Protecting the future of telehealth through advocacy with Jason Marino

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In today’s episode of Moving Medicine, AMA Chief Experience Officer Todd Unger talks with AMA Director of Congressional Affairs Jason Marino in Washington, D.C., about a huge win for telehealth—and the AMA's advocacy efforts that helped power it through Congress.

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Speaker

- Jason Marino, director, congressional affairs, AMA

Transcript

Unger: Hello, this is the American Medical Association's Moving Medicine video and podcast. Today I'm joined by Jason Marino, the AMA's director of congressional affairs in Washington, D.C., and we're going to discuss a huge win for telehealth and the advocacy efforts that help power it through Congress. I'm Todd Unger, AMA’s chief experience officer in Chicago.

Jason, thanks so much for joining us, and congratulations on the big win for the advocacy team on behalf of physicians and patients. This omnibus budget bill that passed Congress late last week, while the headlines were largely focused last week on much needed support for Ukraine, the bill also helps address a lot of other issues, including the future of telehealth. And so before we get into the specifics on what the bill includes, let's take a little bit of a step back. How has Congress traditionally approached the issue of telehealth and why did the AMA initially feel that we needed to get involved from an advocacy perspective?
Marino: Well, Todd, I'm happy to be here today on this good occasion and I'll dive right in. Sure. I mean, telehealth is something that the AMA, we've been talking about for a long time. You could take decades because the current policy that we've lived under before COVID was a telehealth system where there really wasn't much telehealth. We knew conceptually it could work. In the 1960s, I don't know if you remember, there's a show called the Jetsons and in the Jetsons, when the kids in the family did telehealth with its physician. And so we know this can work but the policy that was in the statute was dated. It required you to live, to get telehealth, you had live in a very, very rural area. Then you had to drive to what's called an originating site, which essentially is an office, a satellite office.

Because that was the technology then. You had to go to a satellite office, then sit down and then have your visit there. So you're driving 45 miles somewhere, so some people to sit in some office to do it remotely and very, very few people could meet that criteria. And that was the law in the books for years, for decades. And so in 2016, the AMA, we would get comments like why are physicians not using technology more? And why don't they telehealth more? And we would say, well, look at the Medicare statute, you can't do it. It's too restrictive and so we worked with the AMA worked with our ... we have a council on legislation, which a group of physicians that advises the advocacy team on how legislation should look and gives us advice and counsel and things like, how can you establish a relationship with that patient through two-way video/audio? Yes, you can and give us some rules of the road.

And then we went to work with very friendly Senator at the time. Senators. Senator Schatz, from Hawaii, and then there were Senator Cochran, Senator Wicker from Mississippi, who did a lot of telehealth at the University of Mississippi. And they were very interested in drafting a bill to update the Medicare laws to increase the coverage. And so, we went through a painstaking process where we worked on every line, how do we do this? And we got a good number of bipartisan members on both sides to drop a bill. And that was the 115th Congress. This is May of 2017 that Congress ended and the bill died. Because if it doesn't pass it's dead. And so it was a good effort. And then in 2019, the next Congress, 116th Congress, we got the same group of senators together.
And we updated the bill. We ended up getting one piece of it done, this Telestroke. So you can have health coverage for Telestroke, which was a small win but it was something. And when we had the rollout for that bill, this was in 2019, October, we had over six senators show up in one of these Senate office buildings. Over a hundred different groups were supporting it and we had a packed room on a health care issue, bipartisan the senators. This is a rare event. Doesn't usually roll out this way and you could feel the energy. It just, what was working against us is just congressional inertia. There's a lot of competing bills out there. This sounds good. But you have to remember that we are in a where national debt is 29, it's 30 trillion today. It costs a lot of money. Medicare has some financial issues and solvency issues down the road that you have to be aware of.

And there's a concern that aren't they going to overuse telehealth, aren't patients just going to do a televisit and do an in-person then call a doc again? Is that what's going to happen is a fear of that. Or is there going to be fraud and abuse? Are there going to be ordering GDME, expensive equipment? Is there going to be people that call seniors and say, Hey, do you want to talk to your physician right now? Press one. Press two. If you want to ... And there's these fears of ... fraud and abuse run rampant. And so that kind of kept things down and there was always whispers at the congressional budget office, which scores bills. Eric, it's going to be a big score, billions of dollars. And so, while it was a good bill, there are some obstacles. And I used to give a quote every year that AMA has an annual advocacy conference and we fly, and about 500 leading physicians fly into D.C.

And we talked about the issues of the day and telehealth's been a perennial one that we've been pushing since 2017. And I had a stat I used to always use where I said, "As of 2016, only less than 1%, three-tenths of 1% of seniors use telemedicine. Less than 1%." 2017, 2018, same stat, I would say over and over. And I would say, that's not the future. We have these amazing iPhones that get better and better. Technology's getting better and better but yet we're still not doing telehealth in less than 1%. That's not the future. And it was one of those, you have to wait for their right moment. And in the most recent version of the bill, this was in about 2019. We had a provision in there that we worked a lot, several drafts back and forth, a lot of our top lawyers working on it.

If there's ever a public health emergency, it would give the secretary of HHS authority to waive some of these restrictions on where you have to be. They're called on geographic applications. And then the origination site where you can be in your home and it would make that possible if there was some sort of public health emergency. Well, that happened, unfortunately, there was COVID. And when COVID happened in 2020, there was a bill called the CARES Act, which was a COVID relief bill. In that bill, they essentially took parts of this. The bill was called the Connect for Health Act. They took sections of that, put it in this larger bill and next thing you know, it's law. And so it's one of those, your bill, you may get behind may, you may get lots of co-sponsors may not go anywhere but parts of it can get taken.

It's always what you hope, playing the long game. You're trying to build the co-sponsors, build support.
for moments like this. And so we got in there and once that happened, it was revolutionary. And that you went from Medicare spending less than all, all Medicare payment for physician services, less than 1% telehealth to at some point it went to 16% of Medicare went to physicians for telehealth and now it's settled back down recently to about 4 to 6%, which is still compared to less than 1%.

And it was used, obviously, initially, there was a concern that the spread of COVID, people didn't want to go into a physician's office and you have telehealth, it was an option and it worked but it's gone so much more since then. Because it's you talk to senators, both sides of the aisle, Democrats Republicans will tell you, "Oh, it's been horrible." The one silver lining, they always use that word, silver lining, of this has been telehealth. We've done more innovation in three months. This was back in 2000, then in the last 10 years. And you give the coverage, then a lot of physicians and others will innovate and the patients find it very convenient and members going back for town halls and they're hearing, telehealth, it's working. It's convenient. So it's kind of where we got to here where it's a lot.

**Unger:** So, if I understand you correctly, using your Jetson's analogy, we may not have flying cars but due to all this work over many, many years, we have been able to realize a huge advance in telehealth. And I don't think a lot of people know Jason, I mean, the timeframes for making changes like this, are years of just dedicated effort and working with different Congresspeople, senators and different sessions to kind of get these passed. I'm curious basically huge timing issue here with the pandemic, which offered an opportunity to advance this but with these gains, the kind of under a certain kind of level of emergency measures, how do we what do you need to do to continue these in the future, beyond the pandemic?

**Marino:** So, what's key is that it's been great now. Because we, everyone, it's the coverage is there. In your home, your car anywhere, it's covered, it's very broad coverage but it's of the public health emergency. And the fear is that once that goes away, then you're back to your 1980s statute on telehealth, where you have to be in the very rural area to have some satellite office and it's gone overnight. And that's pretty dramatic.

And if you're a physician practice and you're trying to retool to incorporate telemedicine into your practice, not for everything you need something, you still have to always come in person, for imaging, for certain visits, where it needs to, you got to have some touch involved your surgeries but for what visits that it works, you need to retool your practice, your staff. But if you think it's going to go gone after 90 days, like the public health emergency ends. How do you retool your practice when you're not sure if it's going to go back to the policies of the 1980s, where there's no coverage. And so there's some certainty that physicians, and patients too, need to plan ahead.

**Unger:** Talk about that timeframe, Jason. Is it how many days is it and is it from the day that this public health emergency is declared over? How does that work? What's the risk here?

**Marino:** So the risk is so we're in a period of time where every 90 days the public health emergency
can get extended or not. It was last extended on January 16. So it's up on April 16 for an extension that HHS, the Health and Human Services, has committed to giving a 60-day notice to Congress if they attend to end the public health emergency. So we know that in April, since we haven't got that notice on April 16, it'll get renewed until July, mid-July, they'll extend the public health emergency. And then in mid-July, the thinking is even this congressional budget office, assuming this, that in the middle of July, they're not going to extend it again. And the day that it's not extended the next day, the statutory waivers, I mean, the waivers that we have operating under now go away. So mid-July, unless Congress acts, then all the coverage in telehealth goes back to the old outdated policies.

**Unger:** And so, what do we do?

**Marino:** So what we've done is recognized context where election year and we're in primary season right now, not a lot gets done in the election year. And there's a lot going on in the world with Ukraine, other things. And there's ... when we would love to get and we've been advocating for a permanent coverage. And there's two bills, the Telehealth Modernization Act. There's another one, the Connect for Health Act, two bills that would, that would make it permanent. We recognize that's not likely to happen this year. So in the interim, we want to at least keep an extension, a statutory extension short term. And so with Congress ... and we sent a letter with 300 organizations with us saying, let's at least extend the coverage until we have, until we can extend it permanently. And so that's what's happened, this most recent appropriation bill you mentioned, which there was an extension for 151 days, about five months. So it would go from mid-July to about sometime in December, where there'd be now a statutory extension of the Medicare telehealth coverage that would expire in sometime in December.

**Unger:** Is your aim then, to get kind of more of a permanent thing after we emerge from the kind of the period that we're in from a voting standpoint?

**Marino:** That's the goal. I mean, you would say you ask 151 days. I mean, is that really a big deal? Five months but it really is. And it might not seem it but the reason it is because this is now Congress passing a bill where they own the issue more. And they're going to and if you see the ... if you look at the congressional press releases on both sides of the out membership, Democrat party, Republican party, you'll see them talking about how they extended telehealth and how that's a good thing. When they go home to talk to their constituents, they're going to brag about it, as they should. And they own it a little bit. And one thing in Congress that I've learned of years of lobbying is it's almost a congressional law of physics. When you extend something that's popular, it tends to extend the emotion of an extension tends to keep going.

And so that's why I feel confident that they've done this extension. They couldn't do more because it was dollars. It's billions of dollars. We heard one estimate it could be $5 billion just for one year discovered. So there was a dollars issue that restricted how much they could extend it. But just to game it out in December, I find it hard to believe during a laying duck session of Congress, they're
going to go home for the holidays and just forget about telehealth and let it expire and go back to the old outdated policies. I don't see that happening. I see, in the interim, studies coming out more and more studies showing this works, this saves money. This is convenient for patients. It helps patients to have more mobility and transportation issues. It gives access to minoritized communities that didn't have access before. It's across the board, a win.

And I think the more time we have, the more we can tell that story and kind of ease the fears of overutilization, which we haven't seen, or ease the fears of fraud and abuse. And in this short-term bill, there is a study that MedPAC will come out within June of 2023, that looks at utilization, how much service, how much is it used? And then they'll also be an Inspector General study on fraud and abuse. And we would argue that the second HHS has all the authority to go after users and any program, you're going to have some bad actors, unfortunately, but there are ways to go after that, those bad actors in current law. And so we're confident that this story is just being told and it's getting better and better. And as time is on our side, for this one.

**Unger:** So I know the passage of this bill represents years, actually, of collaboration and hard work from you and your team and the federation. Take us through some of the AMA's advocacy efforts and the obstacles that you overcame, ultimately that led to this one.

**Marino:** Sure. I mean, the first obstacle was just that the, just trying to get people to, members and organizations, to focus on it. And so many years had just gone by where it just didn't have the telehealth coverage. Just wasn't really a thought. And then initially, it was just a matter of getting groups to sign on to a legislation or the idea of legislation that we can do this. There was a fear, can you really do this? Can you really have a physician visit through a computer? And once we show that, yes, you can, you can do that. And that got more groups on board. Then it's a matter, you got to always have a congressional champion. You always have to have certain members like your Senator Tim Scott, in South Carolina, your Senator Schatz, from Hawaii, Senator Congressman Carter, from Georgia, that work it, that dropped the bill, that get their members, their colleagues to sign on.

You have to get the people help you get the cosponsors. There's one bill connected to 60 cosponsors in the Senate. That's the magic number in the Senate. 60. Filibuster proof. Just showed you the support that's out there. And then there's issues that come along like to the AMA. It's very important that you protect state licensure and not undermine that others want to just have one federal license. And there are a lot of meetings where of minds with different organizations where you say, look, I know we have to agree to disagree on this one but we all can agree with Medicare coverage through telehealth is a big deal. Let's all unite on that and not get so distracted on some of the bits and pieces of telemedicine that we can fight it out, so to speak or give our sides going forward. We have to have a coverage first.

And we were able to unite a lot of groups to kind of put aside our differences and unite on the bigger goal, coverage. And that is why we succeeded. And we convince members of Congress, don't go
down the rabbit hole and divisive parts of it, stick to the bigger picture, and it'll be more of a ... and it broadens your support. And we just saw like the growth, from some key committee members to members who are not any health committee, get members of Congress that never talk about health care but also been talk about telehealth. And that's when you're making some wins there and AMA has a great grassroots operation where we can educate physicians and patients and urge them to call into Congress and say, "Hey, we want to keep, this is working. Keep it going. Here's why." And that makes a big difference.

Always having that going and do we have a lot of great positions that are part of our leadership and the Federation that have a lot of credibility when they go to the hill and talk about, "I'm a physician I'm telling you this works. And let me tell you why. And let me tell you my story about that." And that is very powerful. And we've been doing that for years now. And it's finally, we're seeing the fruits of all that, just like a good long-term investment for your retirement. You have compounding returns. If you stay to play the long game, keep adding, this is one of those where you played the long game. You kept adding by making the bill better, adding support until finally, you're ... next thing you know, you have a great product.

Unger: I can't think of a better example of speaking with a unified voice, which is such an important part of what we do here at the AMA, along with the Federation. Jason, I think you mentioned the Physicians Grassroots Network. You can find more about that on the AMA site if you'd like to participate in that. Again, hearing the voices of physicians and actual experience about how measures like this are so important to physicians and patients is incredibly important. Jason, thanks so much to you for being here, to your team, to the AMA advocacy team as a whole, our Federation and members of Congress for supporting such an important measure, appreciate your perspective.

We'll have more on the website about details, about different types of coverage, especially for mental health, which is so important as we emerge from this pandemic. But that's all for today's episode. We'll be back with more. In the meantime, make sure to click subscribe on our YouTube channel and you can find all our great podcasts and videos at ama-assn.org/podcasts. Thanks for joining us. Please take care.

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