Telehealth Policy Landscape Looking Towards 2023

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Mei Wa Kwong, JD, Executive Director, CCHP

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## Telehealth Policy Changes in COVID-19

### Federal

<table>
<thead>
<tr>
<th>Medicare Issue</th>
<th>Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Geographic Limit</td>
<td>Waived</td>
</tr>
<tr>
<td>Site Limitation</td>
<td>Waived</td>
</tr>
<tr>
<td>Provider List</td>
<td>Expanded</td>
</tr>
<tr>
<td>Services Eligible</td>
<td>Added additional 80 codes</td>
</tr>
<tr>
<td>Visit limits</td>
<td>Waived certain limits</td>
</tr>
<tr>
<td>Modality</td>
<td>Live Video, Phone, some srvs</td>
</tr>
<tr>
<td>Supervision requirements</td>
<td>Relaxed some</td>
</tr>
<tr>
<td>Licensing</td>
<td>Relaxed requirements</td>
</tr>
<tr>
<td>Tech-Enabled/Comm-Based (not considered telehealth, but uses telehealth technology)</td>
<td>More codes eligible for phone &amp; allowed PTs/OTs/SLPs &amp; other use</td>
</tr>
</tbody>
</table>

### Medicaid

- **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

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

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

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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 2021
  - Budget Act 2022

- Administrative/Regulatory
  - Physician Fee Schedule

- Guidances & Reports
  - Office of Civil Rights
  - Office of Inspector General

- Actions taken on permanent telehealth policy
- Indications on what federal policymakers are interested in or leaning towards
• 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
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

<table>
<thead>
<tr>
<th>PRE-COVID-19</th>
<th>DURING COVID-19</th>
<th>POST-COVID-19 PHE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Telehealth-specific policy primarily found in Medicare.</td>
<td>Medicare Limitations Eased</td>
<td>After the PHE is declared over, 151-day grace period for some of the temporary COVID-19 waivers. Waiving the geographic requirement will continue during this period; prescribing of controlled substance exception ends.</td>
</tr>
<tr>
<td>• Limited the use of telehealth to take place in specific geographic locations and sites (mostly medical facility)</td>
<td>• Geographic and site limits removed</td>
<td>Permanent Changes Made</td>
</tr>
<tr>
<td>• Primarily only live video allowed</td>
<td>• All Medicare eligible providers can use telehealth (including FQHC/RHC)</td>
<td>• Medicare - mental/behavioral health services may be provided in the home and w/o geographic requirement if certain conditions met.</td>
</tr>
<tr>
<td>• Limited list of providers eligible to provide services</td>
<td>• Audio-only was allowed to provide some services</td>
<td>• Audio-only may be used to provide mental/behavioral health services if certain conditions met.</td>
</tr>
<tr>
<td>Prescribing of Controlled Substances (Ryan Haight Act)</td>
<td>• Expanded list of services eligible to be provided via telehealth</td>
<td>• Rural emergency hospitals added as an eligible originating site</td>
</tr>
<tr>
<td>• Narrow exceptions to the use of telehealth one of which is when a PHE is declared</td>
<td>Prescribing of Controlled Substances</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• 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.</td>
<td></td>
</tr>
</tbody>
</table>
## POST-PHE & 151 DAY GRACE PERIOD: TELEHEALTH POLICY LANDSCAPE MEDICARE

<table>
<thead>
<tr>
<th>ISSUE AREA</th>
<th>MEDICARE POLICY</th>
<th>EXCEPTION(S)</th>
</tr>
</thead>
</table>
| Patient Location (geographic)   | Must be in a defined rural area or a non-metropolitan statistical health professional shortage area | • Treatment of SUD & co-occurring mental health condition  
• ESRD  
• Telestroke  
• Mental & behavioral health conditions (if certain conditions met) |
| 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.
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


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*
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

<table>
<thead>
<tr>
<th>MEDICAID FEE FOR SERVICE</th>
<th>2020</th>
<th>2022</th>
</tr>
</thead>
<tbody>
<tr>
<td>50 States &amp; DC Live</td>
<td>50 States &amp; DC Live Video Coverage</td>
<td></td>
</tr>
<tr>
<td>11 States Store &amp;</td>
<td>25 States Store &amp; Forward Coverage</td>
<td></td>
</tr>
<tr>
<td>20 States RPM Coverage</td>
<td>34 States RPM Coverage</td>
<td></td>
</tr>
<tr>
<td>N/A</td>
<td>34 States Audio—Only Coverage</td>
<td></td>
</tr>
<tr>
<td>39 States &amp; DC Private</td>
<td>43 States &amp; DC Private Payer Laws/24 States w/ Payment Parity</td>
<td></td>
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<tr>
<td>Payer Laws w/ Payment</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Parity</td>
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Percentage of Enacted States Bills Issues in 2022

- Licensing
- Medicaid
- Private Payer
- Prescribing/Prof Regulations

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

info@cchpca.org