# *Legislative Briefing:*
# Telehealth Policy for a Post-Pandemic California

October 15, 2021

*Today's webinar*

California Health Care Foundation

Center for Connected

# Welcome and Introduction to the Legislative Briefing

Mei Wa Kwong, JD

Executive Director

Center for Connected Health Policy

**Center for Connected Health Policy**

THE NATIONAL
TELEHEALTH POLICY
RESOURCE CENTER

# About the California Telehealth Policy Coalition



**Please visit our website for more information or if you are interested in joining.**
https://www.cchpca.org/about/projects/california-telehealth-policy-coalition

# Thank you to today's sponsors

# Purpose and key objectives of today's webinar

Discuss direction of state telehealth policy in context of broader policy landscape and current state administrative efforts.

- **Provide an overview of state and federal telehealth policy**, including prior-to pandemic expansions as well as post-pandemic policies.

- **Discuss stakeholder perspectives and the impact on patients** and issues to keep in mind when developing long-term telehealth policies.

- **Panelist discussion** on ongoing considerations and next steps.

- **Answer key questions** about existing and proposed legislation as well as the future outlook for telehealth in California.

# Agenda and preliminary announcements

**Welcome**
- Mei Wa Kwong, Executive Director, Center for Connected Health Policy

**State and Federal Telehealth Policy Landscape Overview**
- Mei Wa Kwong, Executive Director, Center for Connected Health Policy

**Panelist Session –** Opening remarks followed by discussion
- Moderated by Diana Camacho, Senior Program Officer, Improving Access, California Health Care Foundation

**Speakers**
- Yohualli B. Anaya, MD, MPH, Anaya, Assistant Clinical Professor, Department of Family Medicine, Family Medicine Clerkship, Co-Chair, David Geffen School of Medicine, UCLA
- Sarah Hesketh, Senior Vice President of External Affairs, California Association of Public Hospitals and Health Systems (CAPH)
- Rebecca Picasso, Principal Program Manager, Virtual Care & Telehealth Innovation, Blue Shield of California
- Cary Sanders, Senior Policy Director, California Pan-Ethnic Health Network (CPEHN)

**Q&A**

Attendees will remain muted during the webinar.

Please submit any questions you have during the webinar in the Q&A box, not the chat box.

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# State and Federal Telehealth Policy Landscape

# STATE & FEDERAL
# TELEHEALTH POLICY CHANGES
# IN COVID-19

## FEDERAL

| MEDICARE ISSUE | CHANGE |
|---|---|
| Geographic Limit | Waived |
| Site limitation | Waived |
| Provider List | Expanded |
| Services Eligible | Added additional 80 codes |
| Visit limits | Waived certain limits |
| Modality | Live Video, Phone, some srvs |
| Supervision requirements | Relaxed some |
| Licensing | Relaxed requirements |
| Tech-Enabled/Comm-Based (not considered telehealth, but uses telehealth technology) | More codes eligible for phone & allowed PTs/OTs/SLPs & other use |

- DEA – PHE prescribing exception/allowed phone for suboxone for OUD
- HIPAA – OCR will not fine during this time

## STATE (Most Common Changes)

| MEDICAID ISSUE | CHANGE |
|---|---|
| Modality | Allowing phone |
| Location | Allowing home |
| Consent | Relaxed consent requirements |
| Services | Expanded types of services eligible |
| Reimbursement | Parity |
| Providers | Allowed other providers such as allied health pros |
| Licensing | Waived some requirements |

- Private payer orders range from encouragement to cover telehealth to more explicit mandates
- Relaxed some health information protections

# 2021 Trends

➢ **Federal Activity**
- CCHP tracking over 100 pieces of federal telehealth legislation
- Re-introduction of bills to make some of the temporary changes permanent
  - Removing originating site restrictions, adding audio-only, parity, mental health focus
- CMS Proposed Physician Fee Schedule
  - Extending some temporary eligible telehealth services – just Category 3 until end of CY 2023
  - Expansions for audio-only and FQHC/RHCs but many caveats and limited to mental health

➢ **State Activity**
- Payment parity
  - Reimbursement limits by service, provider, modality
- Audio-Only
- Licensing for out of state providers
- Data requirements/workgroups established
- Broadband (infrastructure, affordability, digital literacy)

# PERMANENT FEDERAL TELEHEALTH POLICY UPDATES

## ADMINISTRATIVE

- *Physician Fee Schedule Changes*
  - Added some services from the temporary list to the permanent list
  - Created a "Category 3" for approval of services. Temporarily allows some services to continue to determine if they should be permanent

*Proposed changes extend Category 3 until end of CY 2023 and allow audio-only for mental health services with many caveats*

## LEGISLATIVE

- *HR 133*
  - Added rural emergency to originating site
  - Expansion of mental health services to be without geographic restriction and allows the home
    - BUT - one in-person visit with telehealth provider within 6-month period prior to telehealth encounter
  - Additional funding for broadband and FCC Telehealth COVID-19 Program

# PERMANENT STATE UPDATES:
## MEDICAID REIMBURSEMENT BY SERVICE MODALITY
## (Fee-for-Service)



**Live Video**
50 states and DC
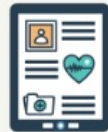
**Store and Forward***
22 states

*Some states reimburse this modality solely as part of Communication Technology-Based Services, which have their own separate codes and reimbursement rates.

**Remote Patient Monitoring***
29 states

**Allow audio-only***
22 states

*As of Fall 2021*

# STATE REIMBURSEMENT REQUIREMENTS FOR PRIVATE PAYERS
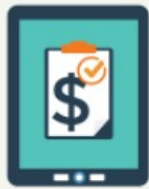


**43 states and DC** have telehealth **private payer** laws

**20 States have *Payment* Parity (almost half are new)**

Some states have "service parity" others have "payment parity" or both – in addition, some make their telehealth private payer laws *"subject to the terms and conditions of the contract"* which can limit true parity

*As of Fall 2021*

# EXAMPLES of 2021 STATE UPDATES

**Payment Parity and Audio-Only**

- Expanding coverage to audio-only (RI, KY, TN)

    - **WA** HB 1196: Expands existing payment parity laws to include audio-only as well – also for RHCs

**Licensing/flexibility for out of state providers** (WV, KS, NY)

- **AZ** HB 2454: Allows out-of-state providers to deliver services via telehealth under certain circumstances

- At least 10 states entered into one or more licensing compacts

**Data requirements/workgroups established** (MN, MD, RI, AZ)

- **NV** SB 5 – Requires Dept. to establish an electronic tool to analyze certain data concerning access to telehealth and creation of a data dashboard for analysis of data related to telehealth access by different groups and populations

**Limited extension of emergency policies** (MD & MN – audio-only and parity – until June 30, 2023)

- **CT** HB 5596: Extends some policies allowing audio-only until June 30, 2023

**Updating Private Payer Laws**

- Payment parity requirements (8 new states) – Many with limits by service, provider, modality

- Prohibiting insurers from contracting with just one telehealth company (AR, AZ)

# CALIFORNIA MEDICAID TELEHEALTH POLICY

| PRE-COVID-19 | COVID-19 | PROPOSED |
|---|---|---|
| Live Video & Store & Forward Reimbursed at parity; Provider chooses when appropriate to use. FQHC/RHC Limited use of both modalities | Live Video & Store & Forward Reimbursed at parity; Provider chooses when appropriate to use. FQHC/RHC allowed to use both modalities | Live Video, Store & Forward along w/audio-only, reimbursed at parity, pending new DHCS billing protocols |
| FQHCs/RHCs limited in where patient located at time of service. Home not eligible | FQHC/RHC home eligible originating site for all modalities | FQHC/RHC may use all modalities with no site limitations and reimbursed at PPS rate |
| No audio-only. | Audio-only reimbursed for services & parity | Audio-only reimbursed at parity, subject to new DHCS billing protocols |
| No RPM. | No RPM. | RPM covered subject to separate fee schedule |

# 2021 CALIFORNIA TELEHEALTH LEGISLATION

➢ **AB 133 – Extends Medicaid Expansions**
- Extends temporary Medi-Cal telehealth policies to December 31, 2022
- DHCS to convene advisory group regarding telehealth billing protocols
- Protects pre-COVID-19 policies, including store-and-forward
- Allows DHCS to authorize RPM with a separate fee schedule
- Creates Children & Youth Behavioral Initiative – Incentivizes school-based telehealth

➢ **AB 457 – Expands Private Payer Protections**
- Updates private payer law – removes contract specific language
- Patient choice and third party telehealth provider protections

# 2021 CALIFORNIA BROADBAND LEGISLATION

➢ **SB 156 – $6 Billion Investment**

- Middle Mile Broadband Infrastructure – construction of state-owned open-access broadband middle mile ($3.25 Billion)
- Broadband Last Mile Support – Last mile funding ($2 billion total, staggered out over 2021-24)
- Loan Loss Reserve – Allows counties to acquire funding for acquisition, construction and improvement of broadband infrastructure and operate a broadband services ($750 million)

# New California Workgroup Process

## Workgroup Charge

*The charge of the workgroup is to advise DHCS on how to refine its telehealth policies to ensure the policies are designed optimally for a post-PHE world.*

» **Billing and coding protocols:** What codes and modifiers should be used to delineate when services are delivered by telehealth and whether services are video or audio-only.

» **Ongoing monitoring and evaluation:** How DHCS should measure and review telehealth utilization to facilitate consumer protection and Medi-Cal program stewardship.

» **Utilization management:** What standards and protections should be in place to ensure expanded telehealth coverage increases access, supports high-quality care, and reduces health disparities, among other goals.
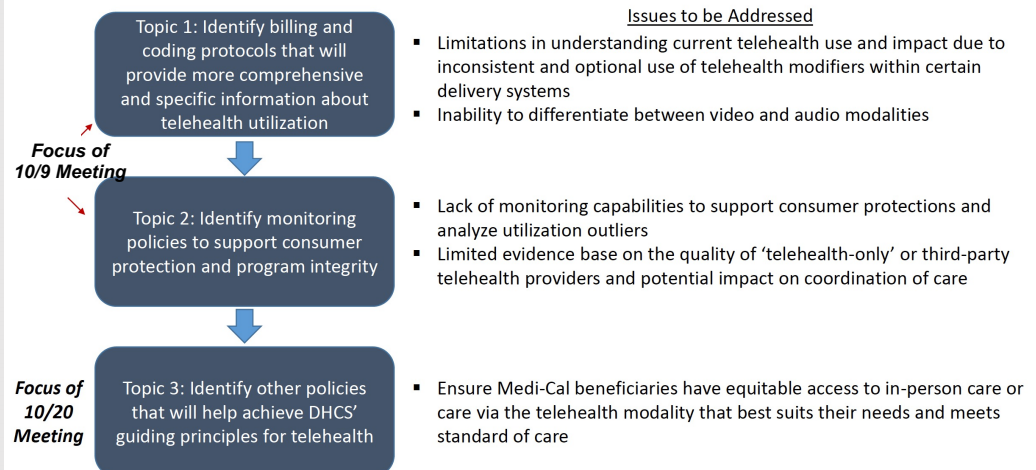
Find more information on the advisory group here:
https://www.dhcs.ca.gov/provgovpart/Pages/TelehealthAdvisoryWorkgroup.aspx

Next Scheduled Meeting:
- October 20, 2021 (Wednesday; time not yet released, hold 9:00 am – 1:00 pm)

## Topics for Workgroup Advisement

**Topic 1: Identify billing and coding protocols that will provide more comprehensive and specific information about telehealth utilization**

*Focus of 10/9 Meeting*

**Topic 2: Identify monitoring policies to support consumer protection and program integrity**

**Topic 3: Identify other policies that will help achieve DHCS' guiding principles for telehealth**

*Focus of 10/20 Meeting*

**Issues to be Addressed**

- Limitations in understanding current telehealth use and impact due to inconsistent and optional use of telehealth modifiers within certain delivery systems
- Inability to differentiate between video and audio modalities

- Lack of monitoring capabilities to support consumer protections and analyze utilization outliers
- Limited evidence base on the quality of 'telehealth-only' or third-party telehealth providers and potential impact on coordination of care

- Ensure Medi-Cal beneficiaries have equitable access to in-person care or care via the telehealth modality that best suits their needs and meets standard of care

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# PANEL SESSION

Moderated by Diana Camacho Senior Program Officer, Improving Access, *California Health Care Foundation*

# PANELISTS

Yohualli B. Anaya, MD, MPH
Assistant Clinical Professor, Department of Family Medicine, Family Medicine Clerkship, Co-Chair
*David Geffen School of Medicine, UCLA*

Sarah Hesketh, Senior Vice President of External Affairs
*California Association of Public Hospitals and Health Systems (CAPH)*

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Cary Sanders, Senior Policy Director
*California Pan-Ethnic Health Network (CPEHN)*

# PANELIST OPENING REMARKS

Yohualli B. Anaya, MD, MPH
Assistant Clinical Professor, Department
of Family Medicine, Family Medicine
Clerkship, Co-Chair
*David Geffen School of Medicine, UCLA*

# PANELIST OPENING REMARKS

Sarah Hesketh

Senior Vice President of External Affairs

*California Association of Public Hospitals and Health Systems (CAPH)*

# PANELIST OPENING REMARKS

Rebecca Picasso

Principal Program Manager, Virtual

Care & Telehealth Innovation

*Blue Shield of California*

# PANELIST OPENING REMARKS

Cary Sanders, Senior Policy Director
*California Pan-Ethnic Health Network (CPEHN)*

# PANEL DISCUSSION

**Moderator:**

- Diana Camacho, Senior Program Officer, Improving Access, *California Health Care Foundation*

**Panelists:**

- Yohualli B. Anaya, MD, MPH, Assistant Clinical Professor, Department of Family Medicine, Family Medicine Clerkship, Co-Chair, *David Geffen School of Medicine, UCLA*
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# Facilitated question and answer

**Please submit your questions in the Q&A box.**

# Register for our Annual Meeting!



**Annual Meeting**
- Tuesday, November 2 from 9am-2pm
- Register here: https://bit.ly/3lz60Ra

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|---|---|
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# California Telehealth Policy Coalition

**Contact staff with any questions:**
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**Please visit the California Telehealth Policy Coalition website for more information:**
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