What Will 2024 Bring for Telehealth Policy?

January 18, 2024
HRSA Funded Telehealth Resource Centers

www.telehealthresourcecenter.org

12 REGIONAL RESOURCE CENTERS

2 NATIONAL RESOURCE CENTERS

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Webinar Tips and Notes

• Your phone &/or computer microphone has been muted.
• If we do not reach your question, please contact your regional TRC. There may be delays in response time: https://telehealthresourcecenter.org/contact-us/
• Please fill out the post-webinar survey.
• Closed Captioning is available.
• Please submit your questions using the Q&A function.
• The webinar is being recorded.
• Recordings will be posted to our YouTube Channel: https://www.youtube.com/c/nctrc
The 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
TODAY’S WEBINAR

• Provide an overview of the federal and state telehealth policy landscape
• Talk about the current status of certain policies
• Items to monitor & what might happen this year
• This webinar is not one to answer very specific billing questions. If you have a specific billing question, please contact your TRC or CCHP directly
FEDERAL & STATE

Federal Policy

- MEDICARE/CMS
- PRESCRIBING OF CONTROLLED SUBSTANCES (DEA)
- HIPAA/PRIVACY/DATA
- LICENSURE

State Policy

- MEDICAID
- PRIVATE PAYER
- PRESCRIBING
- LICENSURE
FEDERAL:
CMS & Medicare
(Reimbursement & Coverage)
MEDICARE TELEHEALTH POLICY EVOLUTION

Pre-Covid
Fairly Limited

During Pandemic
Series of Waivers

Post-Pandemic
Majority of waivers remain until end of 2024
## MEDICARE TELEHEALTH POLICY IN 2024

<table>
<thead>
<tr>
<th><strong>WAIVER DURING COVID-19</strong></th>
<th><strong>REMAINS UNTIL THE END OF 2024</strong></th>
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<tbody>
<tr>
<td>Waiver of geographic requirement</td>
<td>✓</td>
</tr>
<tr>
<td>All eligible providers in Medicare &amp; FQHCs/RHCs to be eligible providers</td>
<td>✓</td>
</tr>
<tr>
<td>Site limitation waived (allowing places such as the home)</td>
<td>✓</td>
</tr>
<tr>
<td>Allow some services to be provided via audio-only</td>
<td>✓</td>
</tr>
<tr>
<td>Expanded list of eligible services to be provided via telehealth</td>
<td>Varies, but mostly remains intact</td>
</tr>
<tr>
<td>WAIVER DURING COVID-19</td>
<td>REMAINS UNTIL THE END OF 2024</td>
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<tr>
<td>Allowing provider to use business address rather than putting home address</td>
<td>✓</td>
</tr>
<tr>
<td>Waiving frequency limit on telehealth visits in SNFs</td>
<td>✓</td>
</tr>
<tr>
<td>Allowing for direct supervision to be done via telehealth</td>
<td>Some remain intact such as supervision of residents when the service is furnished virtually.</td>
</tr>
</tbody>
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- CCHP 2024 Physician Fee Schedule Fact Sheet
- 2024 Physician Fee Schedule Final
- Consolidated Appropriations Act 2023
- CMS Telehealth Fact Sheet (Dated 12/2023)
FEDERAL:
Prescribing & Controlled Substances
CONTROLLED SUBSTANCE PRESCRIBING VIA TELEHEALTH

Limited Exceptions in Ryan Haight Act

One exception is when PHE declared, COVID activated exception

DEA Issues Proposed Post-PHE Regs

Temporary extension to 11/2023

Late 2023, DEA extended the exception through to the end of 2024

DEA Full Text of Extension to end of 2024.
FEDERAL:
HIPAA/PRIVACY/DATA
HIPAA

Pre-COVID Telehealth wasn't specifically addressed

During/Post-COVID - Realization HIPAA outdated
HIPAA

- During COVID, OCR issued guidance that they would “exercise discretion” on HIPAA as it related to using telehealth technology. This has since expired.
- Biden Administration issued Executive Order to look at updating HIPAA regulations.
- In the meantime, several resources have been provided related to telehealth by HHS:
  - Resource for Health Care Providers on Educating Patients about Privacy and Security Risks to Protected Health Information when Using Remote Communication Technologies for Telehealth
  - Privacy and Security Tips for Patients
  - General HHS site on HIPAA & Telehealth
  - Guidance on How the HIPAA Rules Permit Covered Health Care Providers and Health Plans to Use Remote Communication Technologies for Audio-Only Telehealth
• Conversation now gone beyond just HIPAA and concerns about privacy, data and tracking
• In 2023 FTC and HHS warned hospitals and telehealth providers about privacy and security issues related to online tracking
  • CCHP Newsletter – [FTC & OCR Stress (Again) the Importance of How Health Data is Handled (Sept. 2023)](https://example.com).
  • HHS - [Use of Online Tracking Technologies by HIPAA Covered Entities and Business Associates](https://example.com)
FEDERAL: Licensure
US District Court for New Jersey Court Case

- MacDonald v. New Jersey State Board of Medical Examiners
- Specific case on telemedicine and licensure that makes the argument that requiring a license of an out-of-state provider is in violation of the US Constitution
- Based arguments on:
  - Commerce Clause (Dormant Commerce Clause)
  - Privileges & Immunities Clause
  - First Amendment (Speech)
  - Fourteenth Amendment Due Process Clause
STATE:
Medicaid & Private Payer
(Reimbursement & Coverage)
MEDICAID & PRIVATE PAYER LAWS

- 50 States & DC reimburse for Live Video
- 33 States reimburse for some store and forward (some may only do it for CTBS)
- 37 States have some reimbursement for RPM
- 43 States have some reimbursement for audio-only
- 43 States, DC and Virgin Islands have a private payer law
STATE: Prescribing
Prescribing/establishing a patient-provider relationship
- Can telehealth be used to establish a relationship?
- Most states allow if live video is used
- A few exceptions allow asynchronous

Limitations on Prescribing
- Abortion
- Vision & Hearing
- Marijuana
- Controlled Substances
STATE: Licensure
LICENSURE

• Compacts
  • Compacts are structured differently
• Registries
• Limited Exceptions
  • Prior established relationship
  • Infrequent interactions
  • Contiguous state exception
What to Look Out For in 2024
Decisions on temporary Medicare policies & prescribing of controlled substances
  - Look for potentially some policies to be in larger bills
  - HIPAA Update due this year
  - AI Continues to be a significant point of discussion
    • Executive Order on AI
    • NIST Draft Guidance on Privacy Protection Technique for AI
  - Broadband – Affordable Connectivity Program – proposal to continue funding it, but it will need to make it through the budget process
Most states have settled on their policies
- Increasing interest in data collection, efficacy
- Some have also temporary extensions
- Areas of further policy development/discussion
  - Expanding Medicaid
  - Licensure
  - Prescribing

State Budget Shortfalls
CCHP Website – cchpca.org

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Thank You!

www.cchpca.org

info@cchpca.org
Our Next Webinar

The NCTRC Webinar Series

Occurs 3rd Thursday of every month.

**Telehealth Topic:** Can You Hear Me? Equitable Access to Telehealth for Deaf, Hard of Hearing, and Deaf-Blind Patients

**Hosting TRC:** Mid-Atlantic Telehealth Resource Center (MATRC)

**Date:** February 21, 2024*

**Times:** 11 AM – 12 PM (PT)

*This webinar has been rescheduled from our usual third Thursday schedule.
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https://www.surveymonkey.com/r/XK7R72F