

ARIZONA  
TELEMEDICINE  
PROGRAM



# Spring 2021 Telehealth Policy Updates

**Nancy Rowe**

***Associate Director, Public Policy & Outreach***

***Arizona Telemedicine Program /  
Southwest Telehealth Resource Center***

# Federal Updates

ARIZONA  
TELEMEDICINE  
PROGRAM



# When Will the PHE Expire?

- Current expiration date: 7/20/21
- Acting HHS Sec. Norris Cochran sent letter to governors Jan. 22
- PHE will likely remain in place throughout 2021
- HHS will provide 60 days' notice prior to termination
- Multiple TH flexibilities are in place for the duration of the PHE



Georgetown University  
Health Policy Institute  
CENTER FOR CHILDREN  
AND FAMILIES

Topics Say Ahhh! Blog State Resources Research About Us

Say Ahhh!

## Biden Administration Promises Predictability on Future Extensions of the Public Health Emergency

January 24, 2021 · Tricia Brooks

In a recent **letter to Governors**, Acting Health and Human Services Secretary Norris Cochran signaled that the COVID-19 public health emergency (PHE) "will likely remain in place for the entirety of 2021." Moreover, the letter assures states that when a determination is made to terminate the PHE or let it expire, HHS will provide states with 60 days' notice. By law, a PHE is limited to a 90-day period but it can be

Let's start with  
the not-great  
news ...

# OIG Audits

- TH by home health agencies during PHE
- Medicare Part B TH (e.g., E/M, OUD, ESRD, psychotherapy, distant & originating site locations, virtual check-ins, eVisits, RPM, tech, annual wellness visits) – also Part C
- BH in Medicaid MCOs
- TH billing, compliance

March 10, 2021  
Volume XI, Number 69

THE  
NATIONAL LAW REVIEW

PUBLISH / ADVERTISE WITH US • TRENDING LEGAL NEWS • ABOUT US • CONTACT US • QUICK LINKS • ENEWSBULLETINS

52  
NEW ARTICLES

## The Honeymoon Phase Is Over: OIG to Audit COVID-19 Part B Telehealth Services

Friday, February 12, 2021

Telehealth services and providers have been in high demand as the world copes with the COVID-19 public health emergency. Federal and state agencies have amended, and often loosened, regulations in an attempt to facilitate and expand access to telehealth. However, the honeymoon phase of relaxed oversight may be coming to an end as the world adjusts to a new-normal.

On January 26, 2021, the Department of Health and Human Services, Office of Inspector General (“OIG”) announced a new telehealth-related audit targeting the implementation of telehealth waivers by home health agencies during the public health emergency, which we previously covered [here](#). On the same day, OIG announced a second telehealth-related audit to investigate a broad swath of telehealth services, dubbed “[Audits of Medicare Part B Telehealth Services During the COVID-19 Public Health Emergency](#)” (the “Announcement”).

In the Announcement, the OIG reveals its plan to conduct a series of audits of Medicare Part B telehealth services. The audits will occur in two phases. The first phase aims to make an early assessment of whether services “such as evaluation and management, opioid use order, end-stage renal disease, and psychotherapy” meet Medicare requirements. The second phase will dive deeper into a broad range of Medicare Part B telehealth services and compliance issues, including “distant and originating site locations, virtual check-in services, electronic visits, remote patient monitoring, use of telehealth technology, and annual wellness visits.”

Robust compliance programs are key to avoiding censure and other unwanted penalties that could result from the OIG’s ramp-up of telehealth oversight.

ARTICLE BY  
Kenneth Yood  
Matthew M. Shatzkes  
John M. Tilton  
Eva Schifini

*Sheppard, Mullin, Richter & Hampton LLP  
SMCoronavirus Insights*

**SheppardMullin**

f t in e v p s

Administrative & Regulatory  
Corporate & Business  
Organizations  
Coronavirus News  
Health Law & Managed Care  
All Federal

PRINTER-FRIENDLY  
EMAIL THIS ARTICLE  
DOWNLOAD PDF  
REPRINTS & PERMISSIONS

Tweet Like 3

Advertisement

# OIG TH Statement

- Differentiates between “telefraud” (telemarketing with fraudulent billing of DME, genetic tests, etc.) and telehealth fraud

U.S. Department of Health and Human Services  
**Office of Inspector General**

About OIG Reports Fraud Compliance Exclusions Newsroom Careers **COVID-19 Po**

## Principal Deputy Inspector General Grimm on Telehealth

February 26, 2021

It has been just over a year into the COVID-19 pandemic and we remember the over 500,000 Americans who have lost their lives due to COVID-19. That figure is a stark reminder of the critical mission of the Department of Health and Human Services. Challenges in responding to the pandemic have been many, thorny and unprecedented. Consequential decisions often were made quickly to respond to the emergency and provide relief in the way of funding, supplies, and reductions in regulatory and procedural burden. This quick response and scope of relief make oversight, enforcement, transparency, program integrity, and accountability all the more important.

Early in the pandemic, OIG, along with many others, recognized the value of expanding options for accessing health care services. Telehealth is a prime example. Where telehealth and other remote access technologies were once a matter of convenience, the public health emergency made them a matter of safety for many beneficiaries. In some cases, health care providers needed regulatory flexibility to provide safe and effective care remotely during the ongoing pandemic. In March 2020, [we issued policy statements and FAQs in support of increased telehealth flexibilities.](#)

### Related Information

- [COVID-19 Information](#)
- [CDC.gov/coronavirus](#)
- [USA.gov/coronavirus](#)
- [DOJ: Report COVID-19 Fraud](#)
- [Senior Medicare Patrol Information on COVID-19 Fraud](#)
- [OIG's Work in Infectious Disease](#)

Share this Letter

# CMS “Oops” – March 17, 2021

- Removes 4 TH service codes from 2021 PFS Category 3 list (covered thru CY in which PHE ends)
- “Inadvertently” included due to “technical errors”
- 99221-99223: Initial hospital care
- 96121: Neurobehavioral status exam

BECKER'S  
**HOSPITAL REVIEW**

## CMS cuts 4 telehealth services accidentally added to Medicare coverage list

Jackie Drees - 2 hours ago [Print](#) | [Email](#)

[Share](#) [Tweet](#) [Share 0](#)

CMS released a notice March 17 walking back four telehealth service codes that the agency said were inadvertently included on its final list because of technical errors.

CMS finalized its physician fee schedule for 2021 in December, adding more than 60 services to Medicare's telehealth list to ensure they are covered beyond the end of the COVID-19 public health emergency.

The March 17 notice removes four codes from the newly established Category 3 list of approved telehealth services, which CMS said were inadvertently included on the list. Services listed under Category 3 will remain on the Medicare telehealth services through the calendar year in which the public health emergency ends.

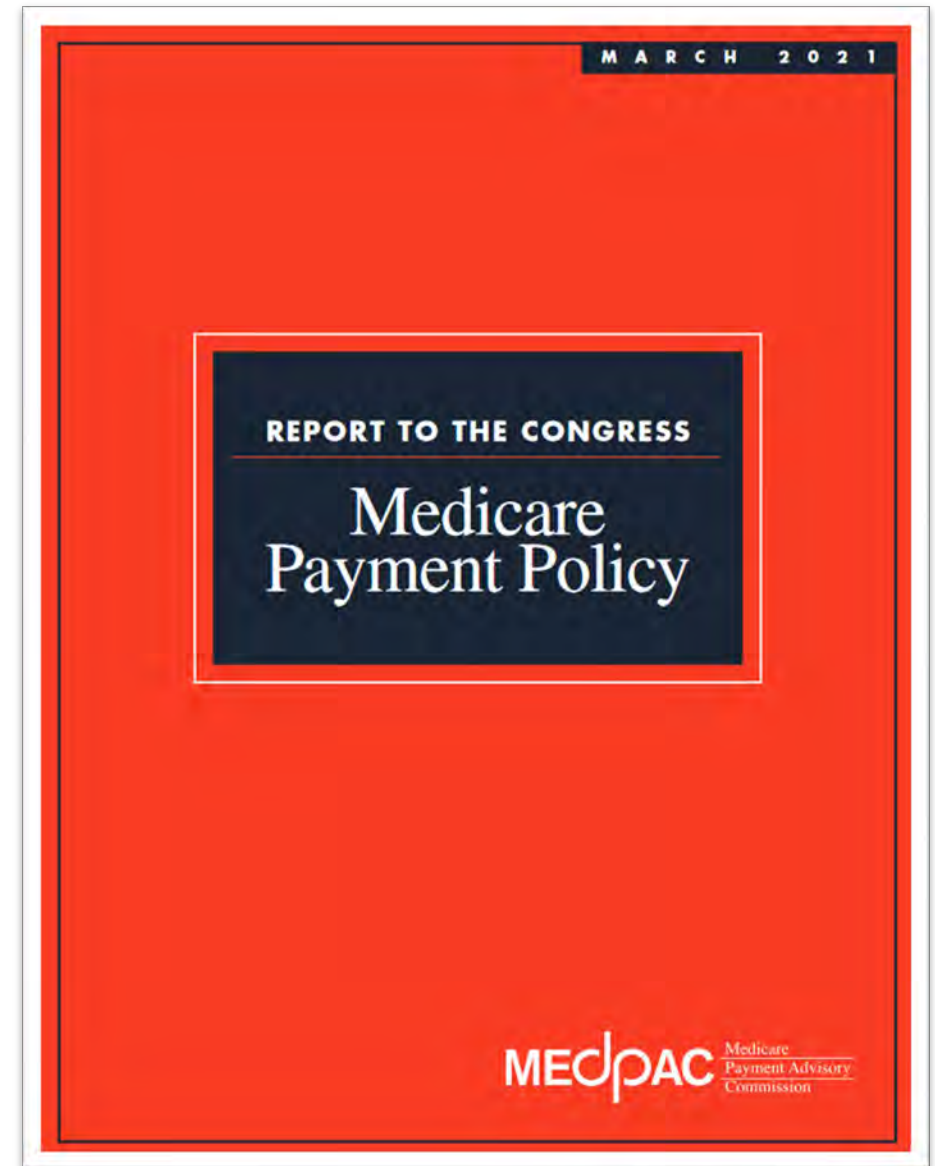
Here are the four telehealth codes CMS removed:

1. 96121: Neurobehavioral status exam by physician or other qualified health professional
2. 99221: Initial hospital care
3. 99222: Initial hospital care
4. 99223: Initial hospital care

Click [here](#) to view the full notice.

# MedPAC Report 3/15/21

- Calls for extension of Medicare PHE TH freedoms for up to 2 years – more time to gather data
- Including audio-only for pts. who can't access video
- Recommends revert to pre-COVID TH payment rates (typically lower)
- Stop allowing reduced/waived cost-sharing, incident-to billing
- In-person visits for high-cost DME, scrutiny of high-volume TH billers





And now for  
happier news ...

# CMS PFS Correction – Jan. 19, 2021


- For CPT codes 99457-99458, 20 minutes of time associated *can* include non-face-to-face care management services as well as real-time interactions with patient
- (Previously said it had to be 20 minutes of interactive time with pt.)

**FOLEY**  
FOLEY & LARDNER LLP

Practice Areas   Industry Teams   People

## CMS Revises 2021 Remote Patient Monitoring Rules, Issues Correction

25 January 2021 | Health Care Law Today | Blog  
Authors: Nathaniel M. Lacktman



CMS just issued a [correction](#) to its guidance on 2021 Medicare rules for remote physiologic monitoring (RPM) services. The correction is effective January 1, 2021 and revises the preamble commentary in the Medicare Physician Fee Schedule Final Rule, [previously published](#) on December 1, 2020. It adds language that was inadvertently deleted from the Final Rule, summarizing and responding some public comments. Here is a summary of the new changes:

**20 Minutes of Time Includes, but Not Limited to, “Interactive Communication” with Patient**

# CMS Adds More Codes for PHE – April 2021

- For audiologists & SLPs
- For Medicare Part B & MA
- 15 audiology codes
- 9 SLP codes

## CMS Expands Telehealth Coverage for Audiologists, Speech-Language Pathologists

CMS has added a number of CPT codes to the list of audiology and speech-language pathology services provided by telehealth that will be covered by Medicare during the coronavirus pandemic.



Source: ThinkStock

By Eric Wicklund

mHEALTH  
INTELLIGENCE  
xtelligent HEALTHCARE MEDIA



April 02, 2021 - The Centers for Medicare & Medicaid Services has expanded Medicare coverage

# CMS Asks

## CMS Facing Pressure to Add Telehealth to Diabetes Prevention Programs

The Alliance for Connected Care is leading a new lobbying effort to have telehealth included in the Medicare Diabetes Prevention Program, both during and after the COVID-19 public health emergency.



Source: ThinkStock

By Eric Wicklund

mHEALTH  
INTELLIGENCE  
xtelligent HEALTHCARE MEDIA



March 31, 2021 - The Alliance for Connected Care is leading a new lobbying effort to include telehealth in a Medicare-funded diabetes prevention program.

## AMA Lobbies CMS to Extend Medicare Coverage for Audio-Only Telehealth

The American Medical Association has sent a letter urging CMS to permanently extend Medicare coverage for audio-only telehealth services. Separately, CMS is being urged to include virtual care in the Medicare Diabetes Prevention Program.



Source: ThinkStock

By Eric Wicklund

mHEALTH  
INTELLIGENCE  
xtelligent HEALTHCARE MEDIA



April 07, 2021 - The American Medical Association is lobbying for permanent Medicare coverage for audio-only telehealth services.

In a letter to Acting Centers for Medicare & Medicaid Services Administrator **Elizabeth Richter**, AMA Executive Vice President and CEO James Madara, MD, urged the agency to continue coverage for phone calls beyond the public health emergency caused by the coronavirus pandemic.

# Credentialing by Proxy: Improvement

- Joint Commission changed accreditation rules
- Now distant site TH entity must be accredited with Jt. Commission **OR** enrolled in Medicare (used to need both)
- Allows originating site hospital to rely on privileging & credentialing done by distant site – streamlined



The screenshot shows a webpage from Foley & Lardner LLP. The header includes the firm's logo and name, along with navigation links for Practice Areas, Industry Teams, and People. Below the header is a breadcrumb trail: HOME / INSIGHTS / CREDENTIALING BY PROXY: JOINT COMMISSION'S IMPROVED TELEMEDICINE ACCREDITATION RULES. The main title of the article is "Credentialing by Proxy: Joint Commission's Improved Telemedicine Accreditation Rules". The date is 15 March 2021, and the authors are Alan H. Einhorn and Nathaniel M. Lacktman. The article features a photograph of a doctor in a white coat typing on a laptop. The text below the photo states: "The Joint Commission recently announced it has changed its accreditation rules to enable more hospitals and telemedicine companies to use the streamlined 'credentialing by proxy' process. Under the change, the distant site telemedicine entity must be accredited with The Joint Commission **or** enrolled in the Medicare program. Previously, the rules required **both** the originating site hospital and the distant site entity to be accredited with The Joint Commission. That requirement of dual-accreditation was exclusively created by The Joint Commission and was not mandated by the CMS Medicare regulations."

# FDA cuts 8 software functions from medical device classification

Jackie Drees - an hour ago [Print](#) | [Email](#)

[Share](#) [Tweet](#) [Share 0](#)

The FDA is excluding eight software functions that were previously classified as medical device status under the 21st Century Cures Act.

The FDA released the new provisions in an April 19 document in the Federal Register. The guidance outlines the software functions that are no longer considered medical devices under the FDA's updated definitions.

Here are the eight software functions that are now excluded from the classification of a medical device:

- Calculator/data processing module for clinical use
- Continuous glucose monitor secondary display
- Automated indirect immunofluorescence microscope and software-assisted system
- Medical device data systems
- Home uterine activity monitor
- Medical image storage device
- Medical image communications device
- Picture archiving and communication system

BECKER'S  
**HEALTH IT**

What is Congress  
up to now?

# Money: The Bottom Line

- Access to care vs. overutilization

In many ways, said Mahoney, telehealth has strengths of its own as a modality.

For example, she said, "I have found a thorough medication review can be more easily and accurately done at home," with pill bottles close at hand.

- Is fraud fear overblown? AMA thinks so.

Overall, members of Congress remain bullish on virtual care, although the details of payment parity, fraud prevention and coverage specifics continue to arise as hurdles.

"Providers and patients like telehealth, so let's do our best not to mess this up," said Rep. Larry Bucshon, R-Ind.

[Global Edition](#) [Telehealth](#)

## In telehealth hearing, House committee weighs access against cost

Witnesses at the U.S. House Committee on Energy and Commerce hearing Tuesday offered a variety of strategies for addressing the future of telehealth.

By [Kat Jercich](#) | March 02, 2021 | 03:01 PM



Members of the U.S. House Committee on Energy and Commerce convened Tuesday to discuss the future of virtual care.

Policyholders and stakeholders emphasized the importance of balancing access to care with addressing concerns around fraud and overutilization.



## Lawmakers Reintroduce Post-COVID-19 Telehealth Bill, Hoping for a Better Outcome

The Protecting Access to Post-COVID-19 Telehealth Act is back after failing to make it through Congress last year. Will lawmakers see enough value in telehealth to make it a priority this year?



Source: ThinkStock

By Eric Wicklund

**mHEALTH INTELLIGENCE**  
xelligent HEALTHCARE MEDIA

January 26, 2021 - With a new administration taking over in Washington, a group of lawmakers is looking to put the emphasis back on passing long-term telehealth legislation.

The group this week re-introduced the **Protecting Access to Post-COVID-19 Telehealth Act**, which aims to make permanent some emergency telehealth access and coverage that was in place over the past year to address the coronavirus pandemic.

## New Bill Tags \$50 Million in Telehealth Grants for Mental Health Providers

Senator Catherine Cortez Masto has introduced a bill that would set aside \$50 million in SAMHSA grants to help behavioral health and substance abuse care providers expand or launch telehealth services focused on peer support.



Source: ThinkStock

By Eric Wicklund

**mHEALTH INTELLIGENCE**  
xelligent HEALTHCARE MEDIA



January 28, 2021 - With behavioral health issues skyrocketing during the coronavirus pandemic, a New Mexico lawmaker has introduced a bill aimed at transitioning peer support programs onto

## Washington is Awash in New and Reintroduced Telehealth Bills

In advance of the next session of Congress, lawmakers are scrambling to file new bills or resubmit old bills that aim to improve telehealth access and coverage through and beyond the coronavirus pandemic.



Source: ThinkStock

By Eric Wicklund



January 29, 2021 - The telehealth industry is awash in new and reintroduced bills to expand telehealth access and coverage through and beyond the coronavirus pandemic.

The group this week re-introduced the **Protecting Access to Post-COVID-19 Telehealth Act**, which aims to make permanent some emergency telehealth access and coverage that was in place over the past year to address the coronavirus pandemic.

**mHEALTH INTELLIGENCE**  
xelligent HEALTHCARE MEDIA

**Advancing Connectivity and Telehealth Access Act**, filed in the House by Reps. Dan Claitor (R-KS) and Gus Bilirakis (R-FL)

## Lawmakers Reintroduce COVID-19 Telehealth Licensure Bill

US Rep. Ted Budd and Senator Ted Cruz have reintroduced a bill that would allow healthcare providers to use telehealth to treat anyone in any state for up to six months after the pandemic.



Source: ThinkStock

By Eric Wicklund

**mHEALTH INTELLIGENCE**  
xtelligent HEALTHCARE MEDIA



February 04, 2021 - A bill has been resubmitted that would allow healthcare providers to use telehealth to treat patients in any state for up to six months after the coronavirus pandemic.

**The Equal Access to Care Act** was reintroduced this week by Texas Rep. Ted Budd and Senator Ted Cruz, both Republicans. Cruz and Senator Marsha Blackburn (R-TN) had submitted the bill last year, but it died in committee.

## Susan Collins wants \$15B to increase rural broadband access

by Lori Valigra  
February 24, 2021

**BDN BANGOR DAILY NEWS**

## Congress Gets Another Shot at Easing Telehealth Licensure Restrictions

The TREAT Act, which has the support of dozens of health systems and connected health organizations, would allow providers to bypass licensing rules and use telehealth to treat patients in any state during the coronavirus pandemic.



Source: ThinkStock

By Eric Wicklund

**mHEALTH INTELLIGENCE**  
xtelligent HEALTHCARE MEDIA



February 08, 2021 - Lawmakers have re-introduced a bill that would allow healthcare providers to use telehealth to treat anyone in the any state throughout the coronavirus pandemic.

The **Temporary Reciprocity to Ensure Access to Treatment (TREAT) Act**, filed in both the House and Senate this past week, aims to allow providers to bypass state and federal



Susan Collins, R-Maine, is introducing a bill on Wednesday that would provide \$15 billion in matching grants to unserved rural areas of the country. Credit: Drew Angerer / AP

Susan Collins introduced a bill in Congress on Wednesday that would provide \$15 billion in matching federal grants to expand high-speed broadband to unserved rural areas.



## Lawmakers Resubmit Telehealth Bills Targeting Kids' Health, COVID-19 Effects

Two more telehealth bills have returned to Capitol Hill to make it through last year's session. One takes on children and other calls for an HHS study of how telehealth has impacted care delivery.



Source: ThinkStock



By Eric Wicklund

**mHEALTH INTELLIGENCE**  
xtelligent HEALTHCARE MEDIA

March 01, 2021 - Two more telehealth bills have resurfaced on Capitol Hill, as part of a package of legislation aimed at improving connected health coverage and addressing the coronavirus pandemic.

## 2 More Telehealth Bills Return to Congress For Another Try

Both the TREATS Act and the Telehealth Modernization Act are being re-submitted this week, as telehealth advocates look to see if they can be added to the agenda for post-COVID-19 connected health coverage.



Source: ThinkStock



By Eric Wicklund

**mHEALTH INTELLIGENCE**  
xtelligent HEALTHCARE MEDIA



February 23, 2021 - Two popular telehealth bills that failed to make it through last year's Legislature are being reintroduced this week on Capitol Hill, adding to a growing number of connected health bills aimed at continuing the momentum for telehealth beyond the coronavirus pandemic.

## Congress Targets Telehealth Coverage for Mental Health, Substance Abuse Treatment

Several bills on Capitol Hill aim to expand telehealth coverage for mental health and substance abuse services delivered via telehealth, including efforts to reduce barriers to prescribing scheduled drugs.



Source: ThinkStock



By Eric Wicklund

**mHEALTH INTELLIGENCE**  
xtelligent HEALTHCARE MEDIA



March 15, 2021 - Congress will be taking a serious look at expanding telehealth coverage for mental health and substance abuse services this year.

Last week Senators Tina Smith (D-MN) and Lisa Murkowski (R-AK) introduced **S 660**, which

## Congress Mulls Audio-Only Telehealth Coverage for MA, PACE Members

A new bill before Congress would establish Medicare coverage for audio-only telehealth services - otherwise known as phone calls - during the pandemic for Medicare Advantage and PACE members.



Source: Getty Images



By Eric Wicklund

**mHEALTH INTELLIGENCE**  
xtelligent HEALTHCARE MEDIA

March 25, 2021 - A new bill before Congress aims to ensure Medicare coverage for telehealth services during the coronavirus pandemic for Medicare Advantage and (Program of All-Inclusive Care for the Elderly) members.

## Congress to Get Another Shot at Telehealth Coverage for Specialists

Lawmakers have resubmitted the Expanded Telehealth Access Act, which would permanently extend Medicare coverage to telehealth services provided by physical and occupational therapists, audiologists and speech and language pathologists.



Source: ThinkStock



By Eric Wicklund

**mHEALTH INTELLIGENCE**  
xtelligent HEALTHCARE MEDIA



March 26, 2021 - A group of lawmakers has resubmitted a bill seeking to permanently expand Medicare coverage to telehealth services provided by physical and occupational therapists, audiologists and speech and language pathologists.

## Support Builds to Add Telehealth Options for Critical Access Hospitals

Telehealth advocates are rallying behind a bill that would allow rural and remote hospitals to use telehealth to treat patients in underserved communities who are dealing with mental health



Source: iStock

By Eric Wicklund

**mHEALTH INTELLIGENCE**  
xtelligent HEALTHCARE MEDIA



March 25, 2021 - A new bill before Congress aims to expand telehealth access for patients living in underserved communities who are dealing with mental health concerns at rural hospitals.

The bill is the **Health Behavioral Access Act**, sponsored by US Reps. Dan Kildee (D-MI) and

## Bills

### H.R. 1647

**Introduced by:** Rep. David McKinley

This bill would amend title XVIII of the Social Security Act to expand telehealth access to Medication Assisted Treatment and audio-only reimbursement under Medicare. This is a bipartisan bill with cosponsors including Rep. Cicilline, Rep. Trone, and Rep. Budd.

### S. 660

**Introduced by:** Sen. Tina Smith

S. 660 would require parity in the coverage of mental health and substance use disorder services provided to enrollees in private insurance plans, whether such services are offered in-person or through telehealth. Republican Senator Lisa Murkowski cosponsored this bill.

### S.620/ H.R. 1677

**Introduced by:** Sen. Deb Fischer and Rep. Troy Balderson

These related bills would direct the Secretary of Health and Human Services, the Medicare Payment Advisory Commission, and the Medicaid and CHIP Payment and Access Commission to conduct studies and report to Congress on actions taken to expand access to telehealth services under the Medicare, Medicaid, and CHIP programs during the COVID-19 emergency.



# ARIZONA TELEMEDICINE PROGRAM



# State Updates

[Global Edition](#) [Telehealth](#)

## For next steps on telehealth, look to the states

Lawmakers in legislatures nationwide have introduced about 300 bills aimed at expanding access to telemedicine – but not every bill is equally helpful.

By [Kat Jercich](#) | January 26, 2021 | 05:04 PM



As the United States approaches its one-year anniversary of the COVID-19 pandemic beginning to disrupt normal healthcare operations, a question continues to endure: What's next for telehealth?

The answer remains unclear on a federal level, with U.S. lawmakers [recently reintroducing](#) legislation that would take at least a few steps toward safeguarding virtual care.

TELEMEDICINE, LEGAL, POLICY

## More states require telehealth coverage going into 2021

Several states passed recent laws that would require commercial insurance plans to cover more telehealth services on a permanent basis. More states now require health plans to pay the same amount for telehealth as in-person visits.

By ELISE REUTER

[Post a comment](#) / Feb 9, 2021 at 4:40 PM



As emergency measures have greatly expanded patients' access to virtual care during the pandemic, states are passing laws to more permanently bolster

# Arizona HB 2454: Telehealth Omnibus Bill

How it started





# HB 2454: How It Started

- Changes term “telemedicine” to “telehealth in ARS
- Requires payment parity by private payers
- Says TH coverage requirements/parameters can’t be more restrictive or less favorable to providers or pts. than those for in-person
- TH services may be provided regardless of geo location or site
- Adds audio-only phone to TH definitions if A/V not feasible
- Allows workers’ comp exams via TH
- Allows physical or mental status exam via TH (including asynchronous) for prescribing, dispensing, furnishing prescription med or device

# HB 2454: How It Started

- Aligns various state definitions of TH
- Adds to list of TH providers (including opticians, PTs, OTs, respiratory therapists, SLPs, audiologists, hearing-aid dispensers, midwives, AL)
- Allows informed consent for TH by electronic means
- Prohibits requiring in-person exam before prescribing
- Requires providers to make “good faith effort” in determining whether a service should be provided by TH and in determining appropriate medium
- Allows non-AZ-licensed providers to provide TH to people in AZ
- Establishes a Telehealth Advisory Committee on TH Best Practices

# Arizona: National Licensure Model?



JANUARY 14, 2021 9:54 AM

## Arizona, First in Occupational Licensing Reform, Now Poised to Become First in Telehealth Reform

By Jeffrey A. Singer

SHARE

Absorbing lessons learned from the COVID-19 pandemic, Arizona Governor Doug Ducey plans for Arizona to once again lead the way in health care reform, this time by seeking legislation to make permanent his emergency executive order that allows Arizona residents to obtain telehealth services from practitioners licensed in any of the 50 states and the District of Columbia. While many states have taken similar emergency steps to improve access to health care during this public health crisis, unless their legislatures act, the emergency orders will expire when the crisis is over. If Governor Ducey convinces Arizona legislators, Arizona will become the first state in the union to permanently allow out-of-state licensed health care practitioners to render telehealth services to its residents.

March 10, 2021  
Volume XI, Number 69

## THE NATIONAL LAW REVIEW

PUBLISH / ADVERTISE WITH US • TRENDING LEGAL NEWS • ABOUT US • CONTACT US • QUICK LINKS • ENEWSBULLETINS

52  
NEW ARTICLES

### "State" of Telehealth Series: Arizona

Tuesday, January 26, 2021

Permanency for Out of State Telehealth Services? Arizona Seeks to Make Permanent Changes to Licensure Requirements

Arizona Governor Doug Ducey delivered the "State" in which he outlined his vision for 2021, focusing on the COVID-19 pandemic (the "Pandemic"), the vaccine, and other COVID-19 related and Governor Ducey's priorities are summarized in the Arizona Resilient Policy Book ("2021 Policy Book")

In the 2021 Policy Book, Governor Ducey seeks to build on the EO that he introduced in his Executive Order 2020-17" back in March 26, 2020 which, among other things, provided for the issuance of a provisional Arizona medical license to any person who is licensed and in good standing in any other state or territory. With such a provisional license, out-of-state practitioners can consult with Arizona residents without needing to go through the Arizona license application process. By its terms, EO 2020-17 expires upon the expiration of the Governor's emergency declaration.

By the nature of EO 2020-17 and its provision regarding provisional licenses, Governor Ducey's legislative agenda includes the passage of legislation that would allow Arizona residents to receive telehealth services from any one of the fifty (50) states or the District of Columbia. As reported by the Centers for Medicare and Medicaid Services as well as during the Pandemic, a more permanent solution goes beyond the Governor's emergency declaration. Arizona could be the

☰ ☒ 🔍

Tuesday, March 09, 2021

Washington Examiner

Politics ▾ Policy ▾ News Opinion ▾ Business MAGAZINE ▾ Multimedia ▾ Beltway Confidential

OPINION

## Arizona may become the model state for telehealth access

by Courtney M. Joslin & Shoshana Weissmann | February 24, 2021 10:30 AM



THE CONSERVATIVE SOURCE  
AMERICANS DESERVE

SUBSCRIBE

At the onset of the pandemic last year, states scrambled to get individuals the healthcare access they needed during lockdowns. Governors quickly issued executive orders allowing individuals to see their healthcare providers virtually using phones and computers with very few restrictions. These temporary telehealth reforms eased the burden of accessing doctors, nurses, pharmacists, and even veterinarians.

As a result, telehealth surged in popularity — virtual visits in 2020 were expected to number over 900 million. But executive orders only last as long as the state of emergency. Permanently improving telehealth access in states should be a top priority this year, and it seems legislators in Arizona agree.

Arizona state Rep. Regina Cobb, a Republican, has introduced a comprehensive telehealth bill that would change the most significant and least helpful restrictions on telehealth in Arizona. Namely, this legislation would require insurers to cover virtual visits the same as in-person visits, reimburse providers at the same rate for virtual and in-person visits, and allow for over-the-phone, audio-only telehealth visits. It would also allow Arizonans to access providers across state lines, something that is proving hugely beneficial for those otherwise locked out of care in other states.

# Arizona HB 2454: Telehealth Omnibus Bill

How it's going



# Arizona HB 2454: How It's Going

**§6-3606**: Interstate telehealth services; registration; requirements; venue; exceptions

A. Allows healthcare providers not licensed in Arizona to provide telehealth services to a person in Arizona if the provider:

1. Registers with this state's applicable health care provider regulatory board or agency that licenses comparable health care providers in this state on an application prescribed by the board or agency that contains all of the following:

- a. Provider's name
- b. Proof of provider's professional licensure, including all jurisdictions where licensed and license numbers
- c. Provider's address, email address, phone number, and information for contact if provider needs to be contacted urgently
- d. Evidence of professional liability insurance coverage
- e. Designation of duly appointed statutory agent for service of process in Arizona

2. Pays registration fee as determined by applicable health care provider regulatory board or agency

3. holds a current, unrestricted, and valid license in another state that is substantially similar to a license issued in this state to a comparable provider and is not subject to any past or pending disciplinary proceedings in any jurisdiction. The provider shall notify the applicable board or agency within five days after any restriction is placed on the provider's license or any disciplinary action is initiated or imposed. Board or agency may use national practitioner databank to verify information submitted.

4. complies with all applicable Arizona laws and rules, including scope of practice and telehealth requirements.

5. complies with Arizona requirements and requirements of any other state where provider is licensed for maintaining liability insurance including coverage for telehealth services in Arizona.

6. consents to Arizona's jurisdiction for any litigation disciplinary action or legal proceeding related to their acts or omissions under this article.

7. follows Arizona community of care standards standards of care for that particular licensed health profession.

8. Annually update registration for accuracy and submit to board or agency a report with number of patients serviced in Arizona and total number and type of encounters in Arizona for the preceding year.

B. Health care providers registered pursuant to this article may not open an office in this state or provide in-person healthcare services to persons located in this state without first obtaining an Arizona license.

C. A healthcare provider who fails to comply with the applicable laws and rules is subject to investigation and disciplinary action by the applicable health care provider regulatory board of Arizona. Disciplinary action may include revoking practice privileges in AZ and referring the matter to the licensing authority in the state(s) where the provider possesses a professional license.

D. The venue for any action arising from a violation of this section is the patient's county of residence in AZ.

E. Providers not licensed in AZ but who hold active licenses in other states and who provide telehealth services to persons located in AZ are not subject to the registration requirements of this section if either:

1. The services are provided under one of these circumstances:

a. In response to an emergency medication condition

b. In consultation with a health care provider who is licensed in AZ and who has the ultimate authority over the patient's diagnosis and treatment

c. To provide after-care specifically related to a medical procedure that was delivered in person in another state

d. To a person who is a resident of another state and the provider is the PCP or BH provider located in that person's state of residence

e. The provider provides fewer than 10 telehealth encounters in a calendar year.

House Engrossed Version  
(Licensure Section)

# Payment Parity?

- House version amended to:
  - Exempt platforms sponsored by/provided by payers
  - Require providers paid the full rate to make interactive telehealth generally available
  - Require provider to access appropriate pt. records at time of service
  - Require provider to inform pt. prior to visit if there is a charge

## Will Telehealth Payment Parity Be Permanent or a Passing Fancy?

A recent study by Foley & Lardner indicates telehealth reimbursement will be on top of the agenda during the coming year, but will states, private payers and the federal government find an acceptable path to true payment parity?



Source: ThinkStock



By Eric Wicklund



February 22, 2021 - As federal and state lawmakers look to establish telehealth policy beyond the coronavirus pandemic, much of the conversation will focus on payment parity.

# Some Other House HB 2454 Amendments

- ~~Insurers can't use TH to meet network adequacy standards~~
- ~~Insurers shall notify all enrollees they have the right to non-emergency, in-person healthcare~~
- Allows claims data to show a service is not appropriate to TH
- Adds “fraud prevention” & ID verification to documentation for TH
- Audio-only requires existing provider-pt. relationship (unless BH or SUD) plus encounter must be initiated at request of pt. and authorized by pt. prior to encounter and video must be unavailable
- Removes HIPAA-compliant IMs from TH definition



# Some Other House HB 2454 Amendments

- Removes veterinarians from expanded provider types; adds trainees
- Providers may not use their preference or convenience to determine appropriate TH medium
- Adds to exhaustive list of new TH Advisory Committee members, among others, two reps of healthcare insurers
- Adds a 3-year pilot program for ADHS to develop delivery of acute care services to pts. in their homes by licensed AZ hospitals working with home health professionals
- Requires DIFI to report to legislature number of TH encounters including # out-of-state providers, types of services, cost analysis





# Major Senate Finance HB 2454 Amendments

- Payers must cover audio-only TH if covered by Medicare or AHCCCS (before Jan. 1, 2022) / if TH Advisory Committee recommends services are appropriate to audio only (starting Jan. 1, 2022)
- Further weakens payment parity to audio-visual *only* (unless BH or SUD)
- To claim audio-only, provider must make TH generally available with A/V
- Network adequacy may not be met by use of providers who provide only TH services and do not provide in-person in AZ or within 50 miles of AZ
- Allows boards to require in-person or A/V exams for Schedule II drugs
- Adds more conditions for providers without AZ licenses

# Major Senate Finance HB 2454 Amendments

- Changes to the TH Advisory Committee:
  - Requires compliance with best practices ID'd by new TH Advisory Committee
  - Removes dentists, requires insurance co. reps to be licensed healthcare providers, adds an equipment manufacturer rep
  - Extends time frame to report recommendations on best practice guidelines
  - Adds deciding which services are appropriate for audio-only telephone
  - Requires monthly TH usage reports by all health care provider regulatory boards
  - AHCCCS will staff the committee & provide meeting space



# HB 2454 Status

- Passed by House with amendments Feb. 11
- Senate Finance Committee: Pass with amendments March 17
- Senate Rules Committee: “Proper for Consideration” April 5
- Senate COW: Pass with (more) amendments April 20
- **Senate roll-call vote next**
- If passed, goes back to House to approve or refer to conference committee (then back to each chamber)
- If passed, goes to governor
- Legislative session ends Saturday!



# SB 1604: Telepharmacy

- Changes statute to allow rural hospitals with <50 beds to satisfy the on-site pharmacist requirement through use of a “remote dispensing site pharmacy”
- Signed into law April 5! Passed Senate unanimously.





# A Plethora of Telehealth Bills

Jurisdiction: AZ

Bill Number: [HB 2820](#)

Bill Title: dietitian nutritionists; licensure

Sponsor: Alma Hernandez

Introduced Date: 02/08/2021

Last Action: DPA - (03/24/2021)

Status: 

CCHP Classification: Miscellaneous

## Notes:

Updates dietician nutritionist laws, including a definition for Telehealth to mean using electronic information and telecommunications technologies to provide services to support clinical health care, patient and professional health related education, and public health and health administration between a license in one location and an individual in another location.

*Source: Center for Connected Health Policy*

# A Plethora of Telehealth Bills

Jurisdiction: AZ

Bill Number: [SB 1682](#)

Bill Title: health care providers; telemedicine

Sponsor: Tyler Pace

Introduced Date: 02/03/2021

Last Action: House Second Reading - (03/03/2021)

Status: 

CCHP Classification: **Online Prescribing & Provider-Patient Relationship Establishment**

Notes:

Updates the definition of telemedicine encounter for purposes of prescribing, dispensing or furnishing medications and unprofessional conduct to allow an examination through telehealth, removing explicit references that the encounter must be "real-time" and "with audio and video capability."

*Source: Center for Connected Health Policy*

# A Plethora of Telehealth Bills

Jurisdiction: AZ

Bill Number: [SB 1145](#)

Bill Title: telemedicine; physicians

Sponsor: Thomas Shope

Introduced Date: 01/13/2021

Last Action: House Second Reading - (02/25/2021)

Status: 

CCHP Classification: **Online Prescribing & Provider-Patient Relationship Establishment**

Notes:

Defines unethical conduct as knowingly dispensing a drug on a prescription order that was issued in the course of the conduct of business of dispensing drugs pursuant to diagnosis by mail or the internet, unless written pursuant to a physical or mental health status examination that was conducted through telemedicine as defined in Section 36-2601, among other exceptions.

*Source: Center for Connected Health Policy*



# A Plethora of Telehealth Bills

Jurisdiction: AZ

Bill Number: [HB 2885](#)

Bill Title: appropriations; healthy communities program

Sponsor: Reginald Bolding, Jr.

Introduced Date: 02/11/2021

Last Action: House Second Reading - (02/15/2021)

Status: 

CCHP Classification: Broadband

## Notes:

Allocates money to expand the healthy communities health care program and requires that the program provide telehealth care, as well as coordinate and provide access to reimbursable broadband communications to facilitate telehealth consultations, including medicaid smartphones and satellite communications.

*Source: Center for Connected Health Policy*

# A Plethora of Telehealth Bills

Jurisdiction: AZ

Bill Number: [HB 2870](#)

Bill Title: medication abortion; telemedicine; ultrasound

Sponsor: Athena Salman

Introduced Date: 02/11/2021

Last Action: House Second Reading - (02/15/2021)

Status:      

CCHP Classification: Miscellaneous

Notes:

Clarifies that certain ultrasound and consent requirements do not apply in the case of a patient using a telemedicine encounter for a medication abortion.

Source: *Center for Connected Health Policy*

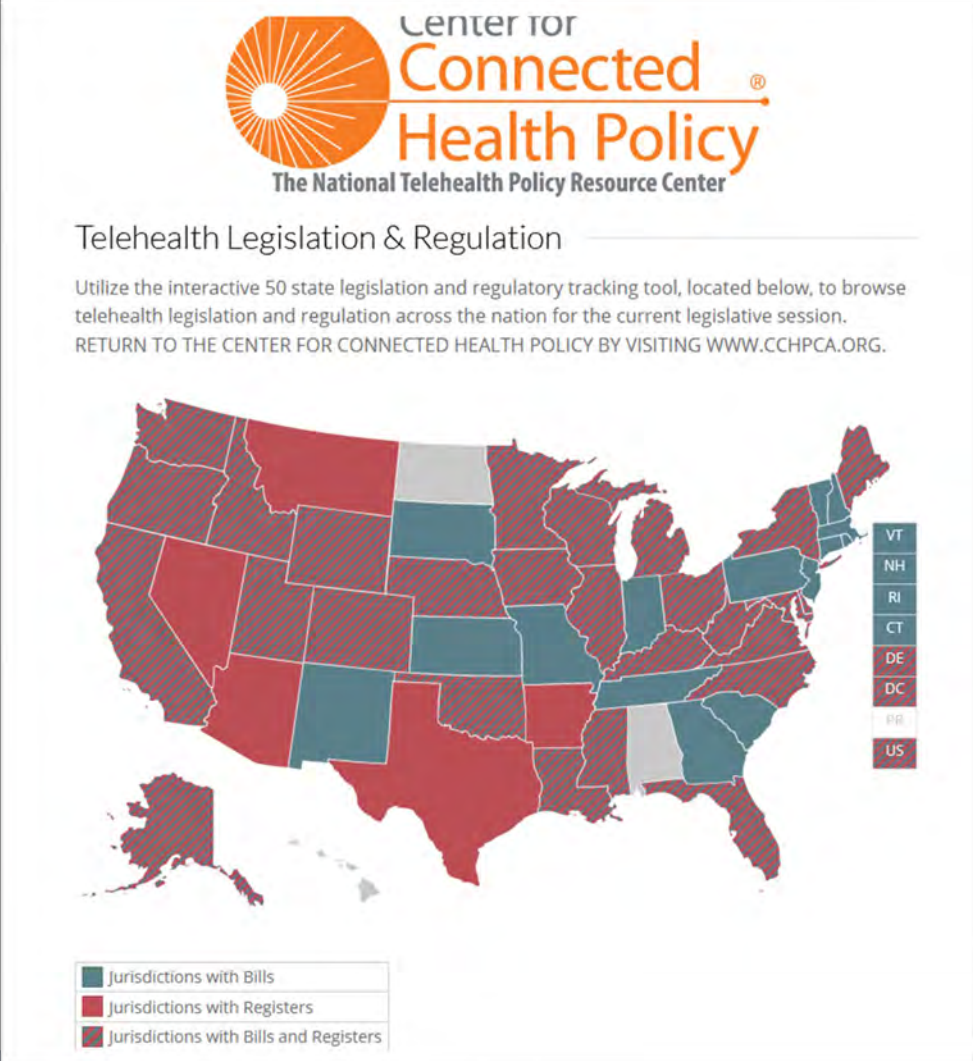
ARIZONA  
TELEMEDICINE  
PROGRAM



# Telehealth Policy Resources

# Telehealth Legislative Trackers

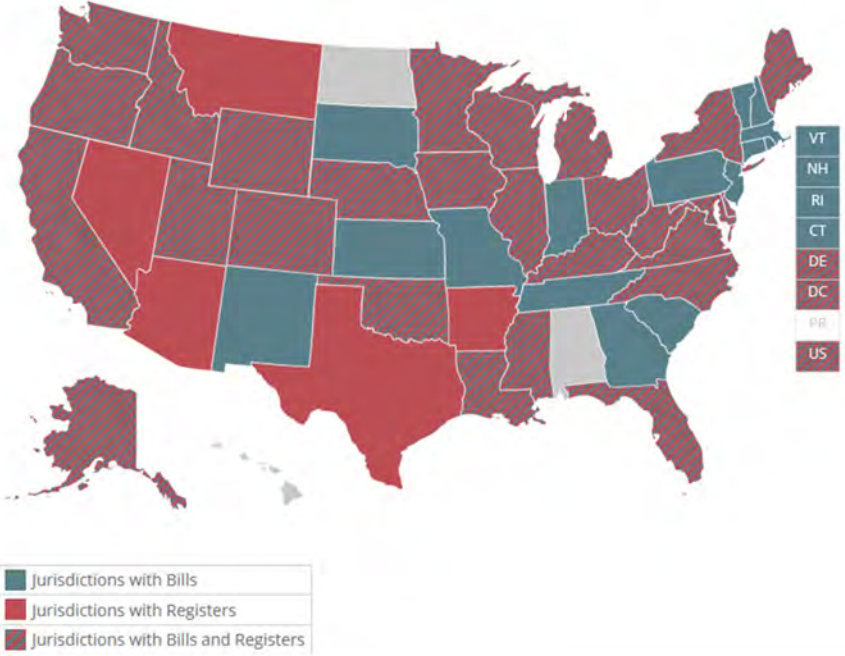
- **States:**  
Center for Connected Health Policy (CCHP)  
<https://track.govhawk.com/reports/24PKO/public>
- **Federal:**  
Alliance for Connected Care  
<http://connectwithcare.org/telehealth-legislation/>



**Center for Connected Health Policy**  
The National Telehealth Policy Resource Center

### Telehealth Legislation & Regulation

Utilize the interactive 50 state legislation and regulatory tracking tool, located below, to browse telehealth legislation and regulation across the nation for the current legislative session.  
RETURN TO THE CENTER FOR CONNECTED HEALTH POLICY BY VISITING [WWW.CCHPCA.ORG](http://WWW.CCHPCA.ORG).




Legend:

- Jurisdictions with Bills
- Jurisdictions with Registers
- Jurisdictions with Bills and Registers

# For Details and Bill Status Updates:

- <https://www.azleg.gov/>

Session: 2021 - Fifty-fifth Legislature - First Regular Session



Bill # Search

Senate House Legislative Council JLBC Other Agencies Bills Committees Legislative Information Calendar & News

The Arizona Revised Statutes have been updated to include the revised sections from the 54th Legislature, 2nd Regular Session.

Members


Legislative Tracking

Request to Speak

Standing Committees

Committee Agendas

Arizona Capitol Television



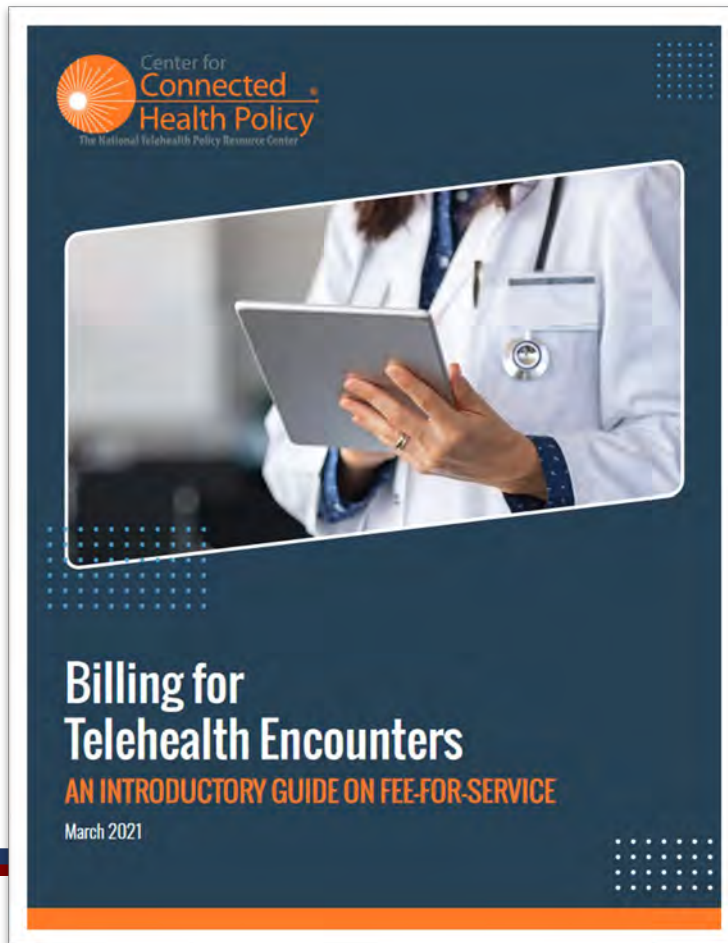
# Center for Connected Health Policy (CCHP)

- <https://www.cchpca.org/>

The screenshot shows the website's header with navigation links for 'CURRENT STATE LAWS & POLICIES' and 'LEGISLATION & REGULATION TRACKING'. A prominent orange banner features the text 'COVID-19' and a paragraph stating: 'Telehealth policy changes occurring within the COVID-19 environment have been rapidly developing on almost a daily basis. CCHP is committed to keeping you updated on these important changes both federally and on the state level. Watch our latest COVID-19 policy update videos.' To the right of this text are two buttons: 'COVERAGE POLICIES' and 'STATE ACTIONS'. Below the banner is a dark navigation bar with the CCHP logo and menu items: 'ABOUT', 'TELEHEALTH POLICY', 'PROJECTS', 'RESOURCES', and 'CONTACT'. A search icon and 'SEARCH' text are also present. The main content area features a large image of the US Capitol building at night with the text 'COVID-19 TELEHEALTH COVERAGE POLICIES' overlaid. A 'CITE CCHP' button is visible in the bottom right of the image. Below the image, the heading 'TELEHEALTH COVERAGE POLICIES IN THE TIME OF COVID-19' is followed by a link: 'TO VIEW RECENT STATE ACTIONS AS A RESULT OF COVID-19 CLICK HERE!'. The text continues with a timestamp: 'Timestamp: September 15, 2020 – 3 pm PT' and a paragraph explaining that most changes will end when the federal Public Health Emergency expires in January 2021, with a link to 'read the full text'. A final paragraph states that policies are developing alongside COVID-19 and that the document is a living one that changes frequently.

# CCHP Updated Billing Guide – March 2021

- <https://www.cchpca.org/sites/default/files/2021-03/2021BillingGuideFINAL.pdf>



Center for Connected Health Policy  
The National Telehealth Policy Resource Center

## Billing for Telehealth Encounters

AN INTRODUCTORY GUIDE ON FEE-FOR-SERVICE

March 2021



### INTRODUCTION

The COVID-19 Public Health Emergency (PHE) was declared on January 31, 2020, but it was not until March 30 that CMS began to issue temporary telehealth policy, coding and billing guidelines, almost on a weekly basis. These changes complicated – and still complicate – billing for telehealth services due to their frequency and the many changes they were enacting, some made permanent, many still temporary.

As it did last year, the Center for Connected Health Policy (CCHP) is providing this informational billing guide to assist those who have questions regarding telehealth billing. The guide is primarily about Medicare fee-for-service billing as policies vary from state-to-state for Medicaid and commercial payers. The purpose of the guide is to clarify:

- telehealth billing and how to get reimbursed
- current legislation dictating billing requirements
- requirements applicable during calendar year 2021
- the requirements relevant only during the periods of PHE extensions
- what may occur post-PHE

With that in mind, this guide is meant not only for those who are new to Medicare telehealth billing, but for intermediate and veteran telehealth providers and staff who may find this guide useful: to validate, challenge and perhaps be inspired to take on services that seem initially too confusing to tackle. The guide's secondary purpose is to separate what the Center for Medicare and Medicaid Services (CMS) terms "telehealth" and what tele-modalities are "Communication Technology Based Services (CTBS)." Knowing the difference can assist you in making choices for short- and long-term practice planning.

### TOPICS COVERED IN THIS DOCUMENT

<b>Part 1: Common Billing and Regulatory Terms</b>	<b>3</b>
Originating Site	4
Distant Site	5
Eligible Providers	6
Codes to Describe Services Provided	7
Modifiers	8
Place of Service Codes	10
Revenue Codes	14
Evaluation and Management CPT Codes	15
<b>Part 2: Medical Services</b>	<b>15</b>
Other E/M Services	16
Non-Telehealth Technology Services	16
Remote Physiologic Monitoring (RPM)	18
Consult or Interprofessional Consultation Codes	20
Other Considerations	23
<b>Conclusion</b>	<b>25</b>
<b>Examples</b>	<b>26</b>
<b>Resources</b>	<b>31</b>

11 Center for Medicare and Medicaid Services, M.N. Booklet: Telehealth Services, March 2020. <https://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNProducts/Downloads/telehealth030320.pdf> (Accessed January 28, 2021).

© Public Health Institute/Center for Connected Health Policy 2021



## BILLING FOR TELEHEALTH ENCOUNTERS

An Introductory Guide on Fee-for-Service

Center for Connected Health Policy  
The National Telehealth Policy Resource Center

PAGE 4

### Part 1: Common Billing and Regulatory Terms (cont.)

#### ORIGINATING SITE

The originating site is where the patient is located when the telehealth interaction takes place. In Medicare, it is limited both geographically and by the specific site a patient is located in at the time of the telehealth interaction (home, doctor's office, school, etc.). Under the usual Medicare policy, the beneficiary must be located in:

- A county outside a Metropolitan Statistical Area (MSA);
- A Rural Health Professional Shortage Area (HPSA) in a rural census tract; or
- From an entity that participates in a federal telemedicine demonstration project approved by the Secretary of HHS as of Dec. 31, 2000; and
- Be in a specific eligible site (Figure 1)

The Health Resources and Services Administration (HRSA) decides HPSAs, and the Census Bureau decides MSAs. To see an originating site's potential payment eligibility, go to HRSA's Medicare Telehealth Payment Eligibility Analyzer.<sup>11</sup> There are some exceptions to the rural requirement for the treatment of end stage renal disease, acute stroke and substance use disorder (SUD). See Figure 1.

#### NEW!!! PERMANENT ORIGINATING SITE CHANGES

Due to the passing of the Consolidated Appropriations Act of 2021 (the Act 2021), in December 2020, Figure 1 undoubtedly will be updated to include Rural Emergency Hospitals (new designation, see Place of Service section below) and for mental health patients in the home, requiring an in-clinic visit 6 months prior to the home encounter.<sup>12</sup>

11 <https://www.congress.gov/21/bills/hr/430/1/642-1/10/r/13.htm>

#### PHE EXCEPTION: MEDICARE

During the PHE, the patient's home can serve an originating site, in addition to the sites originally specified.

COVID-19 PHE, located here: <https://www.cms.gov/files/document/03302020-covid-19-fee-for-service.pdf>

#### Figure 1 Medicare Originating Sites

(Some are allowable only for certain conditions)

- Physician and practitioner offices
- Hospitals
- Critical Access Hospitals (CAHs)
- Rural Health Clinics
- Federally Qualified Health Centers
- Hospital-based or CAH-based Renal Dialysis Centers (including satellite)
- Skilled Nursing Facilities (SNFs)
- Community Mental Health Centers (CMHCs)
- Renal Dialysis Facilities\*
- Homes of beneficiaries with End-Stage Renal Disease (ESRD) getting home dialysis\*
- Mobile Stroke Units\*
- Home of Patient receiving treatment for SUD/Opioid Abuse and co-occurring mental health disorders\*

\* Geographic limit may not apply to these facilities in specific circumstances.  
NOTE: Geographic limitations on originating site removed for treatment & diagnosis of acute stroke.

#### BILLING TIP!

Note that an originating site may bill Medicare a facility fee using code Q3014. If the originating site is the home, no facility fee may be billed.

12 Telehealth Payment Eligibility Analyzer, <https://data.hrsa.gov/hub/index/telehealth/> (Accessed January 29, 2021)

© Public Health Institute/Center for Connected Health Policy 2021

# ATP/SWTRC COVID & Telehealth Web Pages

- <https://southwesttrc.org/resources/covid19>

The screenshot shows the website for Southwest Telehealth Resource Center (TRC) with a focus on COVID-19 resources. The header includes the TRC logo, social media icons for Facebook, Twitter, LinkedIn, and RSS, a search bar, and a CAPTCHA notice. A navigation menu lists Home, About Us, Region, Blog, Online Education, Resources, Events, Training, and Contact Us. The main content area is titled "Telemedicine COVID-19 Resources" and includes a "COVID-19 Resources Menu" on the left with links for healthcare providers, state-specific information, consumer resources, and newsletters. The main text welcomes users and provides a list of resources for healthcare providers, state-specific information, consumer resources, and newsletters. A "COVID-19 Resource Partner" logo for ADHS is also displayed.

**SOUTHWEST TELEHEALTH TRC RESOURCE CENTER™**

SEARCH: search this site  
CAPTCHA: no challenge enabled  
Place a CAPTCHA here for untrusted users.

The Southwest TRC is a subsidiary of  
**ARIZONA TELEMEDICINE PROGRAM**

Home About Us Region Blog Online Education Resources Events Training Contact Us

**COVID-19 Resources Menu**

- FOR HEALTHCARE PROVIDERS
- STATE-SPECIFIC INFORMATION
- CONSUMER RESOURCES
- COVID-19 NEWSLETTERS

**COVID-19 Resource Partner**  
**ADHS**

**Telemedicine COVID-19 Resources**

View Edit Delete Revisions

Welcome to the Southwest Telehealth Resource Center / Arizona Telemedicine Program Telemedicine COVID-19 Resources web pages. We update these pages regularly with information for healthcare providers (including state-specific info) and consumers. You'll see the main sections listed below and the subsections listed to the left as you click on a main section. Check back often for updates!

- FOR HEALTHCARE PROVIDERS
- STATE-SPECIFIC INFORMATION
- CONSUMER RESOURCES
- COVID-19 NEWSLETTERS



ARIZONA  
TELEMEDICINE  
PROGRAM



# Thank you!

For questions or more info:

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