CURRENT STATUS OF FEDERAL & CALIFORNIA TELEHEALTH POLICY DURING COVID

As of December 1, 2020

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.

Mei Wa Kwong, JD, Executive Director, CCHP
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- Always consult with legal counsel.
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CCHP PROJECTS

- Established in 2009
- 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
Medicare limitations on telehealth

- Must be in a rural location and a specific facility type
- Limited list of services reimbursed
- Limited list of providers eligible to provide services and be reimbursed
- Essentially limited to live video modality
- Recently allow the home to be an eligible originating site (where patient located) during the time of the telehealth interaction IF being treated for SUD. If a co-occurring mental health condition was diagnosed, can also be treated at home.

Limitations on the prescription of controlled substance using telehealth
# 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)</td>
<td>More codes eligible for phone &amp; allowed PTs/OTs/SLPs &amp; other use</td>
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## Medicaid

<table>
<thead>
<tr>
<th>Medicaid Issue</th>
<th>Change</th>
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<tbody>
<tr>
<td>Modality</td>
<td>Allowing phone</td>
</tr>
<tr>
<td>Location</td>
<td>Allowing home</td>
</tr>
<tr>
<td>Consent</td>
<td>Relaxed consent requirements</td>
</tr>
<tr>
<td>Services</td>
<td>Expanded types of services eligible</td>
</tr>
<tr>
<td>Providers</td>
<td>Allowed other providers such as allied health pros</td>
</tr>
<tr>
<td>Licensing</td>
<td>Waived some requirements</td>
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- Private payer orders range from encouragement to cover telehealth to more explicit mandates
- Relaxed some health information protections

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<table>
<thead>
<tr>
<th>Date</th>
<th>Event Description</th>
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<tbody>
<tr>
<td>3/17/20</td>
<td>HR 6074 – Geographic/Site limitations waived</td>
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<tr>
<td>3/19/20</td>
<td>CMS Guidance on HIPAA</td>
</tr>
<tr>
<td>3/29/20</td>
<td>HR 748 – Expanded list of eligible providers &amp; Interim Rule from CMS</td>
</tr>
<tr>
<td>4/7/20</td>
<td>First CMS Guidance for FQHCs/RHCs issued</td>
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<tr>
<td>4/30/20</td>
<td>Updated CMS Guidance for FQHCs/RHCs issued</td>
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<tr>
<td>7/1/20</td>
<td>Proposed regulations to make permanent home health telehealth changes made in response to COVID-19</td>
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Figure 1. Primary Care Visits for FFS Medicare Beneficiaries (visits in millions per week)

- Chart from ASPE Issue Brief, July 28, 2020 “Medicare Beneficiary Use of Telehealth Visits: Early Data from the Start of the COVID-19 Pandemic”

Source: Medicare claims data up to June 3rd, available as of June 16.
Much of the telehealth policy that exists revolves around reimbursement, what gets paid. The policy is further broken down into who, what, where and how.

In Medicare, what services are covered if delivered by telehealth can be decided by CMS.
Proposal to make some of the temporary Medicare telehealth changes permanent

- Included some of the services allowed during COVID-19 to be on permanent list
- Proposed to allow some of the services to remain around temporarily until the end of the year the PHE is over
- Request for comments on relaxing some of the supervision requirements
- Clarifies that PTs, OTs, SLPs, clinical social workers, and clinical psychologists can furnish brief online assessment and managements services, virtual check-ins and remote evals
- Some modifications to remote physiologic monitoring
- Some home health changes made permanent
Many of the bills introduced deal specifically with the pandemic or to extend certain temporary waivers

- **S 4769 (Warren)** – Establishes a task force to look addressing maternal mortality and morbidity during COVID including the utilization of smartphones or other telehealth connections

- **Veteran-related telehealth bills**
  - **S 785 (Tester)** – Commander John Scott Hannon Veterans Mental Health Care Improvement Act of 2019 (sent to President)

- **Maternal and Mental Health Bills**
  - **HR 8060 (Trone)** – Require parity in the coverage of mental health and SUD services in private plans whether provided in-person or via telehealth

- **License Reciprocity**
  - **S 4421 (Murphy) & HR 8283 (Latta)** – Provide temporary license reciprocity for telehealth and interstate telehealth provider clinical services

As of September 2018
S 4375 (Alexander) - Would make permanent certain temporary changes:

- Allow FQHCs and RHCs to act as distant site providers
- Home may serve as an originating site for all services
- All types of practitioners may be eligible to furnish services and be reimbursed by Medicare
CHANCES FOR FEDERAL LEGISLATION

GO BACK TO PRE-COVID

PERMANENT CHANGES
July – August 2020 - 31 states made permanent changes

Most done through administrative channels, not legislation

Not clear that all were done in response to COVID or had they been planned to be done before the pandemic
Several states adopted policy of telephone reimbursement in Medicaid but for narrow set of services (SC, TX, TN)

Clarified that home is an eligible originating site in Medicaid (SD, CO, UT)

Clarified policies around FQHCs/RHCs in Medicaid

HI – FQHCs/RHCs eligible providers

WV – Allowed psychiatrists and psychologists in FQHCs/RHCs to be eligible distant site providers

WS – Allow full PPS rate reimbursement
Allowing for telephone reimbursement. A few states and very narrow set of services:

- SC – Allows for telephone delivery for dental services
- TX – Allows only for supportive encounters for behavioral health and case management
- TN – Allows only for ‘provider-based telemedicine’ which is strictly defined and must be HIPAA compliant
- AL & AK – Clarified that audio-only not allowed in their Medicaid programs
104 Legislative bills in 36 states passed
- Modifications to private payer laws
- Medicaid Reimbursement
- Regulatory & licensing
- 35 of the bills directly in response to or explicitly mentioned COVID-19
**STATE TELEHEALTH LEGISLATION**

- **Medicaid**
  - MI – HB 5415 – requires Medicaid to provide coverage for RPM
  - NY – SB 8415 – adds audio-only to definition of telehealth in Medicaid

- **Private Payer Bills**
  - MD – HB 1208/SB502 – explicitly states that mental health care services in patient’s home falls under telehealth & insures must provide reimbursement for SUD
Studies & Data

OR – HB 4212 – requires providers to collect encounter data on race, ethnicity and language whether in-person or via telehealth when providing services for COVID-19

MS – SB 2311 – allows State Board of Health to promulgate rules and collect data on the use of telehealth and EHRs to deliver telemedicine services.
LOOKING FORWARD TO 2021 PREDICTIONS

Federal
- New Administration
- Likely to extend the PHE at least one more time
- Congress trying to pass a budget and possibly another COVID bill

State
- Clearer picture on budgets
- May still extend exceptions if tied to federal PHE
- But clear some states will move forward
CCHP Website – cchpca.org

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