



Federal and State Telehealth Legislative 2023 Updates

Arizona Telemedicine Council
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Overview

Federal

Where are we with telehealth and the public health emergency?
What did the Consolidated Appropriations Act of 2023 authorize?

Telehealth legislation and policy updates from national associations

Center for Telehealth and eHealth Law Digital Health Summit, December 2022
American Telehealth Association Policy Edge, December 2022

Arizona

State telehealth legislation and regulations

Looking ahead

Market, Federal, and State

(Extended to April 11, 2023 – **12th extension**)



Public Health Emergency

set to end on January 11, 2023

Transition period: **151 – day grace period** will go into effect

- **Geographic and site requirements** still waived by CMS, and patient can receive care in the home.
 - After grace period restrictions will revert to pre-PHE.
- Use of **audio-only** telehealth
 - After grace period likely restricted to behavioral health services.
- **Medicare reimbursement** for telehealth visits for physical therapists, occupational therapists, speech language pathologists, and audiologists will end.

No grace period

- Prescribing controlled substances requires an in-person visit. Ryan Haight Act no longer waived.

Federal

Where are we with telehealth and the public health emergency?
What did the Consolidated Appropriations Act of 2023 authorize?

Five Key Telehealth Takeaways from the Consolidated Appropriations Act, 2023



<https://telemedicine.arizona.edu/blog/disentangling-telehealth-public-health-emergency>

Full text of the [legislation](#).

#1: Patients can continue to access telehealth from their home.

#2: Audio-only telehealth services is allowed.

#3: In-person visits for telebehavioral health not required under the CAA, but virtual prescribing for controlled substances still tied to PHE.

#4: Extend pre-deductible telehealth waiver (safe harbor provision).

#5: Expand care options with eligible practitioners, safety net providers, and acute hospital care at home programs.

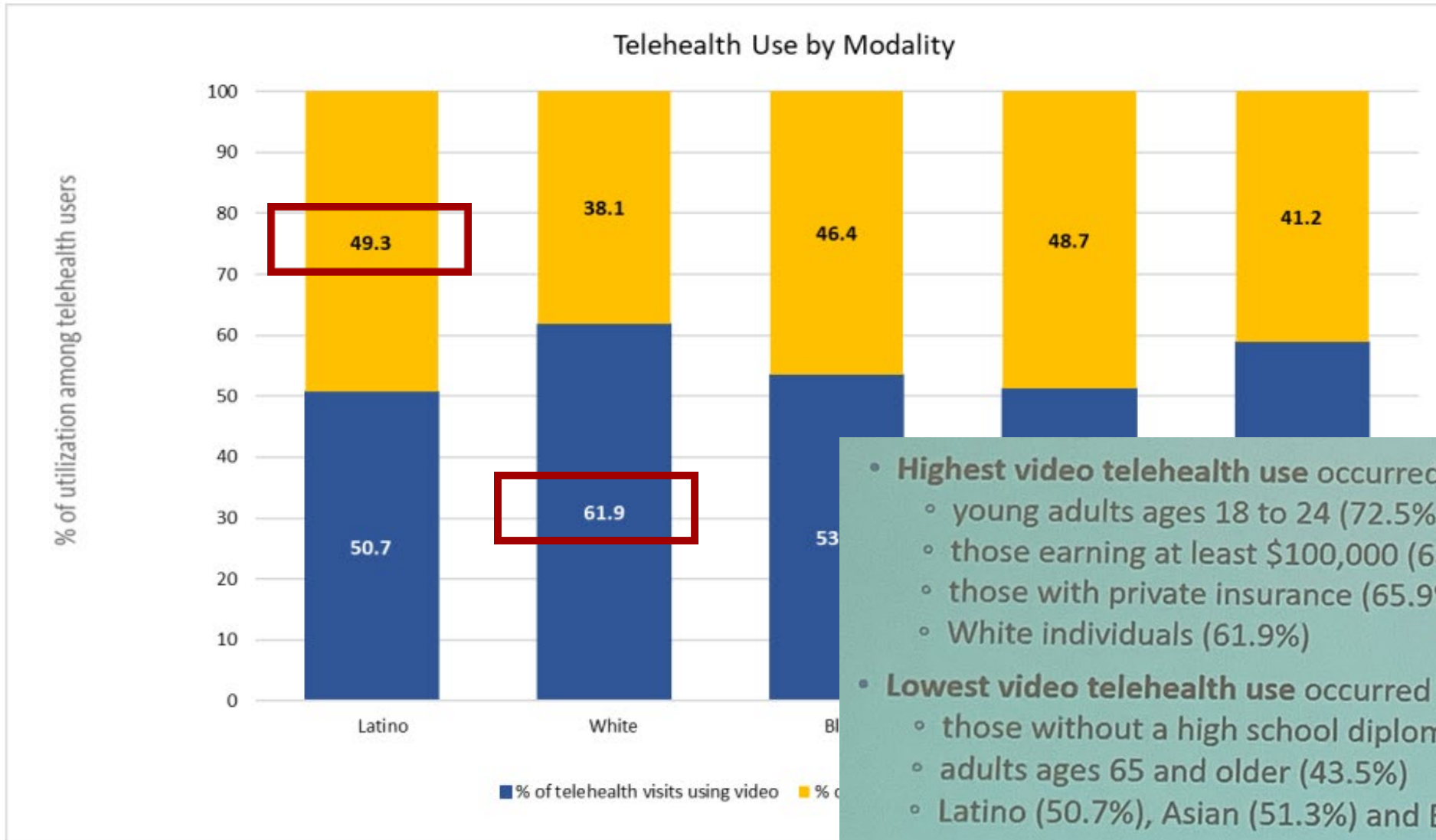
- Almost 1 in 5 beneficiaries used certain audio-only telehealth services, with the vast majority of these beneficiaries using them exclusively.
- Older beneficiaries were more likely to use these audio-only services than younger beneficiaries.
 - Notable because older beneficiaries were less likely to use all telehealth services than younger beneficiaries.

The vast majority of beneficiaries who used certain audio-only services **did not use any audio-video telehealth services.**



Source: OIG analysis of CMS data, 2022.

Figure 2. Telehealth Modality (Video vs. Audio) Among Telehealth Users, By Race/Ethnicity



- **Highest video telehealth use** occurred among:
 - young adults ages 18 to 24 (72.5%)
 - those earning at least \$100,000 (68.8%)
 - those with private insurance (65.9%)
 - White individuals (61.9%)
- **Lowest video telehealth use** occurred among:
 - those without a high school diploma (38.1%)
 - adults ages 65 and older (43.5%)
 - Latino (50.7%), Asian (51.3%) and Black individuals (53.6%)

Medicaid:

CMS Should Assess Effect of Increased Telehealth Use on Beneficiaries' Quality of Care

GAO-22-104700

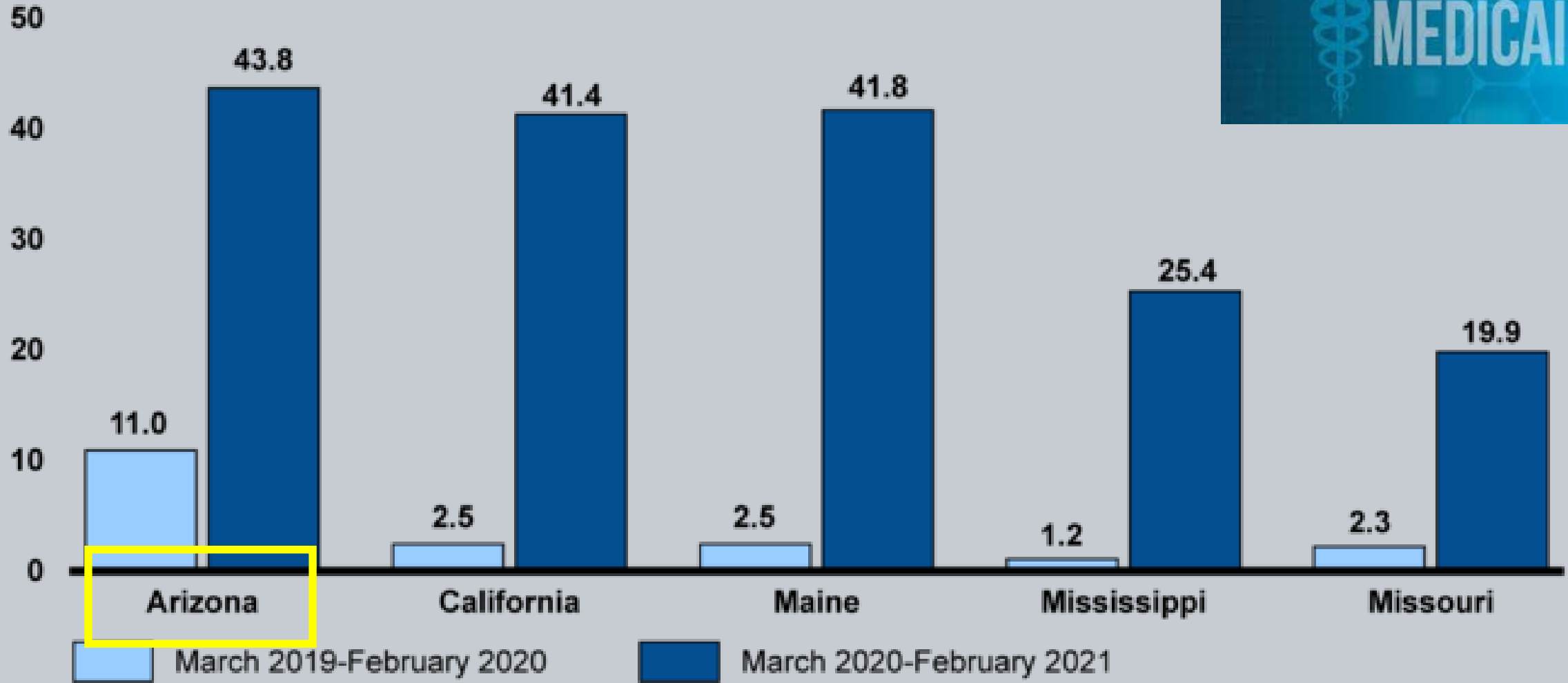
Published: Mar 31, 2022. Publicly Released: Mar 31, 2022.

Medicaid enrolls about 76 million low-income Americans.

Medicaid beneficiaries living in five states increased telehealth use dramatically at **15x** the pre-pandemic level.



Percentage



Source: GAO analysis of Centers for Medicare & Medicaid Services data. | GAO-22-104700

Audio-Only carve out in definition of ‘Telehealth’

Interactive use of **audio**, video or other electronic media, including **asynchronous** store-and-forward technologies and **remote patient monitoring** technologies, for the practice of health care, assessment, diagnosis, consultation or treatment and the transfer of medical data; and

Audio-only if an audio-visual telehealth encounter is not reasonably available due to the patient's functional status or **lack of technology or infrastructure limits**, as determined by the healthcare provider.



AZ HB 2454
Enacted May 2021

Audio-Only Coverage of Behavioral Health Common Across Medicaid Programs

Amid the COVID-19 pandemic, a majority of US states expanded Medicaid coverage of telebehavioral health, with most extending access to audio-only delivery of these services.



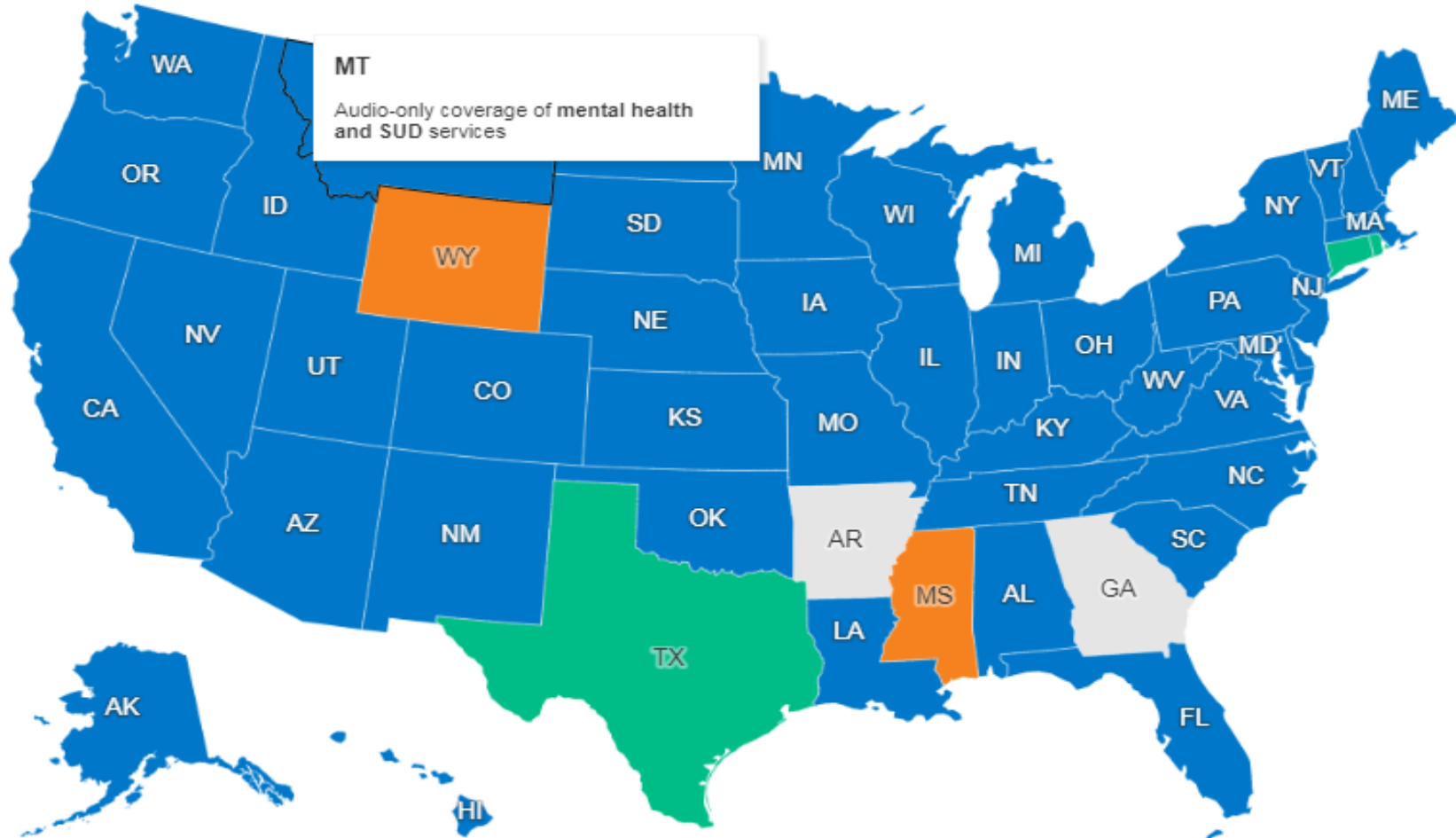
Source: Getty Images

As of July 2022,
44 states provided audio-only
coverage of mental health and
substance use disorder services.

Figure 2

States Providing Medicaid Coverage of Behavioral Health Services Delivered via Audio-Only Telehealth, as of 7/1/2022

■ Audio-only coverage of **mental health and SUD** service (44 states incl DC) ■ Audio-only coverage of **mental health** services (not SUD) (3 states) ■ No audio-only coverage of mental health or SUD services (2 states) ■ NR (2 states)



Telehealth Delivery of Behavioral Health Care in Medicaid: Findings from a Survey of State Medicaid Programs

NOTE: Findings are from KFF's 22nd annual budget survey of Medicaid officials conducted by KFF and Health Management Associates (HMA).
SOURCE: Telehealth Delivery of Behavioral Health Care in Medicaid: Findings from a Survey of State Medicaid Programs • PNG



Telehealth Law & Policy

Access

Digital Divide
In Person Requirements
Geographic Restrictions
Modality (audio-only)

Costs

Reduced Costs
Fraud & Abuse
Unnecessary Utilization
Investment: Tech & Workforce

Licensure

Interstate Practice
Compacts
Telehealth Registration

Privacy & Consent

HIPAA
Consumer Data Protection
Security Risks

Liability

Malpractice insurance
Standard of care
Prescribing of controlled substances

Reimbursement

Payment Parity
Safety Net Providers
Remote Patient Monitoring

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Post-PHE and
future of **hospital at
home care**

Impact of telehealth
on mitigating provider
burnout, esp. for
behavioral health

How to balance
protecting data **privacy**
with data sharing?

Increased OIG
attention on
identifying
telemedicine **fraud**
via data mining
and claims outliers

**Telemedicine
prescribing**

What policy changes can we
make and drive to support
telebehavioral health
services?

How to create **hybrid models of care** that
demonstrate value and ROI?

- What setting(s) are best for patient outcomes:
in person, at home, virtual, hybrid
- What is needed by providers and payers to
meet patient demand and preferences?

Arizona

State telehealth legislation and regulations

Telehealth Advisory Committee

Submitted [report](#) with recommendations re: **audio-only** on 12/2021.

Monitor **out-of-state providers** until 2026.

Sunset provision for 2029 removed as of 3/23/22 ([SB 1390](#))

Proposed rule changes for telehealth registration for **out of state providers** (12.30.22)

<https://track.govhawk.com/public/registers/1xpK3>

Three Year Pilot Program for **acute care services delivered at home**

Expanded with [HB 2374](#) effective as of 04/14/2022.

Any **nurse visits** under the program may be virtual or in person.

Paramedic visits may provide required on-site visits for patient assessment.

Looking ahead

Market: RPM and Acute Hospital Care at Home Programs

Federal: Telehealth permanent bills

State: Data privacy; licensure

AHCaH

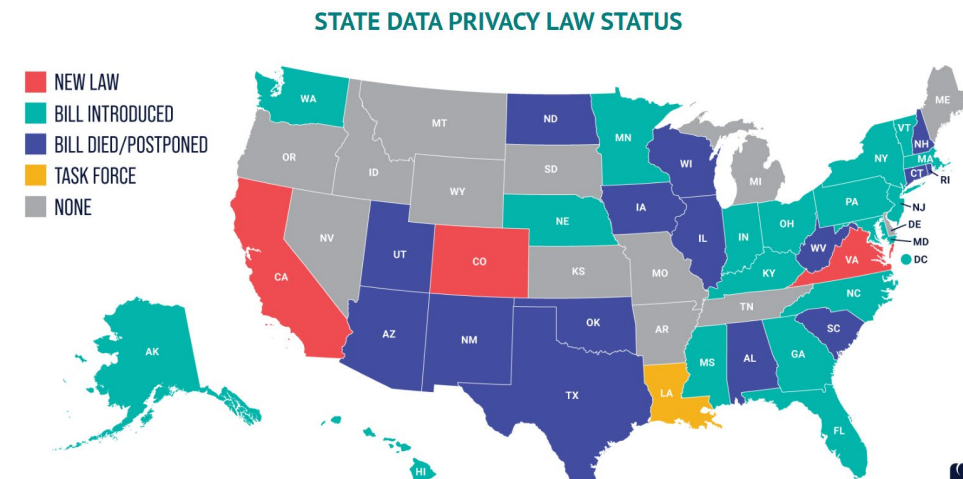
259 hospitals across 37 states participating in the [program](#).

RPM

Only 5% of Medicare beneficiaries are using RPM today. [Estimates](#) project 25% of the US population by 2025.

Resurgence of telehealth permanence bills from the 117th

[CONNECT for Health Act](#)
[Telemental Health Care Access Act](#)
[Telehealth Modernization Act](#)



Looking ahead

Interstate practice allowing telehealth registration, not a license, and rise in licensure compacts

Telehealth Registration

- Current, valid, and unrestricted license in another state;
- Not subject to any past disciplinary proceedings in any state where the provider holds a professional license;
- Must maintain and provide evidence of professional liability insurance;
- Must not open an office or offer in-person treatment in that state; and
- Must annually register and pay a fee with the appropriate state licensing board.

Telehealth registration is currently across seven states:

- [Arizona](#)
- [Florida](#)
- [Indiana](#)
- [Kansas](#)
- [Minnesota](#)
- [Vermont](#)
- [West Virginia](#)

Looking ahead

Interstate practice allowing telehealth registration, not a license, and rise in licensure compacts

Eight Active Compacts

Increasing in number of states, applications, and new compacts

- Interstate Medical Licensure Compact (IMLC)
- Nurse Licensure Compact (NLC) and Advanced Practice Registered Nurse Compact (APRN Compact)
- Recognition of Emergency Medical Services Personnel Licensure Compact (The EMS Compact)
- The Physical Therapy Compact (PT Compact)
- The Psychology Interjurisdictional Compact (PSYPACT)
- Audiology and Speech-Language Pathology Interstate Compact (ASLP-IC)
- The Occupational Therapy Licensure Compact (OT Compact)
- Counseling Compact - (CC)

In development

- Social Work Compact
- Physician Assistant Compact
- Dentists and Dental Hygienists Compact

Looking ahead

Future telehealth law & policy webinar/virtual office hours:

April 12, 2023:

Navigating National Telehealth Legislative and Policy Changes as Telehealth Advances Beyond the Public Health Emergency

October 25, 2023:

The Changing Role of Health Professional Licensing Boards as States Minimize Telehealth Barriers

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THE UNIVERSITY OF ARIZONA
JAMES E. ROGERS COLLEGE OF LAW

Health Law

Thank you

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<https://telemedicine.arizona.edu/>

<https://southwesttrc.org/>

<https://law.arizona.edu/health>

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Questions and ideas are welcome
for all the speakers

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