

Telehealth Federal and State Policy Updates: **AZ HB 2454** and Temporary Waivers to Legislation

Tara Sklar, JD, MPH

Faculty Senior Advisor, Telehealth Law & Policy, Arizona Telemedicine Program
Professor of Health Law and Director, Health Law & Program, Arizona Law

ARIZONA
TELEMEDICINE
PROGRAM



THE UNIVERSITY OF ARIZONA
JAMES E. ROGERS COLLEGE OF LAW

Health Law

Disclosures

- No relevant conflicts of interests.
- This is not legal advice.

Overview



AZ HB 2454

Background, what it covers & what it doesn't, areas to watch

Waivers to Statutes

End of public health emergency waivers and surge of telehealth legislation*

25-Year Reflection – looking back and ahead

Shift in telehealth as additive or substitute service to part of the healthcare system

telehealth

“HB 2454 IS A WIN FOR PHYSICIANS AND PATIENTS ALIKE. EVERY PATIENT DESERVES ACCESS TO THE APPROPRIATE CARE NEEDED TO TREAT THEIR MEDICAL CONDITIONS. HB 2454 WILL BREAK DOWN UNNECESSARY BARRIERS TO TELEHEALTH AND HELP FACILITATE THE DELIVERY OF HIGH-QUALITY CARE TO PATIENTS ACROSS ARIZONA.”

ARIZONA MEDICAL ASSOCIATION PRESIDENT DR. MIRIAM ANAND

HB2454



How Patients Benefit:

- Increases access to primary and specialty care in a timely manner without having to travel long distances.
- Reduces exposure to COVID-19 and other illnesses, which can be more prevalent in health care settings.
- Lowers patient costs and the burdens associated with lost work time, transportation and child care.
- Shortens wait times to see providers, particularly specialists.



How Providers Benefit:

- Builds and supplements workforce capacity in rural areas, where recruiting and retaining health care workers is a challenge.
- Allows primary care providers to more easily connect patients to specialty care where it is not readily available.
- Facilitates consultations between providers both local and remote.
- Allows providers to offer care in various settings, such as home health clinics, hospitals and offices.

TELEHEALTH POLICY CHANGES IN COVID-19

FEDERAL

| MEDICARE ISSUE | CHANGE |
|---|--|
| Geographic Limit | Waived |
| Site limitation | Waived |
| Provider List | Expanded |
| Services Eligible | Added additional 80 codes |
| Visit limits | Waived certain limits |
| Modality | Live Video, Phone, some srvs |
| Supervision requirements | Relaxed some |
| Licensing | Relaxed requirements |
| Tech-Enabled/Comm-Based (not considered telehealth, but uses telehealth technology) | More codes eligible for phone & allowed PTs/OTs/SLPs & other use |

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

STATE (Most Common Changes)

| MEDICAID ISSUE | CHANGE |
|----------------|---|
| Modality | Allowing phone |
| Location | Allowing home |
| Consent | Relaxed consent requirements |
| Services | Expanded types of services eligible |
| Providers | Allowed other providers such as allied health pros |
| Licensing | Waived some requirements |

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

Telehealth Legislation

Practice

Interstate Licensing

Geographic – Originating Site Regulations

Provider-Patient Relationship [in-person visit requirements]

Online Prescribing

Reimbursement

Payment parity [Medicaid and private payers]

Providers & Services

Communication

Telehealth Legislation and **AZ HB 2454**

Practice

Interstate Licensure



Geographic – Originating Site Regulations



Provider-Patient Relationship [in-person visit requirements]



Online Prescribing



Reimbursement

Payment parity [Medicaid and private payers]



Providers & Services



Communication



Established a Telehealth Advisory Committee on Telehealth Best Practices

AZ HB 2454 – Background & Legislative History

May 5, 2021 – HB 2454 signed by Governor Ducey and enacted

January 27, 2021 – HB 2454 was introduced in the House

- **Author:** Representative Regina Cobb (R)
- **Co-Sponsors:** Rep. Joan Osborne (R) and Sen. Nancy Barto (R)
- April 29, 2021: House - Third Reading (Y: 60 N: 0 NV: 0 Abs: 0) [PASS]
- April 22, 2021: Senate - Third Reading (Y: 26 N: 3 NV: 1 Abs: 0) [PASS]

AZ HB 2454 – Background & Legislative History

Prequel to HB 2454 - Waiver to Statute

March 25, 2020: Governor. Ducey issued Executive Order 2020-15 to require all health insurance plans to provide payment parity.

April 7, 2021: Joint Legislative Budget Committee Fiscal Note identified four state fiscal impacts associated with HB 2454 and determined **minimal impact** to the:

- State Employee Health Insurance Trust Fund relative to current practice
- Cost to state's regulatory boards to register out-of-state providers and investigate complaints
- Cost to Department of Insurance and Financial Institutions (DIFI) to enforce HB 2454
- Cost to DHS to establish a 3-year pilot program for the delivery of acute care services in patients' homes

HB 2454 - Definitions

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 telephone encounter between the patient or client and health care provider 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.

Include the use of telehealth in the definition of **direct client contact**.

Definitions cont'd

AZ SB 1682

Remove explicit references that the telehealth encounter must be "real-time" and "with audio and video capability."

CO [HB 1190](#) [Enacted May 2021] Defines **Telemedicine** as:

Amends the definition of telemedicine to **remove references** to interactive audio, video, or data communications

To the **delivery of medical services through HIPAA-compliant telecommunications systems**, while the patient is located at an originating site and the licensee is located at a distant site.

Definitions

■ Licensure

The granting of permission, most often from state governments, to practice a profession or occupation.

■ Interstate Compact

A contract between two or more states creating an agreement on how to address a particular policy issue, adopt a certain standard or cooperate on regional or national matters. Interstate compacts usually require participating states to pass legislation using specific, uniform language.

Active Compacts



Interstate Medical Licensure Compact

- For physicians
- Members: 31 states, the District of Columbia and Guam
- Administered by the Interstate Medical Licensure Commission



Nurse Licensure Compact

- For registered nurses and licensed practical nurses
- Members: 37 states and Guam
- Administered by the Nurse Licensure Compact Commission



Physical Therapy Compact

- For physical therapists
- Members: 28 states
- Administered by the Physical Therapy Compact Commission



Psychology Interjurisdictional Compact (PSYPACT)

- For psychologists
- Members: 15 states
- Administered by the PSYPACT Commission



EMS Personnel Licensure Interstate Compact

- For emergency medical technicians and paramedics
- Members: 20 states
- Administered by the Interstate Commission for EMS Personnel Practice

Compacts also exist for other provider types. The [Advanced Practice Registered Nurse Compact](#) will become active when seven states have enacted legislation. The [Audiologists and Speech-Language Pathologists Compact](#) reached its threshold of 10 states for activation in April 2020.

HB 2454 – **Licensure** for out-of-state providers

Health care provider not licensed in Arizona may provide telehealth services to a patient located in Arizona, if:

- **Registers** with applicable regulatory board or agency & pays fee
- Provide proof of professional **license in another state** that is current and unrestricted
- Evidence of professional liability insurance coverage
- Annually updates registration and provides report on telehealth encounters



At least six states AZ, FL, KS, NY, TN, WV permanently allow providers licensed in other states to deliver telehealth services to in-state residents.
(separate from provider-specific licensure compacts)

- Many states allow providers licensed in bordering states
- Utah – 10 years or more of practice

HB 2454 – Reimbursement

Providers shall be reimbursed at the same level of payment for equivalent services provided via telehealth.

Beginning in January 2022

Telehealth Advisory Committee shall provide recommendations on covered services for **audio-only** telehealth encounters.

HB 2454 – Telehealth Advisory Committee

Requires Advisory Committee to **submit a report** to the Governor, the President of the Senate and the Speaker of the House of Representatives by:

- **December 1, 2021** - with recommendations regarding the specific healthcare services that are appropriate to provide through an **audio-only** telehealth format as a substitute for an in-person or audio-visual telehealth encounter; and
- **June 30, 2022** - with recommendations regarding **telehealth best practice guidelines** for healthcare providers.

HB 2454 – Telehealth Advisory Committee

Before making recommendations, committee must:

- Analyze medical literature and national practice guidelines;
- Consider the comparative effectiveness, safety and benefit to the patient of performing a service through an **audio-only** telehealth format instead of in person or through an audio-visual format; and
- Consider the appropriate frequency and duration of audio-only telehealth encounters.

HB 2454 – Telehealth Advisory Committee

Requires, from October 1, 2021 until January 1, 2026:

- Each healthcare provider regulatory board or agency to submit to the Advisory Committee a report identifying the number and type of out-of-state healthcare providers.
- Terminates the Advisory Committee on July 1, 2029.

HB 2454 – Requirements for Department of Insurance and Financial Institutions

By March 31, 2023 - DIFI to report to the President of the Senate and the Speaker of the House of Representatives the **number and type of telehealth encounters based on claims data** received by health insurers for services provided in Arizona in the preceding year, including the:

- overall number of telehealth encounters and the number of **audio-only** telehealth encounters billed to health insurers
- number of telehealth encounters in Arizona involving **out-of-state health providers**

AZ HB 2454 – Going forward **areas to watch**



Reports from Telehealth Advisory Committee and DIFI

- Action around audio-only telehealth encounters
- Action around out-of-state providers
- Claims data

Pilot program to provide acute care at patients' homes

Scope of providers and services



Vermont created the “Facilitation of Interstate Practice Using Telehealth Working Group” and charged the work group to study the effects of streamlining interstate licensing requirements for out-of-state providers using telehealth.

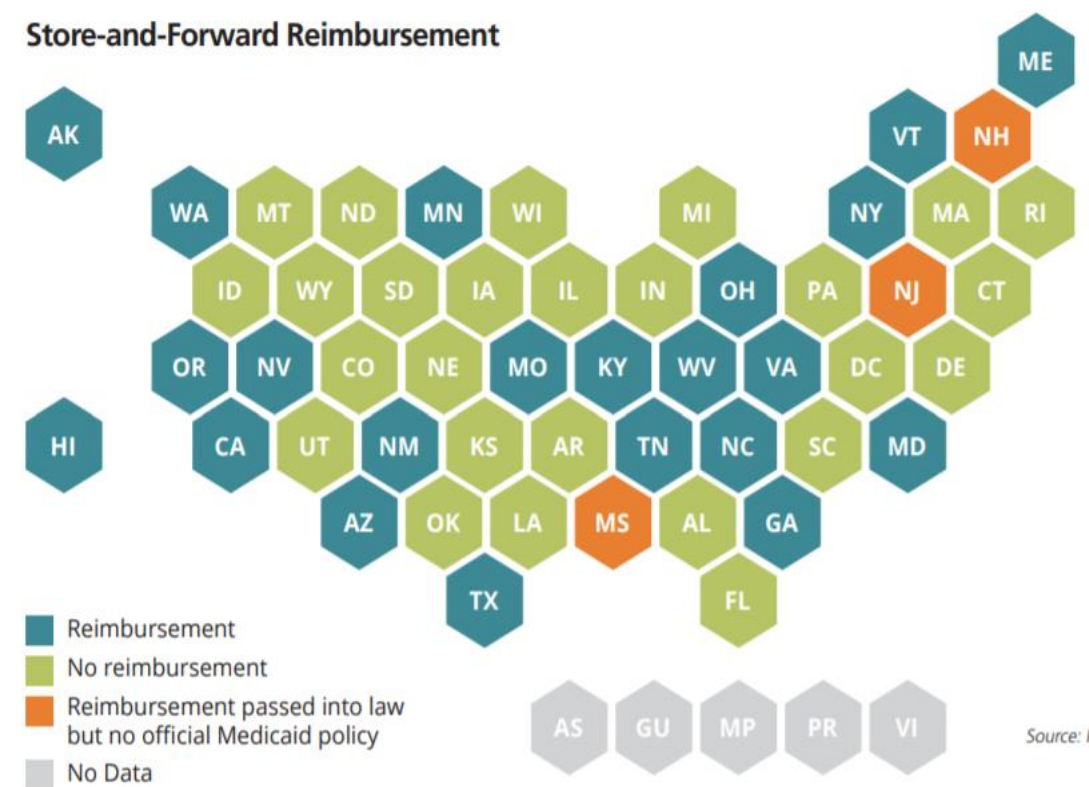
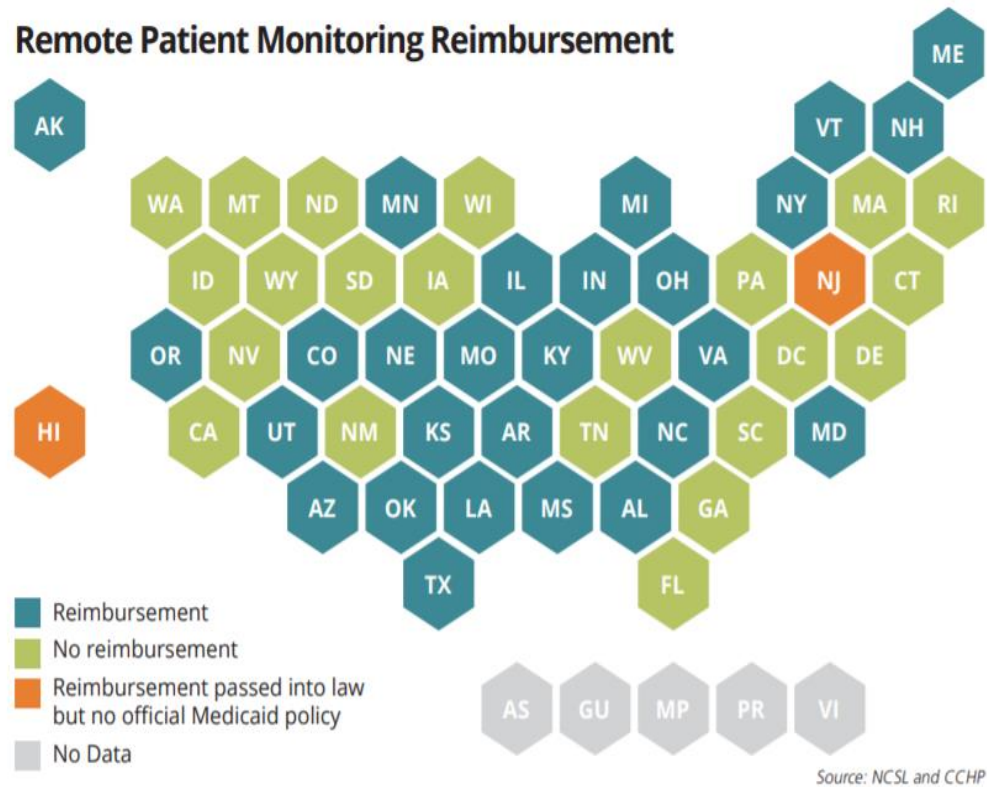
More States Providing Medicaid Reimbursement for Telehealth

| | 2013 | 2021 |
|---|------|---------------------------|
|  Live Video Visits | 44 | 50 & District of Columbia |
|  Store-and-Forward | 6 | 22 |
|  Remote Patient Monitoring | 6 | 27 |

3 Things to Know:

- 1 States have a great deal of flexibility and authority in **determining Medicaid reimbursement** for health care services provided via telehealth.
- 2 All 50 states allow for Medicaid reimbursement for some aspect of **live video telehealth visits**.
- 3 The types of **providers, services and locations eligible for reimbursement** vary across state Medicaid programs.

Medicaid Reimbursement



Source: NCSL and CCHP

Center for Telehealth and e-Health Law (CTeL)

Telehealth Cost Impact Study

Includes data from more than **1.5 million telehealth encounters** from March 2020 to September 2020 (6+ months)

CTeL has collected data from Medicare Part A, Medicare Part B, Medicare Advantage, Medicaid, commercial insurers, and self-pay encounters.

CTeL's study will give policymakers a thorough analysis of telehealth **access, utilization, services provided, and cost.**

Waivers to Statutes

37 states have enacted 51 telehealth bills to make certain flexibilities under temporary waivers permanent after the COVID-19 state public health emergency.

Non-Legislative Action

Some states have taken non-legislative actions—through governor’s offices, Medicaid agencies, licensing boards and other state agencies—to make COVID-related changes permanent.



The **California** Department of Health Care Services, which operates the state’s Medicaid program, **released a list** of several COVID-related telehealth modifications it plans to make permanent—including payment parity for services delivered via telehealth in real-time and coverage for audio-only telephone visits.



Idaho’s governor signed an **executive order** directing state agencies to make more than 150 emergency rules permanent, including several related to telehealth. Changes included streamlining the licensing process for out-of-state providers and allowing providers to use platforms like FaceTime or Zoom.



Ohio Department of Medicaid permanently expanded coverage for different methods of telehealth (e.g., audio-only and remote patient monitoring), authorized different types of providers to deliver services via telehealth, and lifted originating and distant site restrictions. The rules also increased the number and types of services that could be delivered through telehealth, including virtual check-ins by a physician or other provider, physical therapy, additional behavioral health services and more.

Federal

Creating Opportunities Now for Necessary and Effective Care Technologies (CONNECT) for Health Act of 2021

FACT SHEET | May 2021

The "Creating Opportunities Now for Necessary and Effective Care Technologies (CONNECT) for Health Act of 2021" was recently introduced by Senator Brian Schatz (D-HI). Having authored previous iterations of this bill, Senator Schatz notes that this Act will promote higher quality of care, increased access to care and reduce spending in Medicare through the expansion of telehealth services. Thus far, it has received bipartisan support from the majority of his fellow Senators.

▶ There are three main sections to the CONNECT Act:

1. Removing Barriers to Telehealth Coverage
2. Program Integrity
3. Data and Testing of Models

1. Removing Barriers to Telehealth Coverage

Existing telehealth reimbursement policy typically has four issues in which the policy in question touches. Medicare telehealth policy is no different. These areas are:

- Modality Used
- Location of Patient
- Providers
- Services Covered

The CONNECT Act, to varying extent, will impact all four policy areas.



Federal Funding and Legislation

October 12, the Federal Communications Commission committed over \$1.1 Billion in funding for 2,471 **schools**, 205 **libraries** from the **Emergency Connectivity Fund Program**.

H.R. 5541 - Primary and Virtual Care Affordability Act

Extend the exemption for first-dollar coverage of primary care telehealth services from certain high deductible health plan.

H.R. 5506 - Rural Telehealth Access Task Force Act

Biden launches assault on monopolies

The sweeping executive order takes aim at concentrated markets in industries including agriculture, airlines, broadband and banking — and includes efforts to lower drug prices and protect privacy.



The order will also urge the FTC and the Justice Department to **challenge overly broad job licensing** requirements imposed by state governments.

Office of Public and Intergovernmental Affairs

VA Expands Telehealth by Allowing Health Care Providers to Treat Patients Across State Lines

May 11, 2018, 08:59:00 AM

Harness the spending power of Medicare to mandate that a **physician licensed in any state can care for a Medicare beneficiary** anywhere in the U.S

→ Push states to act



A Cancer Patient's Brutal Commute

Maki Inada has to drive 5½ hours to see a doctor because of state laws restricting telemedicine.

By Ateev Mehrotra and Barak Richman
July 12, 2021 6:40 pm ET

🖨️ PRINT 🔍 TEXT

223

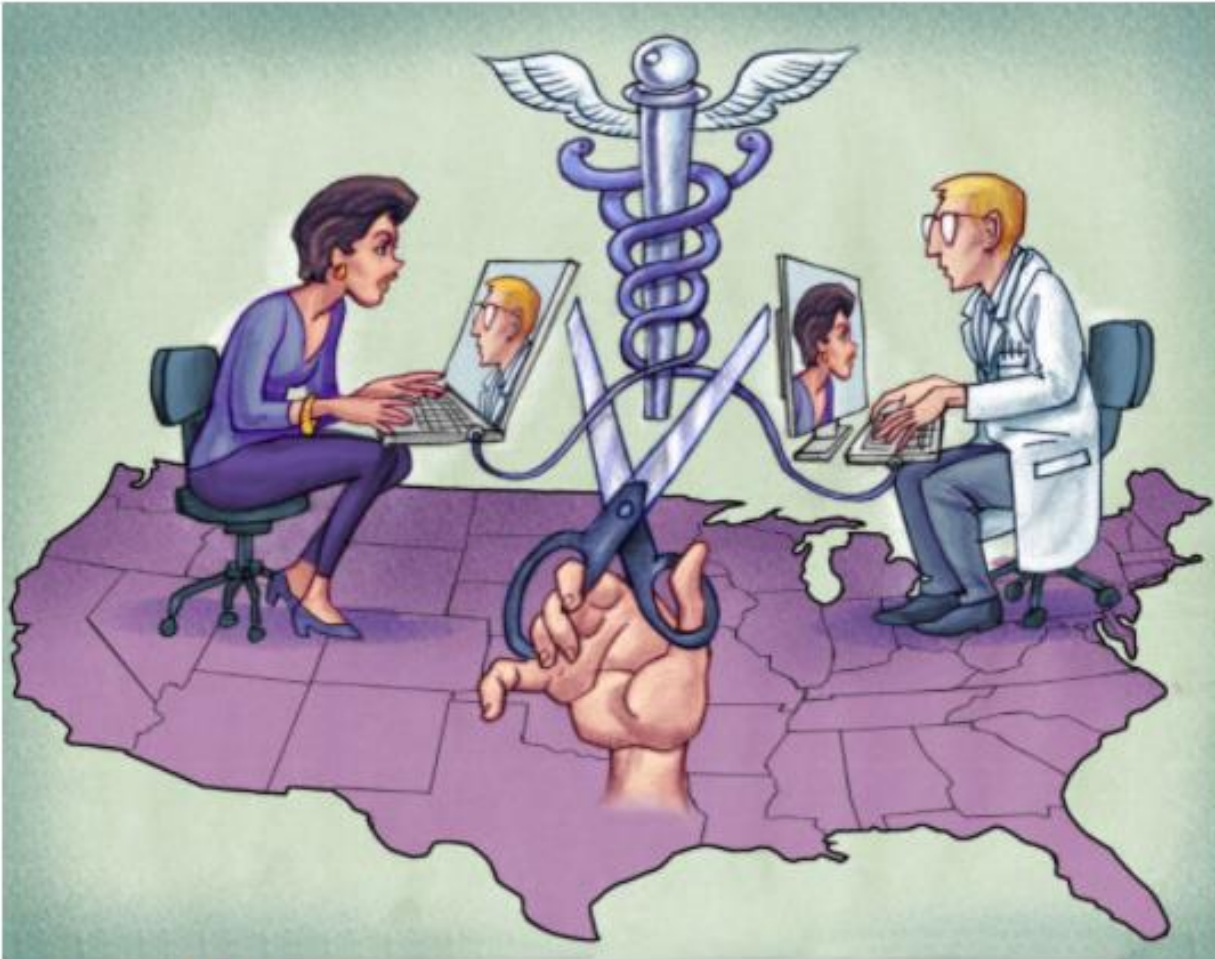


ILLUSTRATION: DAVID KLEIN

Dana-Farber told Ms. Inada she'll have to be **physically located** in Massachusetts for a visit.

She doesn't have to go all the way to the doctor's office, a 5½-hour drive each way.

She can drive 3½ hours, **cross the border** into Massachusetts, pull over, and have a telemedicine visit in the car.”

Best Buy to acquire Current Health to help make home the center of health

POLITICS

Amazon is beefing up its health care lobbying operation



By Rachel Cohrs Oct. 19, 2021

STAT+

Reprints



NURX.

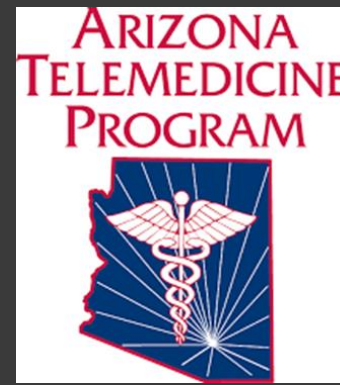
hims & hers

ro

The Patient
Company



o



Thank You

TARA SKLAR, JD, MPH

Senior Faculty Advisor, Telehealth Law & Policy, Arizona Telemedicine Program

Professor of Health Law

Director, Health Law & Policy Program

James E. Rogers College of Law, University of Arizona

trsklar@arizona.edu