US TELEHEALTH POLICY

FEBRUARY 6, 2024

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CENTER FOR CONNECTED HEALTH POLICY (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.
ABOUT CCHP

• Established in 2009 as a program under the Public Health Institute
• Became federally designated national telehealth policy resource center in 2012 through a grant from HRSA
• Work with a variety of funders and partners on the state and federal levels
• Administrator National Consortium of Telehealth Resource Centers
• Convener for California Telehealth Policy Coalition
TODAY’S WEBINAR

- Provide an overview of the federal and state telehealth policy landscape
- Talk about the current status of certain policies
- Items to monitor & what might happen this year

This webinar is not one to answer very specific billing questions. If you have a specific billing question, please contact your TRC or CCHP directly.
FEDERAL & STATE

Federal Policy
- MEDICARE/CMS
- PRESCRIBING OF CONTROLLED SUBSTANCES (DEA)
- HIPAA/PRIVACY/DATA
- LICENSURE

State Policy
- MEDICAID
- PRIVATE PAYER
- PRESCRIBING
- LICENSURE
FEDERAL: CMS & Medicare
(Reimbursement & Coverage)
MEDICARE TELEHEALTH POLICY EVOLUTION

- Pre-Covid: Fairly Limited
- During Pandemic: Series of Waivers
- Post-Pandemic: Majority of waivers remain until end of 2024
<table>
<thead>
<tr>
<th>WAIVER DURING COVID-19</th>
<th>REMAINS UNTIL THE END OF 2024</th>
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<tbody>
<tr>
<td>Waiver of geographic requirement</td>
<td>✓</td>
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<tr>
<td>All eligible providers in Medicare &amp; FQHCs/RHCs to be eligible providers</td>
<td>✓</td>
</tr>
<tr>
<td>Site limitation waived (allowing places such as the home)</td>
<td>✓</td>
</tr>
<tr>
<td>Allow some services to be provided via audio-only</td>
<td>✓</td>
</tr>
<tr>
<td>Expanded list of eligible services to be provided via telehealth</td>
<td>Varies, but mostly remains intact</td>
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<tr>
<td>WAIVER DURING COVID-19</td>
<td>REMAINS UNTIL THE END OF 2024</td>
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<td>------------------------------------------------------------</td>
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<tr>
<td>Allowing provider to use business address rather than putting home address</td>
<td>✓</td>
</tr>
<tr>
<td>Waiving frequency limit on telehealth visits in SNFs</td>
<td>✓</td>
</tr>
<tr>
<td>Allowing for direct supervision to be done via telehealth</td>
<td>Some remain intact such as supervision of residents when the service is furnished virtually.</td>
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- CCHP 2024 Physician Fee Schedule Fact Sheet
- 2024 Physician Fee Schedule Final
- Consolidated Appropriations Act 2023
- CMS Telehealth Fact Sheet (Dated 12/2023)
FEDERAL: Prescribing & Controlled Substances
CONTROLLED SUBSTANCE PRESCRIBING VIA TELEHEALTH

- Limited Exceptions in Ryan Haight Act
- One exception is when PHE declared, COVID activated exception
- DEA Issues Proposed Post-PHE Regs
- Temporary extension to 11/2023
- Late 2023, DEA extended the exception through to the end of 2024

January 31, 2024 Final rules on the prescribing of buprenorphine by OTP, may take place via audio-video or audio-only. Limited ability to use audio-visual for methadone
FEDERAL: HIPAA/PRIVACY/DATA
Pre-COVID Telehealth wasn't specifically addressed

During/Post-COVID - Realization HIPAA outdated
• During COVID, OCR issued guidance that they would “exercise discretion” on HIPAA as it related to using telehealth technology. This has since expired.
• Biden Administration issued Executive Order to look at updating HIPAA regulations
• In the meantime, several resources have been provided related to telehealth by HHS
  • [Resource for Health Care Providers on Educating Patients about Privacy and Security Risks to Protected Health Information when Using Remote Communication Technologies for Telehealth](#)
  • [Privacy and Security Tips for Patients](#)
  • [General HHS site on HIPAA & Telehealth](#)
  • [Guidance on How the HIPAA Rules Permit Covered Health Care Providers and Health Plans to Use Remote Communication Technologies for Audio-Only Telehealth](#)
• Conversation now gone beyond just HIPAA and concerns about privacy, data and tracking

• In 2023 FTC and HHS warned hospitals and telehealth providers about privacy and security issues related to online tracking
  • CCHP Newsletter – FTC & OCR Stress (Again) the Importance of How Health Data is Handled (Sept. 2023).
  • HHS - Use of Online Tracking Technologies by HIPAA Covered Entities and Business Associates
US District Court for New Jersey Court Case

• MacDonald v. New Jersey State Board of Medical Examiners
  • Specific case on telemedicine and licensure that makes the argument that requiring a license of an out-of-state provider is in violation of the US Constitution
  • Based arguments on:
    • Commerce Clause (Dormant Commerce Clause)
    • Privileges & Immunities Clause
    • First Amendment (Speech)
    • Fourteenth Amendment Due Process Clause
STATE: Medicaid & Private Payer
(Reimbursement & Coverage)
50 States & DC reimburse for Live Video

33 States reimburse for some store and forward (some may only do it for CTBS)

37 States have some reimbursement for RPM

43 States have some reimbursement for audio-only

43 States, DC and Virgin Islands have a private payer law
STATE: Prescribing
Prescribing/establishing a patient-provider relationship
• Can telehealth be used to establish a relationship?
• Most states allow if live video is used
• A few exceptions allow asynchronous

Limitations on Prescribing
• Abortion
• Vision & Hearing
• Marijuana
• Controlled Substances
STATE: Licensure
- Compacts
  - Compacts are structured differently
- Registries
- Limited Exceptions
  - Prior established relationship
  - Infrequent interactions
  - Contiguous state exception
What to Look Out For in 2024
- Decisions on temporary Medicare policies & prescribing of controlled substances
  - Look for potentially some policies to be in larger bills
- HIPAA Update due this year
- AI Continues to be a significant point of discussion
  - Executive Order on AI
  - NIST Draft Guidance on Privacy Protection Technique for AI
- Broadband – Affordable Connectivity Program – proposal to continue funding it, but it will need to make it through the budget process
Most states have settled on their policies
- Increasing interest in data collection, efficacy
- Some have also temporary extensions
- Areas of further policy development/discussion
  - Expanding Medicaid
  - Licensure
  - Prescribing

State Budget Shortfalls
CCHP Website – cchpca.org

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