

# Telehealth Private Insurance Laws

BY JACK PITSOR

While many aspects of the telehealth policy landscape have evolved over the last decade, one of the most significant trends has been the proliferation of state laws affecting private insurance coverage for telehealth. Currently, 43 states and the District of Columbia have telehealth private insurance laws—up from 16 states in 2012, according to the [Center for Connected Health Policy](#). These state laws, however, vary greatly in scope—including what exactly private health insurers are required to cover and, in some cases, reimburse for telehealth.

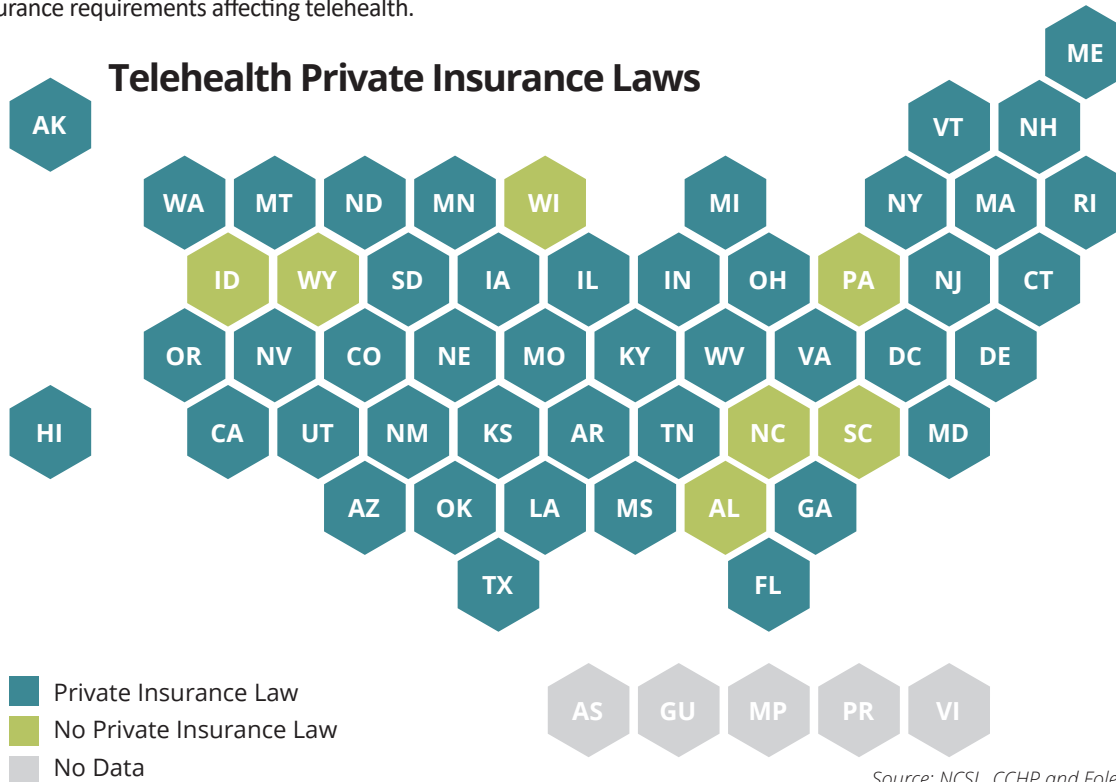
Many providers and policy experts argue guaranteeing coverage and payment for telehealth, especially coverage and payment equal to in-person care, [provides a financial incentive](#) for health professionals to use telehealth. Additionally, private insurance coverage [increases access](#) to virtual care and reduces out-of-pocket costs for patients receiving care through telehealth. During the COVID-19 pandemic, expanding private insurance coverage for telehealth helped [ensure continuity of care](#), particularly for patients with chronic conditions.

However, some payers and providers maintain telehealth is [not always equivalent](#) to in-person care, especially as it relates to establishing a provider-patient relationship. And, while many view telehealth as a [cost-effective alternative](#) to in-person services, some policy experts believe requiring equal payment [may negate these cost-savings](#).

Given these considerations, policymakers continue to evaluate the appropriate approach to improve access to virtual care through telehealth private insurance laws. This explainer provides an overview of these state laws, including coverage parity, payment parity and other private insurance requirements affecting telehealth.

## 3 Things to Know:

- 1 Forty-three states and the District of Columbia have **state laws affecting private health insurance coverage for telehealth**.
- 2 Forty-one states and the District of Columbia require private insurers to **cover telehealth similarly to in-person care**, referred to as “coverage parity.”
- 3 Twenty-two states require private insurers to **reimburse providers for telehealth on the same basis or at the same rate** as in-person care, referred to as “payment parity.”



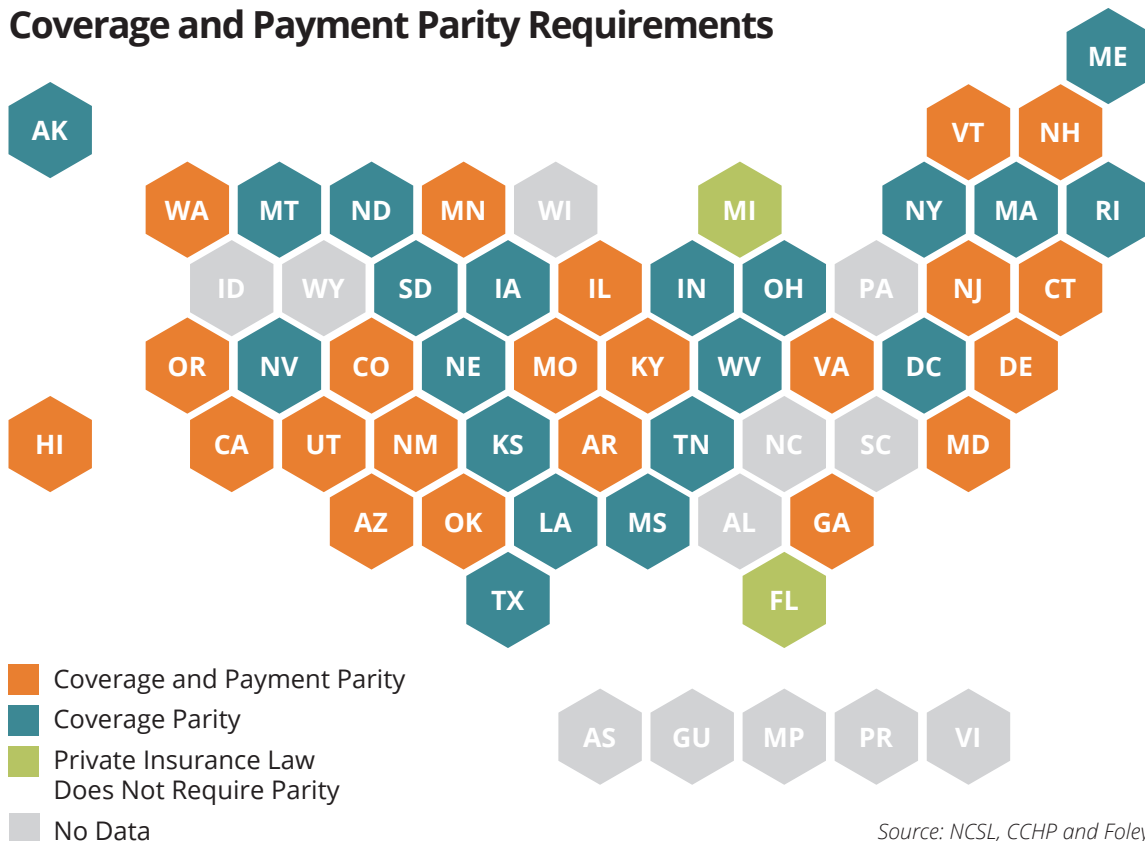
## The Type of Private Health Insurance Plan, and How It Is Funded, Makes a Difference

State telehealth private insurance laws affect only certain state-regulated health plans, such as insurance plans sold on the Affordable Care Act’s individual and small group marketplaces and fully insured employer-sponsored plans. However, these laws—like most state laws regulating private health insurance—**do not affect** self-funded employer-sponsored health plans, which cover **more than 60% of workers** who receive insurance through their employer. This limitation is due to the federal Employee Retirement Income Security Act (ERISA), which **preempts state laws** and regulations that directly or, sometimes, indirectly apply to self-funded health plans. Federal policymakers have the authority to establish **telehealth coverage requirements for ERISA plans**.

## Coverage Requirements


Forty-one states and the District of Columbia mandate coverage parity, which requires private insurers to cover telehealth similarly to in-person care. These state laws often specify insurers cover telehealth “in the same manner” or “to the same extent” as in-person services and prohibit insurers from denying coverage solely because a service is delivered through telehealth. Additionally, coverage parity laws typically clarify insurers are not required to cover virtual health services they do not cover in-person, and that they can apply the same level of cost-sharing to telehealth as they would for in-person care.


## Coverage and Payment Parity Requirements






Some states set limits on what private insurers are required to cover. For example:

 **Washington** applies telehealth coverage requirements only to services recognized as an **essential health benefit** under the Affordable Care Act.

 **South Dakota** authorizes private insurers to establish criteria a provider must meet to demonstrate a certain service or treatment can be safely and effectively delivered via telehealth.

 Two states with private insurance laws—**Florida** and **Michigan**—do not explicitly require coverage parity. Rather, these states give insurers more authority over the extent of coverage they provide for telehealth.


## Reimbursement Requirements


While most private insurance laws require coverage parity, fewer state laws stipulate what insurers must pay for telehealth. Twenty-two states mandate payment parity, which requires private insurance reimbursements for telehealth to reflect what the insurer would pay for in-person services. Some state laws require reimbursements for telehealth to be “the same amount” or “at the same rate” as in-person services. **Certain policy experts** maintain this statutory language provides a stricter standard for private insurers and ensures reimbursement rates are truly equivalent to in-person care.


Other payment parity laws specify private insurers must reimburse “on the same basis” as in-person care, which **some argue** may better account for potential cost savings achieved through telehealth—such as lower facility and administrative fees.

Some states—including **California**, **Georgia** and **Washington**—require payment parity, but also authorize insurers and providers to **voluntarily differentiate** reimbursements via contract negotiations.

Several other states have established requirements for private insurance reimbursements, but they do not constitute full payment parity for all services delivered through telehealth. For example:

 Some states limit payment parity to certain types of services and specialties. **Iowa**, **Massachusetts** and **Nebraska** mandate payment parity for telemental health or behavioral health services. Massachusetts also temporarily extended payment parity requirements to primary care and chronic disease management services until January 2023. **Rhode Island** established payment parity for primary care, dietitian and behavioral health services.

 At least six states—**Florida**, **Kansas**, **Nebraska**, **North Dakota**, **Tennessee** and **West Virginia**—have statutory language fully deferring to reimbursement rates determined through provider-insurer contract negotiations rather than requiring payment parity.

 **Louisiana** requires private health insurers to reimburse providers at originating sites—or where the patient is located when using telehealth—for at least 75% of the in-person rate.

## Other Private Insurance Requirements

Beyond coverage and payment parity, states have enacted legislation enhancing private insurance coverage for telehealth in other ways.

### Cost-sharing protections

According to [Foley and Lardner LLP](#), 30 states provide cost-sharing protections for health plan enrollees using telehealth, which often ensures patients do not face higher copayments, coinsurance or deductibles for telehealth visits compared to in-person care.

### Coverage for different modalities

[Foley](#) also identified 27 states that require private insurance coverage for [store-and-forward technologies](#), and 17 states that mandate coverage for [remote patient monitoring](#).

### Limiting coverage exclusions

Some states prohibit insurers from establishing additional criteria as a condition for telehealth coverage. For example, [Colorado](#) enacted legislation in 2020 prohibiting health insurers from requiring a previously established provider-patient relationship, or from imposing additional certification, location or training requirements prior to covering telehealth. The legislation also prevents insurers from establishing specific requirements or limitations on telehealth technologies in compliance with the Health Insurance Portability and Accountability Act.



**A note about this brief:** Although the COVID-19 pandemic ushered in a wave of private insurance coverage requirements, many of these actions are temporary. State counts listed throughout this brief only include permanent laws and regulations. Please refer to the Telehealth, COVID-19 and Looking Ahead brief for more information.

### About the Telehealth Explainer Series

As state leaders seek to capitalize on the potential for telehealth to support the health care workforce and improve access to care, a number of state policy issues may arise. This new series of explainer briefs addresses six aspects of telehealth to better inform policymaking for state lawmakers.

This resource is supported by the Health Resources and Services Administration (HRSA) of the U.S. Department of Health and Human Services (HHS) as part of an award totaling \$853,466 with 100% funded by HRSA/HHS. The contents are those of the author(s) and do not necessarily represent the official views of, nor an endorsement, by HRSA, HHS, or the U.S. Government.

**Tim Storey, Executive Director**

7700 East First Place, Denver, Colorado 80230, 303-364-7700 | 444 North Capitol Street, N.W., Suite 515, Washington, D.C. 20001, 202-624-5400

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