, who helped rewrite the state’s rules this summer. “I know my patients. My perception about what’s wrong over the phone is not the same as when they show up in the office.”

There’s concern a telephone visit would miss symptoms. Patients could lie, misrepresent their condition or, in a worst-case scenario, pretend to be another

person.

“Can I or one of my physicians provide value to a patient by phone? We can,” said Peter Antall, pediatrician and medical director of the Online Care Group, which provides the doctors another telemedicine company, American Well, uses. “But can we accurately and adequately diagnose a wealth of conditions by telephone? Not really well.”

For example, determining whether a patient has strep throat isn’t possible over the phone; you can’t see white patches on their tonsils or swab for a strep test.

Telemedicine companies like Teladoc and American Well can serve as “traffic cops,” as Antall put it, urging people to go to the emergency room if need be or stay away if it’s unnecessary. But you can’t access qualities such as if a patient is in pain, lethargic or disoriented over the phone, he said.

The over-prescribing of antibiotics — a serious public health issue — has also been linked to telemedicine. There may be a temptation for doctors, say, to diagnose a patient with strep throat instead of the flu, a viral infection that can’t be treated with antibiotics. Teladoc users brag on social media about being able to receive antibiotics quickly through the service.

To refute criticism, the company points to a Health Affairs review of 3,700 Teladoc visits that found no evidence of misdiagnosis and less likelihood to need follow-up.

The company brought on former Senate Majority Leader and physician Bill Frist last fall to work on state policy issues and to help establish quality standards that Teladoc hopes will eventually spread to the entire industry.

The Dallas-based company, which expects 500,000 “visits” this year after 100 percent growth in the last two years, said patients should first seek care from their regular doctors.

“When the patient’s established primary care physician is not available or accessible, the patient has to look for alternatives, and Teladoc is a viable option instead of the more expensive and less convenient options of ER and urgent care,” the company said in a written response to a question. “Teladoc supplements primary care

physicians — we don't replace them.”

STATES WORKING ON STANDARDS

Almost a dozen states, including North Carolina, Florida and Louisiana, last year worked on revamping their telemedicine guidelines. Most of the discussion concerns whether telemedicine doctors must see patients in person or through a live video interaction before treating them at a distance or over the phone.

Hawaii allows a patient-physician relationship to start over the phone — but that's rare among states.

Proposed rules from Iowa's medical board state that doctors can see a patient through telemedicine for the first time if the technology used in an encounter is “sufficient to establish an informed diagnosis.”

In Georgia, a teledoctor may electronically examine a patient only using technology “equal or superior to an examination done personally,” according to rules finalized last summer.

States have been intentionally vague in writing their regulations, says William Harp, executive director of the Virginia Board of Medicine, because they want to ensure patient safety without squashing emerging technology.

Asked whether appropriate care can be given through only the telephone, Harp responded, “it depends.” The standard of care differs for each condition, which makes outlining what's allowable and not difficult for states like his. Virginia hopes to finalize its rules as soon as next month.

Sometimes companies brazenly scorn state laws and regulations.

At a telemedicine summit late last year in Washington, the chief medical officer of Teladoc was asked how the company operates in 49 states, some with rules prohibiting its practices. Henry DePhillips responded that his company didn't bother following the rules, according to four people in attendance, including Paula Guy, who asked the question.

“The guy literally said ‘they're ignoring the rules,’” said Guy, who heads the Georgia

Partnership for Telehealth. “Diagnosing someone over the phone, it doesn’t seem right to me.”

But enforcing the law isn’t easy. Medical boards respond to complaints, by in large, before they take action against a doctor.

In Arkansas, which like Texas doesn’t allow telephone-first visits, the state received phone calls from pharmacies saying doctors from as far away as North Carolina were writing prescriptions for them to fill. Not seeing that as acceptable, the pharmacies called the medical board.

But it may be up to state attorneys general to take action that effectively suppresses such practices, policy insiders say.

SPLINTERING OF LOBBY

Not every telemedicine company or provider believes telephone-only visits are good.

American Well, which provides a platform for employers and health plans to offer e-visits, declined last year to join the Alliance for Connected Care, a new Washington lobbying group. The Alliance, formed by former Senate majority leaders Tom Daschle and Trent Lott, is pushing hard to have Congress remove the barriers that keep Medicare from reimbursing most telemedicine “visits,” a change that could free billions of dollars.

American Well says it is trying to sort out issues such as the proper balance of audio and video contact for different medical services. At present, the Boston-based company’s policy states that its doctors can only prescribe drugs if video is used. Roughly 90 percent of American Well’s visits are video-based.

“Some of those issues are a little more difficult to shake out when you have a number of telehealth platforms all working in the same coalition,” said Kofi Jones, vice president of public relations and government affairs at American Well.

The American Telemedicine Association, whose membership includes companies that use both phone and video consults, has straddled the line of what’s allowable and not over the telephone.

In guidelines it released late last year on urgent and primary care, the association states that prescribing is “generally accepted” after video conferencing that mimics in-person exams, or telephone-only consults when there is a prior provider-patient relationship or medical record available.

However, the telemedicine trade group takes no firm stand on telephone exams with no patient history, noting there are “differences of opinion” and few validated studies.