

Legislation Committee

September 14, 2023





California
Telehealth
Policy
Coalition



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California Legislative Developments (1/2)

Bill No.	Coalition Support?	Recent Developments	Brief Description
AB 41 (Holden)		Passed Senate and Assembly, enrolled (09/12/23)	This bill would revise the Digital Infrastructure and Video Competition Act to rename the act as the Digital Equity in Video Franchising Act. It would establish a policy of the state that subscribers and potential subscribers of a state video franchise holder should benefit from equal access, as defined, to video service within the franchise service area, and expand the prohibition on certain cable operators or video service providers from discriminating against, or denying access to service to, any group of potential residential subscribers to include denial of equal access, as specified.
AB 48 (Aguiar-Curry)		Passed Senate, back in Asm. for concurrence in Sen. amendments (09/12/23)	This bill would add to the rights of every resident of skilled nursing facilities and intermediate care facilities the right to receive the information that is material to an individual's informed consent decision concerning whether to accept or refuse psychotherapeutic drugs. The bill would permit the use of remote technology, including telehealth, to allow a prescriber to examine and obtain informed written consent.
AB 232 (Aguiar-Curry)		Passed Senate and Assembly, enrolled (09/11/23)	This bill would authorize a person who holds a license in another jurisdiction of the United States as a marriage and family therapist, clinical social worker, or professional clinical counselor to provide services in the state for a period not to exceed 30 consecutive days in any calendar year if certain conditions are met.
AB 254 (Bauer-Kahan)		Passed Senate and Assembly, enrolled (09/11/23)	This bill would revise the definition of "medical information" in the CMIA to include reproductive or sexual health application information, which the bill would define to mean information related to a consumer's reproductive or sexual health collected by a reproductive or sexual health digital service.
AB 286 (Wood)		Passed Senate, back in Asm. for concurrence in Sen. amendments (09/12/23)	This bill would require that the Public Utilities Commission' statewide, publicly accessible, and interactive map showing the accessibility of broadband service identify, for each address in the state, each provider of broadband services that offers service at the address and the maximum speed of broadband services offered by each provider of broadband services at the address.

California Legislative Developments (2/2)

Bill No.	Coalition Support?	Recent Developments	Brief Description
AB 414 (Reyes)		Passed Senate and Assembly, enrolled (09/11/23)	This bill, the “Digital Equity Bill of Rights,” would state that it is the principle of the state to ensure digital equity for all residents of the state, that residents shall have access to broadband that meets specific requirements, and that broadband internet subscribers benefit from equal access to broadband, as those terms are defined.
AB 1241 (Weber)	<i>Watch</i>	Approved by the Governor and chaptered by Secretary of State (09/08/23)	This bill would require a provider furnishing services through video synchronous interaction or audio-only synchronous interaction to maintain and follow protocols to either offer those services via in-person contact or arrange for a referral to, and a facilitation of, in-person care. The bill would specify that the referral and facilitation arrangement would not require a provider to schedule an appointment with a different provider on behalf of a patient.
AB 1369 (Bauer-Kahan)		Passed Senate and Assembly, enrolled (09/11/23)	This bill would authorize an eligible out-of-state physician or surgeon to practice medicine in California without a license if the practice is limited to delivering health care via telehealth to an eligible patient who has a disease or condition that is immediately life-threatening.
AB 1399 (Friedman)		Passed Assembly and Senate, to engrossing and enrolling (09/12/23)	This bill would require a veterinarian who practices veterinary telemedicine, among other things, to employ sound professional judgment to determine whether using veterinary telemedicine is an appropriate method for delivering medical advice or treatment to the patient, provide quality of care consistent with prevailing veterinary medical practice, and be able to provide the client with a list of nearby veterinarians who may be able to see the animal patient in person upon the request of the client.
SB 345 (Skinner)		Passed Senate and Assembly, enrolled (09/11/23)	This bill would state that California law governs in any action against a person who provides or receives by any means, including telehealth, reproductive health care services or gender-affirming health care services, as specified, if the care was legal in the state in which it was provided at the time of the challenged conduct.

Legislation not moving forward this year

Bill No.	Coalition Support?	Recent Developments	Brief Description
AB 768 (Boerner Horvath)		<i>Never heard in Committee</i>	This bill would establish within state government the Office of Broadband and Digital Equity. This bill would establish the Office of Broadband and Digital Equity Board with members, as specified.
AB 1022 (Mathis)		<i>Never heard in Committee</i>	This bill, among other things relating to the PACE program, would require those capitation rates to also reflect the frailty level and risk associated with those populations. The bill would also expand an approved PACE organization's authority to use video telehealth to conduct all assessments, as specified.
AB 1588 (Wilson)		<i>Never heard in Committee</i>	The Affordable Internet and Net Equality Act of 2023 would require the Department of Technology to develop and establish the Net Equality Program.
AB 1714 (Wood)		<i>Never heard in Committee</i>	This bill would define "public utility" to include a corporation providing broadband service to the public or a portion of the public.
SB 513 (Wiener)		<i>Held on Sen. Approps. Suspense File</i>	This bill would require the Department of Corrections and Rehabilitation to conduct mental health treatment for state prison inmates in a manner to accomplish various goals, including providing, to the greatest extent possible, regular and consistent mental health therapy to inmates who seek it, and ensuring that an inmate is provided an introductory mental health therapy appointment within 2 weeks of requesting care.
SB 282 (Eggman)		<i>Held in Assembly Approps.</i>	This bill would authorize reimbursement for a maximum of 2 visits that take place on the same day at a single site, whether through a face-to-face or telehealth-based encounter, if after the first visit the patient suffers illness or injury that requires additional diagnosis or treatment, or if the patient has a medical visit and either a mental health visit or a dental visit, as defined.

Coalition Comment Letters Submitted on Physician Fee Schedule and CONNECT Act

- Physician Fee Schedule (PFS) public comment submitted to CMS
- Letter of support for CONNECT Act submitted to Sen. Schatz's office. Coalition will be listed as endorsing organization



September 11, 2023

Office of Senator Brian Schatz
722 Hart Senate Office Building
Washington, DC 20510

Re: CONNECT for Health Act of 2023 Support

Dear Senator Schatz,

On behalf of the California Telehealth Policy Coalition (Coalition), we write in support of the CONNECT for Health Act of 2023. The CONNECT for Health Act would expand access to telehealth in the Medicare program and support both providers and patients in utilizing telehealth.

The California Telehealth Policy Coalition is made up of 170 diverse organizations dedicated to advancing telehealth policy in California, including consumer groups, medical systems, payers, providers, and technology representatives. The Coalition has deep expertise in the operational, and financial components of delivering safe, secure, and clinically appropriate telehealth.

The temporary flexibilities enacted during the COVID-19 Public Health Emergency (PHE) allowed providers and patients to greatly increase their telehealth utilization and thereby access to care. The CONNECT Act will make permanent many of the flexibilities enacted during the PHE which are currently set to expire at the end of 2024. The Coalition strongly supports the CONNECT Act's provisions to remove geographic requirements and originating site limitations permanently, as these proposed changes support expanded access and coverage for all Medicare beneficiaries. Without a permanent removal of these provisions, most Californians on the Medicare program and their providers will be unable to have their telehealth services covered or reimbursed, restricting access to care.



September 11, 2023

Administrator Chiquita Brooks-LaSure
Center for Medicare and Medicaid Services
Department of Health and Human Services
Attention: CMS-1754-P
P.O. Box 8016
Baltimore, MD 21244-8016

Re: CMS 1784-P: Revisions to Payment Policies under the Medicare Physician Fee Schedule Quality Payment Program and Other Revisions to Part B for CY 2024

Dear Administrator Brooks-LaSure:

The California Telehealth Policy Coalition (Coalition) appreciates the opportunity to provide comments on the proposed CY 2024 Medicare Physician Fee Schedule. The Coalition applauds CMS' leadership in proposing telehealth policy changes that will continue to expand access to care and support telehealth adoption.

The Coalition is made up of over 170 diverse organizations dedicated to advancing telehealth policy in California, including consumer groups, medical systems, payers, providers, and technology representatives. The Coalition's guiding principles include advancing policies that promote access to and coverage of telehealth.

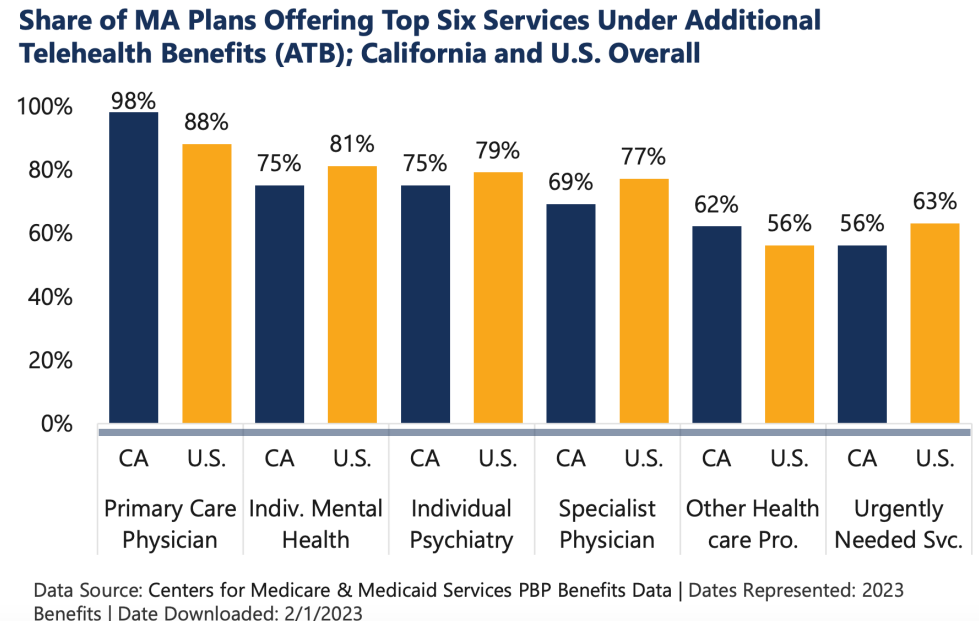
The Coalition is pleased to see the proposals to extend many of the flexibilities enacted during the COVID-19 Public Health Emergency (PHE) until 2024, in alignment with the Consolidated Appropriations Act of 2024. We hope to see these flexibilities made permanent in the future in order to maintain the increased access to care telehealth has been shown to provide. We also support the addition of marriage and family therapists and mental health counselors as telehealth practitioners, as this proposal is critical for addressing the growing behavioral health needs in California and nationwide.

DHCS Releases “Supplemental Benefits in Medicare Advantage Plans” 2023 Report

- Report outlines the supplemental benefits offered by California Medicare Advantage plans in 2023 including Additional Telehealth Benefits (ATB)

Additional Telehealth Benefits (ATB)

- Almost all California MA plans (98%) offer at least some ATB, about as often as U.S. plans (97%).
- 98% of MA plans in California offer ATB for primary care, a higher share than of MA plans in the U.S. overall (88%).
- California MA plans offer ATB less often than U.S. MA plans for mental health, psychiatric, specialist physician, and urgent services.



Review the report here:

<https://www.dhcs.ca.gov/services/Documents/OMII-Chartbook-4-Supplemental-Benefits.pdf>

E-consult State Plan Amendment (SPA) News

- New York State Medicaid has submitted a SPA for CMS approval to cover e-consult codes 99451 and 99452, as shared to coalition staff
- The proposed SPA does not include FQHC/RHCs
- While not public yet, New York expects CMS approval soon and will then publish coverage policies
- If approved, this would be the first e-consult SPA to be enacted as a result of the January 2023 State Health Official Letter

California Broadband Developments

- California 5-Year Action Plan Broadband Equity Access and Deployment (BEAD) Program [published August 28, 2023 here](#)
- Middle-Mile Advisory Council Meeting: October 20, 2023, 10:00am
 - Register [here](#)
- California Broadband Council Meeting: October 25, 2023, 9:30am
 - Register [here](#)
- Statewide Planning Group Meeting: October 25, 2023, 12:00pm
 - Link coming soon [here](#)

November 8th Annual Meeting – Advancing the Telehealth Continuum: Defining the Policy Landscape and Priorities for 2024

Wednesday, November 8th - 9am-4pm

At The California Endowment in Sacramento

Confirmed Speakers



WELCOMING SPEAKER

DIANA CAMACHO, MPH

Senior Program Officer,
Improving Access
California Health Care Foundation



KEYNOTE SPEAKER

JEFFREY REYNOSO, DRPH, MPH

Regional Director
U.S. Department of Health and Human
Services



LUNCHEON SPEAKER

RENÉ MOLLO, MSN, RN

Deputy Director,
Health Care Benefits and Eligibility
California Department of Health Care Services

Tentative Sessions:

- National Perspective on Telehealth Programs
- Health Centers and Virtual Care
- Topic-Specific Roundtables: Remote Patient Monitoring, Broadband access/digital equity, E-consult and more!

Sponsorship opportunities for this event are available.

Please contact Mei Kwong at meik@cchpca.org for more information.

We hope to see you there! Register here: [Link](#)

2023 Sponsorship Opportunities

- Webinars
- Newsletter
- Fact Sheet Design
- Legislative Briefing
- Annual Meeting

Next Steps

- ❑ Submit SB 345 letter of support
- ❑ Continue monitoring end of legislative session
- ❑ Continue monitoring New York e-consult SPA developments

Closing Announcements

Upcoming Meetings

Monthly Meeting

September 15, 1-2pm

Education Committee

October 11, 2-3pm

Legislation Committee

October 12, 1-2pm

Please reach to staff if you have any questions

Mei Kwong: meik@cchpca.org

Amy Durbin: amyd@cchpca.org

Robby Franceschini:

robby.franceschini@bluepathhealth.com

Stephanie Thornton:

stephanie.thornton@bluepathhealth.com



Appendix



2024 Physician Fee Schedule Discussion (1/2)

- Conforms with temporary telehealth policies enacted by the [Consolidated Appropriations Act of 2023](#) (CAA 2023) continuing most COVID Medicare flexibilities until Dec. 31, 2024
 - Waiving locational restrictions, keeping expanded list of eligible providers and audio-only, suspending in-person requirements, continuing temporary codes through 2024
- Added marriage and family therapists and mental health counselors as telehealth practitioners
- Telephone Evaluation and Management Services
 - CPT codes 99441-99443 will remain actively priced through 2024 and are considered telehealth services.
 - CPT codes 98966-98968 are not considered telehealth services but CMS proposes to assign them an active payment status for 2024
- New temporary codes
 - Health and well-being coaching services, deep brain stimulation, therapy, hospital, cardiovascular and pulmonary rehab, SDOH risk assessment

2024 Physician Fee Schedule Discussion (2/2)

- New code classification system
 - Moving from a Category 1, 2 and 3 classification system to a binary ‘permanent’ or ‘provisional’ classification
- Facility rate vs. non-facility rate reimbursement
 - POS 10 will be reimbursed at the non-facility PFS rate, while 02 will be paid at the facility rate beginning Jan. 1, 2024
- Frequency limitation removals
- Remote physiologic monitoring (RPM) and remote therapeutic monitoring (RTM) billing clarifications
- Supervision revisions
- Diabetes self-management training (DSMT) and medical nutrition training (MNT) updates
- **Public Comment Due September 11, 2023**

SB 345 (Skinner)

Principle	Determination	Reasoning
Promote access and coverage		May increase access and coverage by supporting retention of telehealth providers providing reproductive health care and gender-affirming care in CA.
Enhance care coordination		Does not pertain to care coordination.
Promote provider and patient engagement		Does not pertain to provider and patient engagement.
Reinforce clinical quality		Does not pertain to clinical quality.
Ensure data privacy and security		May increase data privacy and security by safeguarding against the enforcement of other states' laws that criminalize abortion-related services or gender affirming care.
Next Steps	Discuss whether to take position	

For Discussion: AB 286 (Wood)

AB 286 would update the statewide publicly-available broadband maps

Principle	Determination	Reasoning
Promote access and coverage	✓	May increase access and coverage by ensuring that statewide public broadband maps more accurately reflect the experiences of patients and consumers
Enhance care coordination		Does not pertain to care coordination.
Promote provider and patient engagement	✓	May increase engagement through empowering patients to provide feedback on the broadband speeds that an internet service provider states is offered
Reinforce clinical quality		Does not pertain to clinical quality.
Ensure data privacy and security		Does not address privacy or security.
Next Steps	Discuss whether to take a position.	

For Discussion: AB 1714 (Wood)

AB 1714 would include broadband services in the definition of “public utility”

Principle	Determination	Reasoning
Promote access and coverage	✓	May increase access and coverage by including broadband service in the definition of a public utility
Enhance care coordination		Does not pertain to care coordination.
Promote provider and patient engagement		Does not pertain to provider and patient engagement.
Reinforce clinical quality		Does not pertain to clinical quality.
Ensure data privacy and security		Does not address privacy or security.
Next Steps	Discuss whether to take a position.	

For Discussion: AB 1241 (Weber)

AB 1241 would clarify that a telehealth provider subject to new policies around referral to in-person care within Medi-Cal would not require a provider to schedule an appointment with a different provider on behalf of a patient

Principle	Determination	Reasoning
Promote access and coverage	✓	May increase access to care by limiting potential loss of access to care delivered via telehealth for Medi-Cal beneficiaries
Enhance care coordination		Does not pertain to care coordination.
Promote provider and patient engagement		Does not pertain to provider and patient engagement.
Reinforce clinical quality	✓	May reinforce quality in alignment with coalition principle of not holding telehealth to a higher standard of care or imposing heightened requirements
Ensure data privacy and security		Does not address privacy or security.
Next Steps	Discuss whether to take a position.	

For Discussion: AB 232 (Aguiar-Curry)

AB 232 would grant a 30-day temporary practice allowance to qualifying therapists

Principle	Determination	Reasoning
Promote access and coverage	✓	May increase access to care by ensuring those visiting or relocating to California can access their provider for 30 days
Enhance care coordination		Does not pertain to care coordination.
Promote provider and patient engagement	✓	May increase patient involvement/empowerment and promote the continued relationship between trusted provider and patient
Reinforce clinical quality		Does not pertain to clinical quality.
Ensure data privacy and security		Does not address privacy or security.
Next Steps	Discuss whether to take a position.	

2023 Coalition Policy Priorities

➤ **Maintain and expand coverage of telehealth**

- Advocate for continued coverage of telehealth modalities across all types of coverage, e.g., expand remote patient monitoring
- Support continued FQHC/RHC coverage for telehealth
- Revisit cross-state provider considerations (e.g., practicing and prescribing across state lines)

➤ **Build the evidence base for telehealth in California**

- Showcase research and evaluation findings from California organizations on monthly calls
- Work with members to highlight health outcomes and patient stories to impact state policy
- Collect member input to provide input on the DHCS Research and Evaluation Plan

➤ **Bridge the digital divide to ensure patient and provider internet access**

- Work with other health care stakeholder to provide comments and recommendations on California's broadband work
- Showcase the inequitable distribution of internet access/ telehealth for certain communities (i.e., communities of color, the disabled community, older adults)

➤ **Ensure California maintains leadership at the state level on telehealth policy**

- Continue to educate Coalition members and others on new and developing state telehealth policies
- Advocate for state coordination on telehealth and related health technology issues
- Conduct outreach to state agency telehealth leaders and legislative leaders

Key Dates in the Legislative Calendar 2023



- Jan. 4: Legislature reconvenes
- Jan. 10: Governor submits budget
- Feb. 17: Last day for bills to be introduced
- June 7: Last day for each house to pass bills introduced in that house
- June 15: Budget bill must be passed by midnight
- July 14: Last day for policy committees to meet and report bills
- Sept 14: Last day for each house to pass bills
- Oct 14: Last day for Governor to sign or veto bills passed by the Legislature







Full calendar available at: <https://www.assembly.ca.gov/legislativedeadlines>

E-Consult Update


- E-consult workgroup letter submitted to DHCS in January requested the inclusion of e-consult codes (99446-9, 99451 and 99452) in the proposed APM for FQHCs and RHCs
- Next Steps: requesting State Plan Amendment from DHCS to include e-consult codes in response to CMS [State Health Official letter](#)

Interested in e-consult SPA opportunities? Please share in the chat or via email

DHCS Post-COVID-19 Public Health Emergency Telehealth Policy

Policy Area	Continues PHE Policy?	Additional Detail/Notes
Baseline coverage of synchronous telehealth		<ul style="list-style-type: none"> Continue coverage of synchronous video, audio-only telehealth
Baseline coverage of asynchronous telehealth		<ul style="list-style-type: none"> Continue coverage across services and systems, including 1915(c) waivers, TCM and LEA-BOP
Payment parity		<ul style="list-style-type: none"> Continue to exclude virtual communications from payment parity Continue use of cost-based reimbursement for TCM/LEA-BOP; county-behavioral health to be cost-based via CalAIM payment reform
Virtual Communications & Check-Ins		<ul style="list-style-type: none"> Continue coverage in physical health To be added to 1915(c) waivers, TCM and LEA-BOP Excluded from payment parity
Telehealth in FQHCs & RHCs		<ul style="list-style-type: none"> Continue reimbursement at PPS rate for otherwise billable visits delivered via all telehealth modalities including audio-only and asynchronous Continue exemption from site limitations for patient or provider
Establish New Patients via Telehealth		<ul style="list-style-type: none"> Providers may only establish a relationship with new patients in-person or via synchronous video telehealth visits Providers may establish new patients via audio-only synchronous interaction(including FQHCs/RHCs): when the visit is related to sensitive services, when the patient requests audio-only or attests they do not have access to video, or when the visit is designated by the Department to meet another exception

DHCS Post-COVID-19 Public Health Emergency Telehealth Policy

Policy Area	Continues PHE Policy?	Additional Detail/Notes
Patient Consent	<p style="text-align: center;">  <i>+ additional requirements</i> </p>	<ul style="list-style-type: none"> • New consent requirements for additional information be shared with beneficiaries regarding: <ul style="list-style-type: none"> • Right to in-person services • Voluntary nature of consent • Availability of transportation to access in-person services • Limitations/risks of receiving services via telehealth • Notification of the right to make complaints
Third Party Corporate Telehealth Providers	<p style="text-align: center;"><i>New policy</i></p>	<ul style="list-style-type: none"> • Monitor and assess the implementation of AB 457 and the implementation of complimentary policy approaches in Medi-Cal that promote continuity and quality of patient care
Utilization Review	<p style="text-align: center;"><i>New policy</i></p>	<ul style="list-style-type: none"> • Continue to expand analytics and algorithm development to effectively identify suspect telehealth activity to be investigated. Potential risks include, but are not limited to, the following: <ul style="list-style-type: none"> • Up-coding time and complexity of services provided. • Misrepresenting the virtual service provided. • Billing for services not rendered. • Kickbacks

DHCS Post-COVID-19 Public Health Emergency Telehealth Policy

Policy Area	Continues Current Policies?	Additional Details/Notes
New Video Requirement	<i>New policy</i>	<ul style="list-style-type: none"> No sooner than January 1, 2024, phase in an approach that provides patients the choice of a video telehealth modality when care is provided via telehealth. If a provider offers audio-only telehealth services, the provider will also be required to provide the option for video services to preserve beneficiary choice.
New In-Person Services Requirement	<i>New policy</i>	<ul style="list-style-type: none"> No sooner than January 1, 2024, phase in an approach that requires any provider furnishing services through telehealth to also either offer services via in-person face-to-face contact or link the beneficiary to in-person care. <ul style="list-style-type: none"> If the provider chooses to link the beneficiary to in-person, they must provide for a referral to and a facilitation of in-person care that does not require a patient to independently contact a different provider to arrange for such care. DHCS will consider stakeholder recommendations on ways to ensure access to in-person services and telehealth services without restricting access to either, and work with stakeholders to develop a consumer-friendly brochure to inform enrollees about right to in-person care.
Network Adequacy	<i>New policy</i>	<ul style="list-style-type: none"> Allow Medi-Cal managed care plans, county Mental Health Plans and county Drug Medi-Cal Organized Delivery System plans to use clinically appropriate video synchronous interaction as a means of demonstrating compliance with the network adequacy time or distance standards. DHCS will develop policies for granting credit in the determination of compliance with time or distance standards.