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Telehealth Federal Policy in 2023

January 18, 2023

Mei Wa Kwong, JD, Executive Director, CCHP

Center for Connected Health Policy

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# Telehealth Policy Changes in COVID-19

## Federal

<table>
<thead>
<tr>
<th>Medicare Issue</th>
<th>Change</th>
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### Medicare Issue
- Geographic Limit
- Site limitation
- Provider List
- Services Eligible
- Visit limits
- Modality
- Supervision requirements
- Licensing
- Tech-Enabled/Comm-Based (not considered telehealth, but uses telehealth technology)

### Change
- Waived
- Expanded
- Added additional 80 codes
- Waived certain limits
- Live Video, Phone, some srvs
- Relaxed some
- Relaxed requirements
- More codes eligible for phone & allowed PTs/OTs/SLPs & other use

## Medicaid Issue

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### Medicaid Issue
- Modality
- Location
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- Services
- Providers
- Licensing

### Change
- Allowing phone
- Allowing home
- Relaxed consent requirements
- Expanded types of services eligible
- Allowed other providers such as allied health pros
- Waived some requirements

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

• DEA – PHE prescribing exception/allowed phone for suboxone for OUD
• HIPAA – OCR will not fine during this time
First declared on January 31, 2020
Renewed 12 times
Last renewed on January 11, 2023
End date of April 11, 2023
Potential renewal one more time?
DEVELOPMENT OF TELEHEALTH POLICY

Legislation

Administrative/Regulatory
• **Consolidated Appropriations Act of 2021**
  • Expanded permanent telehealth policy to allow for mental and behavioral health services to be provided in the home without geographic requirement applying **IF** certain conditions met (in-person visit w/telehealth provider 6 months prior to telehealth services taking place)

• **Budget Act of 2022**
  • Delayed implementation of certain policies and expiration dates on some temporary waivers until 151 days after the PHE is declared over
    • FQHC, RHC, PT, OT, SLP remain eligible providers
    • Geographic limitation waive; home still eligible site for services
    • Audio-only can continue to be used

• **Consolidated Appropriations Act of 2023**
  • Changed end date of temporary waivers to December 31, 2024
Consolidated Appropriations Act of 2023

- Changed end date of temporary Medicare waivers to December 31, 2024. Waivers include:
  - Location- suspends geographic requirement; allows home to be an eligible site
  - Allows some providers to continue to be reimbursed for telehealth delivered services including PT, OT, audiologists
  - Allows FQHCs and RHCs to continue to provide services via telehealth
  - Allows audio-only to be used to provide some services
  - Delays implementation of permanent policy regarding mental health services & telehealth (the prior in-person visit requirement) to January 1, 2025
  - Requires a study on telehealth that will look at the data gathered from services provided in the 2022-2024 period. Interim report due October 1, 2024; final report due April 1, 2026
  - Extension of safe harbor for absence of a deductible for telehealth
Will allow some of the temporarily eligible telehealth services made available during COVID-19 to remain eligible for reimbursement until 2023 (“Category 3”)

For permanent policy, audio-only may be used to provide mental and behavioral health services if certain conditions met

Redefined “mental health visit” for FQHC/RHCs to include the use of live video and audio-only. Does NOT mean FQHCs/RHCs are telehealth providers or providing services via telehealth. Special billing instructions post-PHE

During the 151-day “grace period” COVID-19 eligible telehealth services list will be available. (Needs to reconcile with new language passed in budget act)
### Federal Telehealth Policy (1/11/23)

<table>
<thead>
<tr>
<th>Permanent Telehealth Policy</th>
<th>Automatically Goes Away</th>
<th>Post-PHE Through December 31, 2024</th>
<th>Post-PHE Through End of the Year PHE Ends</th>
</tr>
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<tr>
<td><strong>Medicare</strong></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>• Limited the use of telehealth to take place in specific geographic locations and sites (mostly medical facility)</td>
<td>• OCR exercising discretion on HIPAA</td>
<td><strong>Medicare:</strong></td>
<td>• Category 3 services</td>
</tr>
<tr>
<td>• Primarily only live video allowed</td>
<td>• PHE exception of prescribing controlled substances</td>
<td>• Geographic limitation temporarily suspended</td>
<td>• Virtual presence for direct supervision</td>
</tr>
<tr>
<td>• Limited list of providers eligible to provide services</td>
<td><strong>Medicare:</strong></td>
<td>• Home temporarily continues to be an eligible originating site for services</td>
<td></td>
</tr>
<tr>
<td>• Mental health services provided w/o geographic requirement &amp; in the home &amp; audio-only can be used if certain conditions met like prior in-person visit.</td>
<td>• Can continue to use audio-only to provide some services, not just mental health</td>
<td>• FQHCs, RHCs, OTs, PTs and some other can continue to be eligible providers</td>
<td></td>
</tr>
<tr>
<td>• FQHC/RHC allow use live video &amp; audio-only for mental health visits</td>
<td>• Suspension of the prior in-person visit requirement to provide mental health services or use audio-only to provide mental health services to Jan. 1, 2025</td>
<td>* At this point, the COVID list of eligible services is still on the 151-day grace period track unless CMS takes further action</td>
<td></td>
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**Prescribing of Controlled Substances (Ryan Haight Act)**

• Narrow exceptions to the use of telehealth one of which is when a PHE is declared

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• **Proposed** regulations by SAMHSA
  • Makes permanent initiation of buprenorphine via audio-only or audio-visual telehealth if an opioid treatment program (OTP) physician PCP or authorized healthcare professional under supervision of program physician determines adequate eval can be done via telehealth.

• **CMS issued letter** noting Medicaid programs can cover eConsult, but it is not mandated.
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Hosting TRC: Mid-Atlantic Telehealth Resource Center (MATRC)

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