Telebehavioral Health and State Actions

HHS Chairs Meeting | June 7, 2022
○ Telebehavioral Health State Actions
  • Mei Kwong, executive director, Center for Connected Health Policy
○ Table Discussions
○ Pair and Share
○ Large Group Report Out
Raise your hand if your state enacted legislation related to telehealth in 2022.

Put those hands in the air!
Enacted Telehealth Legislation in 2022

- Additional Telehealth Modalities
- Audio-Only Telephone Consults
- Cross State Licensing
- Medicaid
- Online Prescribing
- Private Insurance
- Provider Types

Source: Health Costs, Coverage and Delivery State Legislation
June 7, 2022
NCSL

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
# 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, but uses telehealth technology)</td>
<td>More codes eligible for phone &amp; allowed PTs/OTs/SLPs &amp; other use</td>
</tr>
</tbody>
</table>

### Medicare Issues

- **DEA – PHE prescribing exception/allowed phone for suboxone for OUD**
- **HIPAA – OCR will not fine during this time**

## State (Most Common Changes)

<table>
<thead>
<tr>
<th>Medicaid Issue</th>
<th>Change</th>
</tr>
</thead>
<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>
</tr>
</tbody>
</table>

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

- Specialty/conditions where telehealth most likely covered
- Long history of telehealth efficacy in providing services
- Extreme shortage of these services in many regions
First year of pandemic, in Medicare beneficiaries used telehealth for 43% of all behavioral health service
14.1 million services via telehealth in Medicare first year of pandemic
“the use of telehealth may improve access, especially for beneficiaries facing barriers to care.”

Office of the Inspector General, “Telehealth Was Critical for Providing Services to Medicare Beneficiaries During the First Year of the COVID-19 Pandemic”
OIG Report – States Report Multiple Challenges With Using Telehealth to Provide Behavioral Health Services to Medicaid Enrollees

Study pre-dated the pandemic (Jan and Feb 2020).

Reported challenges by states:
- Lack of training for providers & enrollees
- Limited connectivity (providers & enrollees)
- Protecting privacy and security
- Costs of infrastructure
- License reciprocity
- Informed consent
### TEMPORARY FEDERAL TELEHEALTH CHANGES

<table>
<thead>
<tr>
<th>MEDICARE</th>
<th>PRESCRIBING</th>
<th>HIPAA</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Waived statutory requirements</td>
<td></td>
<td></td>
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<tr>
<td>• Series of administrative changes</td>
<td></td>
<td></td>
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<tr>
<td>• Prescribing during PHE w/o meeting limited exceptions</td>
<td></td>
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<tr>
<td>• OCR exercise discretion</td>
<td></td>
<td></td>
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<tr>
<td>• Opened up the possibility of using other modalities</td>
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</tbody>
</table>
## Most Common Temporary State Telehealth Changes

<table>
<thead>
<tr>
<th><strong>Reimbursement</strong></th>
<th><strong>Licensure/Consent</strong></th>
<th><strong>Re-defining Telehealth</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>• Medicaid</td>
<td>• Relaxed licensure requirements</td>
<td></td>
</tr>
<tr>
<td>• Commercial Payers</td>
<td>• Timing and types of consent (allowed to be oral and expanded when can obtain it)</td>
<td>• Inclusion of audio-only</td>
</tr>
</tbody>
</table>
Reported challenges by states:

- Lack of training for providers & enrollees
- Limited connectivity (providers & enrollees) <- Allowed audio-only
- Protecting privacy and security <- Feds and some states relaxed
- Costs of infrastructure
- License reciprocity <- Licensure eased
- Informed consent <- Expanded types of consent and timing
Most established telehealth policies on reimbursement are made up of
- 4 typical elements
- Most limitations are around these 4 elements
## LICENSURE

<table>
<thead>
<tr>
<th>COMPACTS</th>
<th>RECIPROCITY</th>
<th>REGISTRY/SPECIFIC LICENSE</th>
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<tbody>
<tr>
<td>• Most popular option, numerous compacts</td>
<td>• While states may have on the books reciprocity laws, few seem to actually be used</td>
<td>• Florida &amp; Arizona created a registry</td>
</tr>
<tr>
<td></td>
<td>• Telehealth licenses</td>
<td>• Telehealth licenses</td>
</tr>
</tbody>
</table>
RE-DEFINING TELEHEALTH

PRE-PANDEMIC

Most definitions for telehealth/telemedicine excluded audio-only or telephone as a modality in which to deliver services

COVID-19

States are changing their definitions to include “audio-only” as a modality that falls under telehealth/telemedicine
Consent and privacy relaxations rolling back

Infrastructure continues to be a significant topic of discussion

- Federal govt investing in some infrastructure with funding to build out connectivity and subsidy programs
- Some states have invested in broadband
- However, this is a long-term issue, and will not be solved in 12-24 months

One topic states flagged where there has been little attention is the provider/patient training.
47 states passed 201 bills related to telehealth

- Most popular issues were private payer reimbursement, Medicaid reimbursement, cross state licensing

Policies impacting specific professions were also significantly up

- Online prescribing
- Specific language that telehealth was allowed for certain providers
CCHP Website – cchpca.org

Subscribe to the CCHP newsletter at cchpca.org/contact/subscribe
What action has your state taken related to telebehavioral and telemental health since the COVID-19 pandemic?

What sort of data or information has your state gathered on telebehavioral health utilization, outcomes, efficacy, etc.?

What challenges does your state face related to expanding access to telebehavioral and telemental health services?

Table Discussions (Round Robin Style)
Find someone in the room you have not talked to today to discuss any of the following:

- Something interesting you learned from another state
- Questions you still have
- Actions you plan to take (e.g., stakeholder engagement, legislative action, etc.)
NCSL Resources

• Health Costs, Coverage and Delivery State Legislation
• Bringing the Benefits of Telehealth to Rural and Underserved Patients
• Telehealth Explainer Series: A Toolkit for State Legislators

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