

# Telehealth Policy Landscape Looking Towards 2023

December 6, 2022



Center for Connected  
Health Policy

THE NATIONAL  
TELEHEALTH POLICY  
RESOURCE CENTER



## CENTER FOR CONNECTED HEALTH POLICY (CCHP)

Mei Wa Kwong, JD,  
*Executive Director, CCHP*

is a non-profit, non-partisan organization that seeks to advance state and national telehealth policy to promote improvements in health systems and greater health equity.

# DISCLAIMERS

- Any information provided in today's talk is not to be regarded as legal advice. Today's talk is purely for informational purposes.
- Always consult with legal counsel.
- CCHP has no relevant financial interest, arrangement, or affiliation with any organizations related to commercial products or services discussed in this program.



# 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
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



# PUBLIC HEALTH EMERGENCY

---



# PUBLIC HEALTH EMERGENCY

- First declared on January 31, 2020
- Renewed 11 times
- Last renewed on October 13, 2022
- End date of January 11, 2023
- Expected to be renewed at least one more time
- If renewed, end date will be in April 2023
- Currently, some telehealth flexibilities in Medicare have a 151-day extension post-PHE

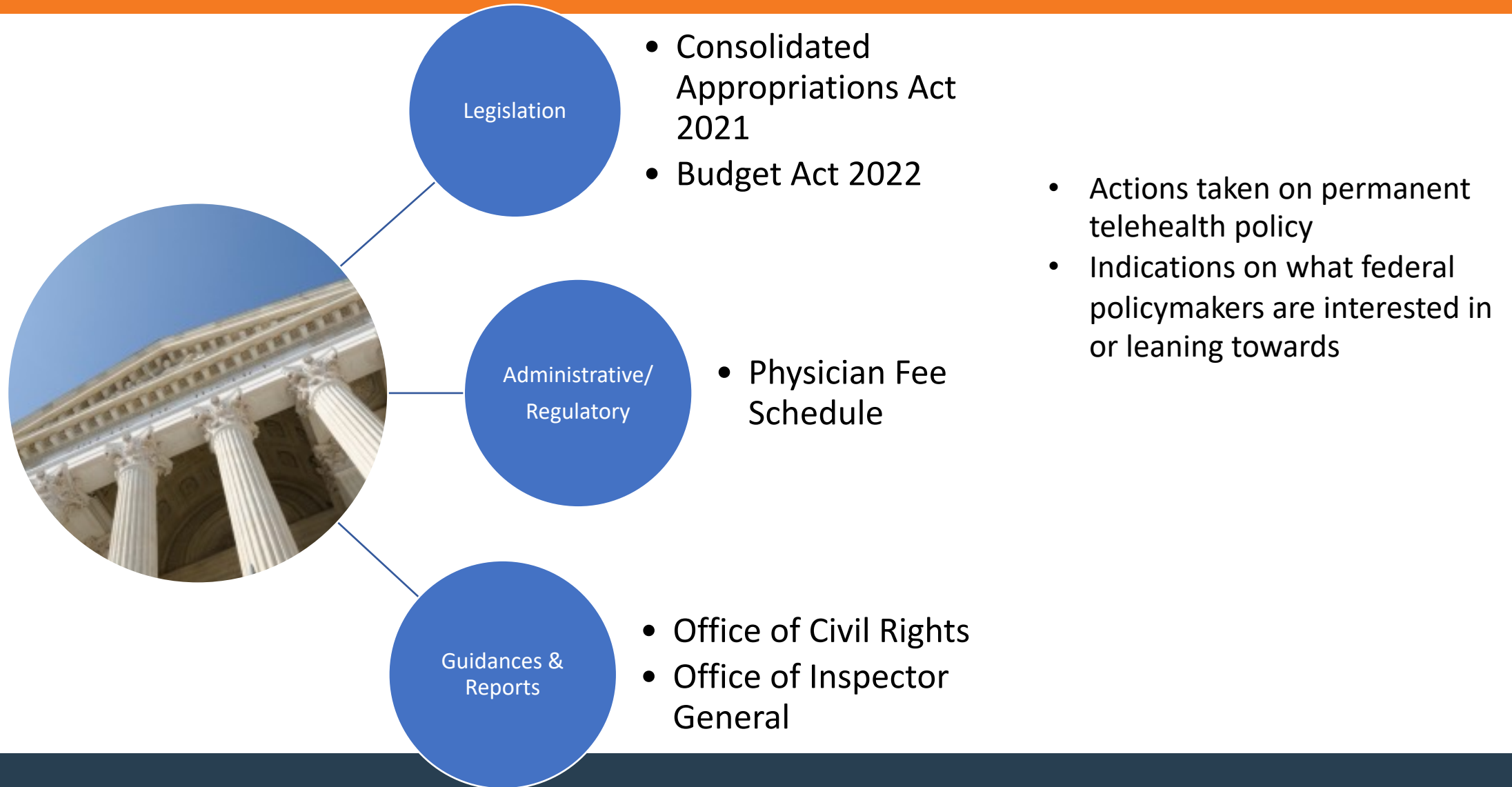


# FEDERAL TELEHEALTH POLICY

---



# POST-PHE



# LEGISLATION

- Consolidated Appropriations Act of 2021
  - Expanded permanent telehealth policy to allow for mental and behavioral health services to be provided in the home without geographic requirement applying IF certain conditions met (in-person visit w/telehealth provider 6 months prior to telehealth services taking place)
- Budget Act of 2022
  - Delayed implementation of certain policies and expiration dates on some temporary waivers until 151 days after the PHE is declared over
    - FQHC, RHC, PT, OT, SLP remain eligible providers
    - Geographic limitation waive; home still eligible site for services
    - Audio-only can continue to be used





# PFS 2021-2022

- Will allow some of the temporarily eligible telehealth services made available during COVID-19 to remain eligible for reimbursement until 2023 (“Category 3”)
- For permanent policy, audio-only may be used to provide mental and behavioral health services if certain conditions met
- Redefined “mental health visit” for FQHC/RHCs to include the use of live video and audio-only. Does NOT mean FQHCs/RHCs are telehealth providers or providing services via telehealth. Special billing instructions post-PHE
- During the 151-day “grace period” COVID-19 eligible telehealth services list will be available.



# FEDERAL TELEHEALTH POLICY

PRE-COVID-19	DURING COVID-19	POST-COVID-19 PHE
<p>Telehealth-specific policy primarily found in Medicare.</p> <ul style="list-style-type: none"> <li>Limited the use of telehealth to take place in specific geographic locations and sites (mostly medical facility)</li> <li>Primarily only live video allowed</li> <li>Limited list of providers eligible to provide services</li> </ul> <p>Prescribing of Controlled Substances (Ryan Haight Act)</p> <ul style="list-style-type: none"> <li>Narrow exceptions to the use of telehealth one of which is when a PHE is declared</li> </ul>	<p>Medicare Limitations Eased</p> <ul style="list-style-type: none"> <li>Geographic and site limits removed</li> <li>All Medicare eligible providers can use telehealth (including FQHC/RHC)</li> <li>Audio-only was allowed to provide some services</li> <li>Expanded list of services eligible to be provided via telehealth</li> </ul> <p>Prescribing of Controlled Substances</p> <ul style="list-style-type: none"> <li>PHE exception activated. Telehealth can be used to prescribe w/o a prior in-person exam by telehealth provider or one of the other narrow exceptions.</li> </ul>	<p>After the PHE is declared over, 151-day grace period for <b>some</b> of the temporary COVID-19 waivers. Waiving the geographic requirement will continue during this period; prescribing of controlled substance exception ends.</p> <p>Permanent Changes Made</p> <ul style="list-style-type: none"> <li>Medicare - mental/behavioral health services may be provided in the home and w/o geographic requirement if certain conditions met.</li> <li>Audio-only may be used to provide mental/behavioral health services if certain conditions met.</li> <li>Rural emergency hospitals added as an eligible originating site</li> </ul>



# POST-PHE & 151 DAY GRACE PERIOD: TELEHEALTH POLICY LANDSCAPE MEDICARE

ISSUE AREA	MEDICARE POLICY	EXCEPTION(S)
Patient Location (geographic)	Must be in a defined rural area or a non-metropolitan statistical health professional shortage area	<ul style="list-style-type: none"> <li>• Treatment of SUD &amp; co-occurring mental health condition</li> <li>• ESRD</li> <li>• Telestroke</li> <li>• Mental &amp; behavioral health conditions (if certain conditions met)</li> </ul>
Patient Location (physical site)	Physician/practitioner offices; hospitals, CAHs, RHCs, FQHCs, Hospital/CAH-based renal dialysis centers; SNFs, CMHCs, Renal Dialysis facilities, Mobile Stroke Units, REHs, Home (certain conditions)	Mental & behavioral health conditions (if certain conditions met)
Modality	Live video; store-and-forward for telehealth demonstration projects in Alaska and Hawaii	Audio-only may be used for mental and behavioral health services if certain conditions met.
Eligible Provider	Physician, Nurse Practitioner, Physician Assistant, Certified Nurse Midwife, Clinical Nurse Specialist, Certified Registered Nurse Anesthetists, clinical Psychologists, Clinical Social Workers, Dietitians or Nutrition Professionals *	

*\* Through Administrative Actions, CMS redefined a “mental health visit” for FQHCs & RHCs to include provision of these services via live video or audio-only, however, because it is a redefinition of “mental health visit” it is not considered “telehealth” and therefore FQHCs/RHCs are not considered telehealth providers.*



# OTHER AGENCIES – GUIDANCES & REPORTS

- HHS/OCR – [Guidance on How the HIPAA Rules Permit Health Plans and Covered Health Care Providers to Use Remote Communication Technologies for Audio-Only Telehealth](#)
- HHS/OCR – [Guidance on Nondiscrimination in Telehealth: Federal Protections to Ensure Accessibility to People with Disabilities and Limited English Proficient Persons](#)
- OIG – [Medicare Telehealth Services During the First Year of the Pandemic: Program Integrity Risks](#)
- OCR – Made clear that HIPAA discretion allowed during the pandemic will end when federal PHE no longer exists. ([OCR FAQ](#), page 3)



# STATE TELEHEALTH POLICY

---

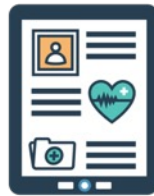


# MEDICAID REIMBURSEMENT BY SERVICE MODALITY (Fee-for-Service)



Live Video

50 states and DC



Store and Forward

25 states



Remote Patient Monitoring

34 states



Audio-Only

34 states and DC

*As of Fall 2022*



# REIMBURSEMENT REQUIREMENTS FOR PRIVATE PAYERS



## 43 states and DC

have telehealth private payer laws

**24 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

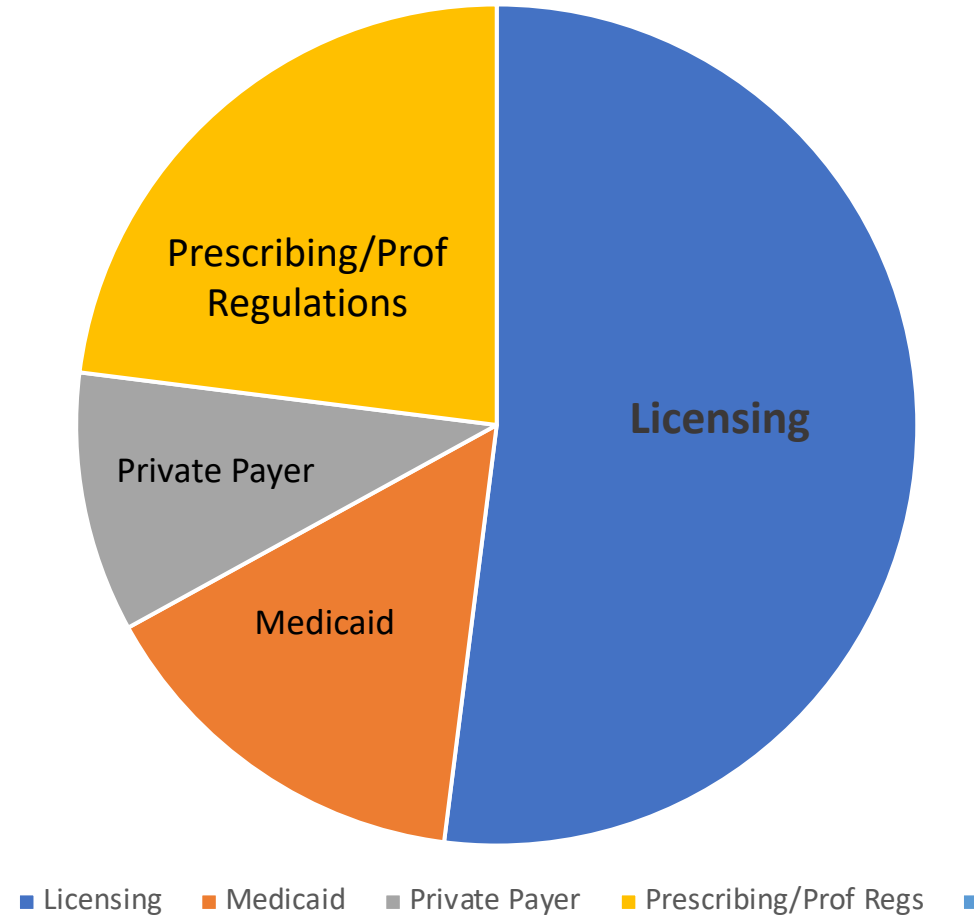
*As of Fall 2022*



# STATE TELEHEALTH POLICY

MEDICAID FEE FOR SERVICE	
2020	2022
50 States & DC Live Video Coverage	50 States & DC Live Video Coverage
11 States Store & Forward Coverage	25 States Store & Forward Coverage
20 States RPM Coverage	34 States RPM Coverage
N/A	34 States Audio—Only Coverage
39 States & DC Private Payer Laws/5 States w/Payment Parity	43 States & DC Private Payer Laws/24 States w/Payment Parity

Percentage of Enacted States Bills Issues in 2022





# STATE TELEHEALTH LEGISLATION 2022

- 41 states & DC passed legislation related to telehealth
- 180 bills CCHP was tracking, passed
- Compared to 2021 (201 bills) and 2020 (104 bills)

# STATE TELEHEALTH LEGISLATION 2022

- Specific Issues Addressed
  - Licensure – Specific exceptions to licensing such as allowing providers to provide services to patients they had already established relationships with at least for a period or time, or if they were follow-up visits or traveling with a sports team
  - Specifying coverage/reimbursement for a specific profession or modality in Medicaid or private payer
  - Studies and pilots
  - Some legislation related to abortion and telehealth

# WHAT'S NEXT IN 2023

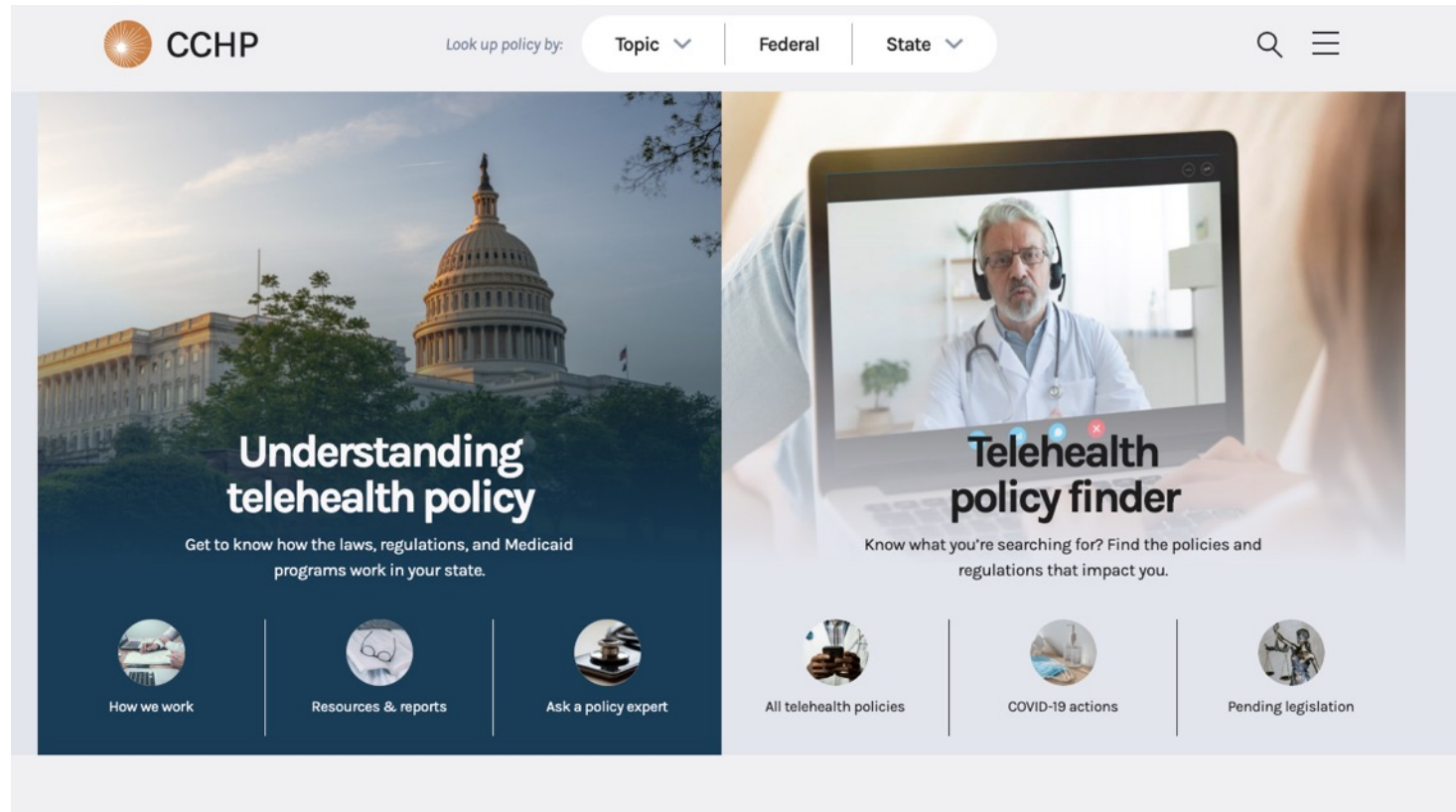
## Federal

- Extension of the PHE at least one more time
- Potential extension of telehealth waivers beyond the 151 day grace period?
- DEA Telehealth Registry?
- More examination of Medicare claims due to concerns around fraud/abuse & over-utilization

## States

- Continued work on permanent telehealth policies
- Licensure will continue to be an issue
- Concern over patient choice, private payer plans that are “telehealth-first” or use of a third party to provide all telehealth services
- Network adequacy & telehealth

## ➤ CCHP Website – [cchpca.org](http://cchpca.org)



## ➤ Subscribe to the CCHP newsletter at [cchpca.org/contact/subscribe](http://cchpca.org/contact/subscribe)





**Center for Connected  
Health Policy**

THE NATIONAL  
TELEHEALTH POLICY  
RESOURCE CENTER

**Thank You!**

[www.cchpca.org](http://www.cchpca.org)

[info@cchpca.org](mailto:info@cchpca.org)