

Current Status of Telehealth Policies

September 1, 2020

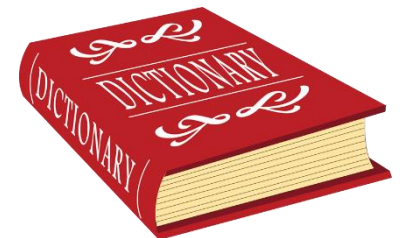


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Review of Terminology

- **Telehealth:** “the use of electronic information and telecommunications technologies to support long-distance clinical health care, professional health-related education, public health, and health administration” (*Medical Dictionary*)
- **Telemedicine:** “the practice of medicine when the doctor and patient are widely separated using two-way voice and visual communication” (*Merriam-Webster*)
- The two terms are often used interchangeably
- Telehealth is more broad/comprehensive and the U.S. Department of Health and Human Services (HHS) uses the term telehealth so this presentation will use the term telehealth



Background: Regulatory Complexities

The regulatory framework for telehealth is quite complex!

Medicare Regulated by the federal government	Medicaid Regulated by both the federal and state governments
Self-Insured Health Plans Regulated by the federal government	Fully-Insured Health Plans Must comply with both federal and state requirements

Background: Regulatory Complexities

In addition, policies regarding telehealth span across several areas:

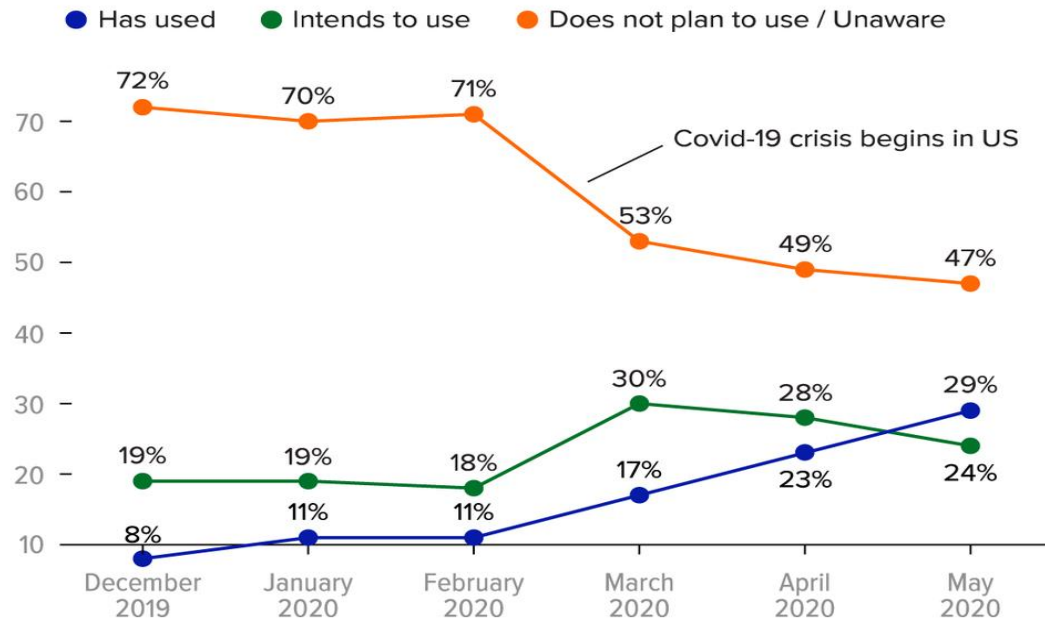
1. Reimbursement
2. Licensure/credentialing
3. Prescriber/provider-patient relationship establishment
4. Privacy/security
5. Malpractice



COVID-19 and Telehealth Expansion

- **Pre-COVID-19:** Utilization of telehealth was minimal (0.1% - 9%)
- **During COVID-19:** Utilization of telehealth increased significantly

Telemedicine adoption during Covid-19

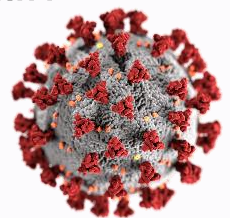


SOURCE: 118,508 RESPONSES, WEIGHTED BY US CENSUS (18+)
SURVEY DATE: DECEMBER 1, 2019 TO MAY 18, 2020
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Telehealth Policy Changes During the COVID-19 Public Health Emergency

- The Secretary of Health and Human Services (**HHS**) declared COVID-19 pandemic a **Public Health Emergency** on January 31, 2020, and renewed it effective April 26, 2020 & July 25, 2020.
- On **March 17, 2020**, the HHS announced that it will waive potential penalties for HIPAA violations if healthcare providers serve patients in good faith through everyday communications technologies (e.g., Skype, FaceTime, etc.) during the COVID-19 national public health emergency. NB: states have their own health privacy/security laws.
- For the duration of the COVID-19 public health emergency, DEA-registered providers can use telehealth to issue Rx for controlled substances without an in-person evaluation if they meet certain conditions, including compliance with state laws.



Telehealth Policy Changes During the COVID-19 Public Health Emergency

- The **Coronavirus Preparedness and Response Supplemental Appropriations Act** (and later the **CARES Act**) gave the HHS Secretary authority to waive certain restrictions on Medicare coverage of telehealth services for traditional fee-for-service (FFS) Medicare beneficiaries during the public health emergency.

- Allows beneficiaries living in any geographic area to receive telehealth services
- Allows beneficiaries to access telehealth visits from their home
- Allows telehealth videoconference visits to be delivered via smartphone
- Removes requirement for preexisting relationship between patient and provider
- Allows FQHCs and RHCs to provide telehealth services
- Allows some services to be delivered via audio-only phone

NOTES: Changes enacted as part of the Coronavirus Preparedness and Response Supplemental Appropriates Act and the CARES Act.

SOURCE: Centers for Medicare and Medicaid Services (CMS), [Medicare Telemedicine Health Care Provider Fact Sheet](#), March 2020. [CMS Press Release](#), March 30, 2020.

Telehealth Policy Changes During the COVID-19 Public Health Emergency

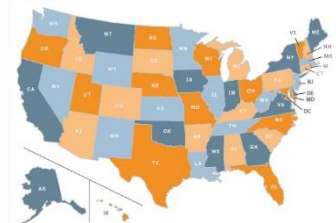
- **Additional waivers (Medicare FFS)**
 - Allow all health care professionals (including PT, OT, SLP, etc.) to bill and receive payment for telehealth services
 - Reimburse telehealth visits at the same rate as in-person visits for the duration of the public health emergency (pay parity). Note: for FQHC/RHC's, reimbursement is set at \$92.03/telehealth visit.
 - Expand the type of reimbursable services provided via telehealth, adding additional 125 services
 - Office of Inspector General (OIG) is providing flexibility for health care providers to reduce or waive cost sharing for patients for telehealth



Telehealth Policy Changes During the COVID-19 Public Health Emergency

- **Licensure Requirements**

- **Federal level:** HHS temporarily waived the Medicare requirement that providers be licensed in the state they are delivering telehealth services when practicing across state lines if a list of conditions are met. However, does not exempt providers from state licensure requirements.
- **State level:** Almost all states (47, including CA) moved to temporarily waive out of state licensing requirements to allow providers with equivalent licenses in other states to practice via telehealth (list of states and their status available through the Federation of State Medical Boards).



Telehealth Policy Changes During the COVID-19 Public Health Emergency: CA

- Gov. Newsom declared a State of Emergency on March 4, 2020
- Made provisions for any medical facility, telehealth agency or staffing agency that wants to use medical professionals with out-of-state licenses to apply for temporary permission from the EMS Authority during the duration of the emergency
- On April 4, Gov. Newsom signed Executive Order N-43-20, expanding protections to medical providers and relaxing certain state privacy and security laws so that they can provide telehealth services without the risk of being penalized
- Suspended the requirement to obtain and document verbal or written consent before the telehealth service



Telehealth Policy Changes During the COVID-19 Public Health Emergency: CA

- On **March 18, 2020**, the Department of Managed Health Care (DMHC) issued an All Plan Letter (APL) requiring commercial plans to do the following (and made it applicable to phone visits as well):
 - Reimburse for telehealth at the same rates as in-person visits (which was already a plan that was going to go into effect next year due to AB 744)
 - Make patient cost-sharing the same as in-person
- On **March 19, 2020**, the Department of Health Care Services (DHCS) issued an APL almost identical to DMHC's for Medi-Cal Managed Care



Future of Telehealth Policies

Most temporary changes allowed at the federal level during the PHE will require Congressional action to become permanent.

POLICY CHANGE	STATUTORY OR ADMINISTRATIVE CHANGE NEEDED
Removal of the geographic limitation on where telehealth can take place.	To remove would require Congressional action.
Allowing any type of site/building a patient is located in to be an eligible location.	Would require Congressional action.
Allowing the use of audio-only to provide some services.	Would not technically require a statutory change, but CMS may not act without legislative permission. Current federal law only says the modality must be a “telecommunications system” but did not define it. CMS in regulations have defined it as an “interactive telecommunications system” that excludes audio-only.
Allowed all Medicare providers to be eligible providers.	Would require Congressional action.
Expansion of eligible services to be provided via telehealth from a list of 115 to 240.	CMS can make these change administratively without Congressional Action

Table source: Center for Connected Health Policy <https://www.cchpca.org/resources>



Future of Telehealth Policies: CMS's Proposed PFS Rules Change

- CMS recently released its annual proposed rule for the 2021 Physician Fee Schedule which does the following:
 - Adds several permanent and temporary services to the approved list of Medicare telehealth services → currently soliciting input on additional services it should permanently add to the telehealth list beyond the PHE & whether to extend certain flexibilities granted during the PHE, including separate payment for audio-only services
 - Allows direct supervision to be provided using real-time, interactive audio and video technology through Dec. 31, 2021
 - Proposes to remove exclusion of phone, fax and email systems from the definition of “telecommunication system” but does NOT propose to continue reimbursement for telephone codes (99441-99443)
- Comments are due to CMS by **October 5**



Future of Telehealth Policies: CA

- AB 744 (signed into law in Oct 2019) requires that all physician contracts issued or renewed after Jan 1, 2021, cover telehealth visits the same as in-person visits
- However, it does not apply to Medi-Cal Managed Care
- CMA and other hospital/physician groups are urging Gov. Newsom to adopt trailer bill language to expand payment parity to Medi-Cal
- However, the administration is not interested in moving a substantive health budget trailer bill this year → wants to gather more data and develop a comprehensive telehealth strategy



Future of Telehealth Policies

- Telehealth will likely play a bigger role in the future compared to the pre-pandemic era
- Federal and state policy makers will need to be proactive and enact sound telehealth policies that can improve health and address gaps/disparities
- Telecommunications technology will need to also expand/improve
- Stay tuned...!



Thank You!



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