The Telehealth Explainer Series: A Toolkit for State Legislators

- What Is Telehealth?
- Medicaid Reimbursement for Telehealth
- Telehealth Private Insurance Laws
- Licensure and Interstate Compacts
- Ensuring Patient Safety, Security and Quality of Care
- Improving Behavioral Health from Afar
- Telehealth, COVID-19 and Looking Ahead
• Federal and State Telehealth Policy Landscape Update
  • Mei Wa Kwong, executive director, Center for Connected Health Policy

• Telehealth as a HRSA Priority
  • Heather Dimeris, deputy associate administrator, Federal Office of Rural Health Policy, Health Resources and Services Administration

• State Legislative Respondent Panel
  • Representative Regina Cobb, Arizona
  • Senator Virginia Lyons, Vermont

• Q&A

Agenda
TELEHEALTH POLICY LANDSCAPE UPDATE

August 25, 2021
National Conference of State Legislatures

Mei Wa Kwong, JD,
Executive Director, CCHP

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.
○ 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
# 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>
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<tr>
<td>Licensing</td>
<td>Relaxed requirements</td>
</tr>
<tr>
<td>Tech-Enabled/Comm-Based</td>
<td>More codes eligible for phone &amp; allowed PTs/OTs/SLPs &amp; other use</td>
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</tbody>
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## State (Most Common Changes)

<table>
<thead>
<tr>
<th>Medicaid Issue</th>
<th>Change</th>
</tr>
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<tbody>
<tr>
<td>Modality</td>
<td>Allowing phone</td>
</tr>
<tr>
<td>Location</td>
<td>Allowing home</td>
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<tr>
<td>Consent</td>
<td>Relaxed consent requirements</td>
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<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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</tbody>
</table>

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

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*DEA – PHE prescribing exception/allowed phone for suboxone for OUD*

*HIPAA – OCR will not fine during this time*
Physician Fee Schedule

- Released every summer for the following year proposing changes to the Medicare program
- Telehealth policy changes that can be made administratively typically are made here
- Public comment period for 60 days
- Finalized in November/December
Adding services to the permanent eligible telehealth list for Medicare
- Adding services to the list is within CMS purview
- Did not accept any suggestion received from public to add additional services
- Category 3 services will be extended to end of CY 2023
- Other temporarily eligible services on the telehealth COVID list that are not already permanently approved or in Category 3 will disappear when the PHE is declared over. CMS asks the public to provide comments on whether any of those services should be moved to Category 3.
Mental Health Services

- Consolidated Appropriations Act (CAA) passed in Dec 2020 would allow mental health services to be provided in the home and without geographic limitations if the patient has an in-person visit with the telehealth provider within the 6 months prior to telehealth services taking place.
- The visit within the 6 months would need to take place before each telehealth visit.
Audio-Only

CMS this year is redefining the definition of “telecommunications system” which is not defined in federal law.

CMS proposes allowing the use of audio-only to provide mental health services if certain conditions met:

• Established patient
• Patient at home
• Provider has capability of doing live video
• Patient cannot or does not want to do it via live video
• Has an in-person visit with the telehealth provider 6 months prior

As of September 2018
FQHC/RHC

CMS is redefining what a mental health visit is for an FQHC/RHC. The new definition would "also include encounters furnished through interactive-real-time telecommunications technology."

- FQHCs/RHCs would be able to provide mental health services via live video & audio-only (next slide)
- This will not be regarded as “telehealth”
- PPS & AIR rates will be paid
FQHC/RHC (Audio-Only)
CMS is will also allow FQHCs/RHCs to provide mental health visits via audio-only as well if
• Patient cannot use live video or consents to the use of audio-only

CMS is seeking comments whether to also require the 6 months prior in-person visit as well for FQHCs/RHCs
Remote Therapeutic Monitoring (RTM)

- Possibly allow others not able to bill remote physiological monitoring (RPM) codes to bill these; nature of data and how it’s collected
- **989X1** – Initial set-up and patient education on use of equipment
- **989X2** - Device(s) supply with scheduled (e.g., daily) recording(s) and/or programmed alert(s) transmission to monitor respiratory system, each 30 days
- **989X3** - Device(s) supply with scheduled (e.g., daily) recording(s) and/or programmed alert(s) transmission to monitor musculoskeletal system, each 30 days
- **989X4** - Remote therapeutic monitoring treatment, physician/other qualified health care professional time in a calendar month requiring at least one interactive communication with the patient/caregiver during the calendar month; first 20 minutes
- **989X5** - Remote therapeutic monitoring treatment, physician/other qualified health care professional time in a calendar month requiring at least one interactive communication with the patient/caregiver during the calendar month; each additional 20 minutes
Other Proposals

- Permanent adoption of G2252 (virtual check-in 11-20 minutes)
- Requesting comments regarding making permanent certain in-person supervisory requirements eligible to be done via telehealth.
- Comments for separate coding and payment for medically necessary chronic pain management (telehealth one of the elements)
- Revising the definition of primary care services in the Shared Savings Program
- Proposing new CPT codes and RUC values for chronic care management & principal management codes
- Allowing audio-only in limited circumstances for certain opioid treatment program counseling and therapy services
CCHP currently tracking over 100 pieces of federal legislation related to telehealth

Majority of bills address temporary changes or COVID in some way

Licensure

Mental Health

Pilots
Author: Senator Brian Schatz (D-HI)

Removing Barriers to Telehealth Coverage

- Home allowed to be eligible site for all services
- Geographic limitation removed
- FQHCs/RHCs added to list of eligible providers, would receive PPS rate
- Geographic limitation not apply to an Indian Health Services facility or if providing emergency care
- No facility fees for some of these new exceptions like the home

As of September 2018
Removing Barriers to Telehealth Coverage – Secretary Powers

- Secretary provided with authority to waive certain limitations
  - Originating site
  - Geographic limitations
  - Limits on technology used
  - Limits on practitioners who can use telehealth and be reimbursed
  - Types of services covered
  - Any other limitation Secretary deems necessary
  - Able to set policies and fee schedule for these waivers
Program Integrity
• Provide the Inspector General in HHS $3 million to conduct audits, investigations and other duties to ensure program integrity
• Secretary shall make training and education resources available to providers and beneficiaries so they’re aware of these changes

Data and Testing Models
• Secretary will collect and analyze data for both telehealth and communications technology-based services (CTBS)
• Interim & final report to Congress
• Analysis of telehealth waivers in alternative payment models
Creating Opportunities Now for Necessary and Effective Care Technologies (CONNECT) for Health Act of 2021

The "Creating Opportunities Now for Necessary and Effective Care Technologies (CONNECT) for Health Act of 2021" was recently introduced by Senator Brian Schatz (D-HI). Among the authoritative provisions of this bill, Senator Schatz notes that this Act will promote higher quality of care, increased access to care and reduce spending in Medicare through the expansion of telehealth services. Thus far, it has received bipartisan support from the majority of his fellow Senators.

There are three main sections to the CONNECT Act:

1. Removing Barriers to Telehealth Coverage
2. Program Integrity
3. Data and Testing of Models
MEDICAID REIMBURSEMENT BY SERVICE MODALITY
(Fee-for-Service)

- **Live Video**: 50 states and DC
- **Store and Forward**: Only in 22 states
- **Remote Patient Monitoring**: 26 states

*As of February 2021*
43 states and DC have telehealth **private payer** laws

Some go into effect at a later date.

**Parity is difficult to determine:**
- Parity in services covered vs. parity in payment
- Many states make their telehealth private payer laws “subject to the terms and conditions of the contract”

As of February 2021
Fifteen state Medicaid programs now allow for telephone reimbursement in some way. **NOTE:** Some states may have recently passed legislation to cover reimbursement, but proof Medicaid has implemented such a policy has not been found yet.

- Brown states are for Communications Technology Based Services (CTBS)
- Research is based on information from Feb – Jun 2021
104 legislative bills passed in 36 states related to telehealth
- Private payer law modifications
- Medicaid reimbursement
- 35 of the bills directly/explicitly mentioned COVID-19

Not as many licensure related bills or demonstration/pilot projects
NY adds audio-only to definition of telehealth as applied to Medicaid (SB 8416)

Michigan requires Medicaid to cover RPM (HB 5415) & requires home and schools to be eligible originating sites (HB 5416)

West Virginia added new private payer law (HB 4003)
More states making final decisions regarding telehealth policy, particularly in Medicaid

- Struggling with decisions on audio-only

- Legislative trends
  - Licensure
  - Board guidelines
  - Pilots/demonstration projects
Temporary Extension of COVID-19 waivers
- CA & CT

Licensure changes
- AZ & FL not requiring a full state license with their state, but will require registration

Private Payer Laws
- Payment parity or prohibiting insurers from contracting with just one telehealth company (VA, OK - provider not required to use proprietary tech)

Audio-only
- Payment parity for audio-only (AZ, RI, WA)

End of PHEs
- Though for some states, telehealth waivers are tied to federal PHE
CCHP Website – cchpca.org

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www.cchpca.org
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Office for the Advancement of Telehealth

- HRSA is home to the Office for the Advancement of Telehealth:
- Serves across HHS and coordinates with other key federal partners to leverage telehealth to improve access, enhance outcomes, and support clinicians and patients
- Promotes the use of telehealth technologies for health care delivery, education, and health information services
- Provides funding for direct services, research, and technical assistance in the field of telehealth
Telehealth Policy Changes During the COVID-19 Public Health Emergency

- **Reimbursement:**
  - Medicare: flexibilities with location, eligible services, eligible providers, cost-sharing, licensing, modality, and supervision of providers
  - Medicaid
  - Private insurers

- **Licensure:**
  - Almost every state has modified licensure requirements/renewals policies for providers, including out-of-state requirements for telehealth

- **Prescribing controlled substances:**
  - A practitioner can prescribe a controlled substance to a patient using telemedicine even if the patient is not at a hospital or clinic registered with the DEA

- **HIPAA:**
  - HHS Office of Civil Rights empowered covered providers to use widely available communications applications without risk of penalties

- **Federally Qualified Health Centers and Rural Health Clinics:**
  - Provide services as a distant site for any service that Medicare has approved to be furnished via telehealth
Telehealth Investments During the COVID-19 Pandemic

Millions Invested Across HRSA Programs

- $15 million for provider telehealth training
- $15 million to key areas in maternal and child health
- $11.6 million to HRSA-funded Telehealth Resource Centers
- $5 million to assist telehealth clinicians on licensure and credentialing
- $8 million to support telehealth broadband
Telehealth.HHS.gov

- The trusted, timely, and one-stop resource for both patients and providers for everything they need to know about telehealth.
HHS Telehealth Resources

• Telehealth.HHS.gov
  https://telehealth.hhs.gov/

• Telehealth Resource Centers
  https://www.telehealthresourcecenter.org/

• ProviderBridge
  https://www.providerbridge.org/

• Multi-Discipline Licensure Resource Project
  https://icensureproject.org/

• Rural Telehealth Research Center
  https://ruraltelehealth.org/

• RHIHub
  https://www.ruralhealthinfo.org/
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Additional Resources

- Telehealth Explainer Series: A Toolkit for State Legislators
- State Telehealth Policies
- State Action on the Coronavirus (COVID-19)
- Health Innovations State Law Database

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