



ADDRESSING DISPARITIES & EQUITABLE ACCESS IN TELEHEALTH: LEGAL BARRIERS AND OPPORTUNITIES

DEVELOPING A TELEMEDICINE PROGRAM ARIZONA TELEMEDICINE PROGRAM

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Disclosures

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

Statutory Telehealth Definitions and Trends

Overview

**Doctor-Patient Relationship:
Interstate Licensing, In-Person Visits, and
Audio-Only Modality**

Disparities and Equitable Access

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



Accomplishment, Optimism And Strength: Arizona's 2021 Year In Review

News Release

December 22, 2021



NATIONAL FOREFRONT OF TELEHEALTH: Arizona dramatically expanded telehealth, providing greater opportunities for accessible medical services. The **broadest telemedicine law in the nation**, House Bill 2454 expanded access to telemedicine for patients, ensured doctors receive equal compensation from insurance companies for telemedicine services, and allowed out-of-state health care professionals to provide telemedicine in Arizona.

Legislative Definitions

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

Legislative Definitions

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.

CO HB 1190
Enacted May 2021



Practice

Interstate Licensing

Audio-Only Modality

Geographic Restrictions

In-person Visit Requirements

Online Prescribing

Reimbursement

Payment Parity

Providers & Services

Established

Telehealth Advisory Committee on Telehealth Best Practices

REFERENCE TITLE: telehealth; health care providers; requirements

State of Arizona
House of Representatives
Fifty-fifth Legislature
First Regular Session
2021

HB 2454

Introduced by
Representatives Cobb; Osborne, Senator Barto

AN ACT

AMENDING SECTIONS 20-841.09, 20-1057.13, 20-1376.05, 20-1406.05, 23-1026, 32-1401, 32-1854, 32-1901.01, 32-2061, 32-3248.01, 32-3251, 36-2272, 36-3601, 36-3602, 36-3603 AND 36-3604, ARIZONA REVISED STATUTES; AMENDING TITLE 36, CHAPTER 36, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 36-3605, 36-3606 AND 36-3607; AMENDING SECTIONS 38-672 AND 38-673, ARIZONA REVISED STATUTES; RELATING TO TELEMEDICINE.

February 2021

California Department of Health Care Services recommends expanded telemedicine services should remain permanent once the public health emergency is lifted.

“Access to quality health care services and helping to ensure equity in availability of modalities across the delivery systems.”



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.



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Establishment of a Doctor-Patient Relationship

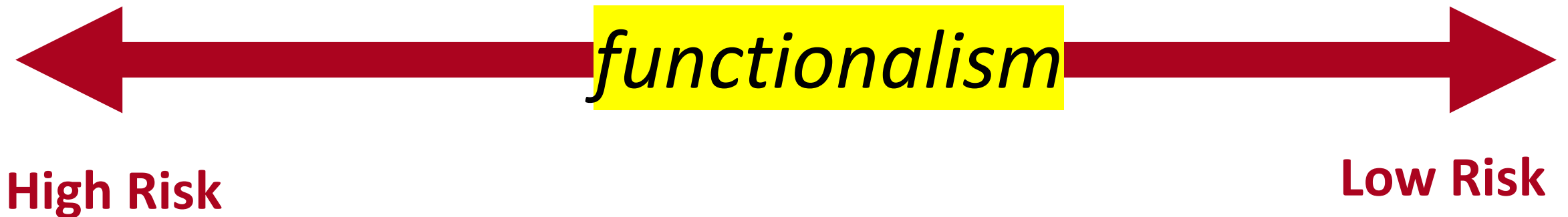
The origin of legal, ethical, and professional duties.

The rise of permanent interstate telehealth – creating a process for licensure.



Potential Legal Positions on Formation

Should healthcare relationships be established in any way that is reasonable and appropriate for the circumstances and purposes?



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

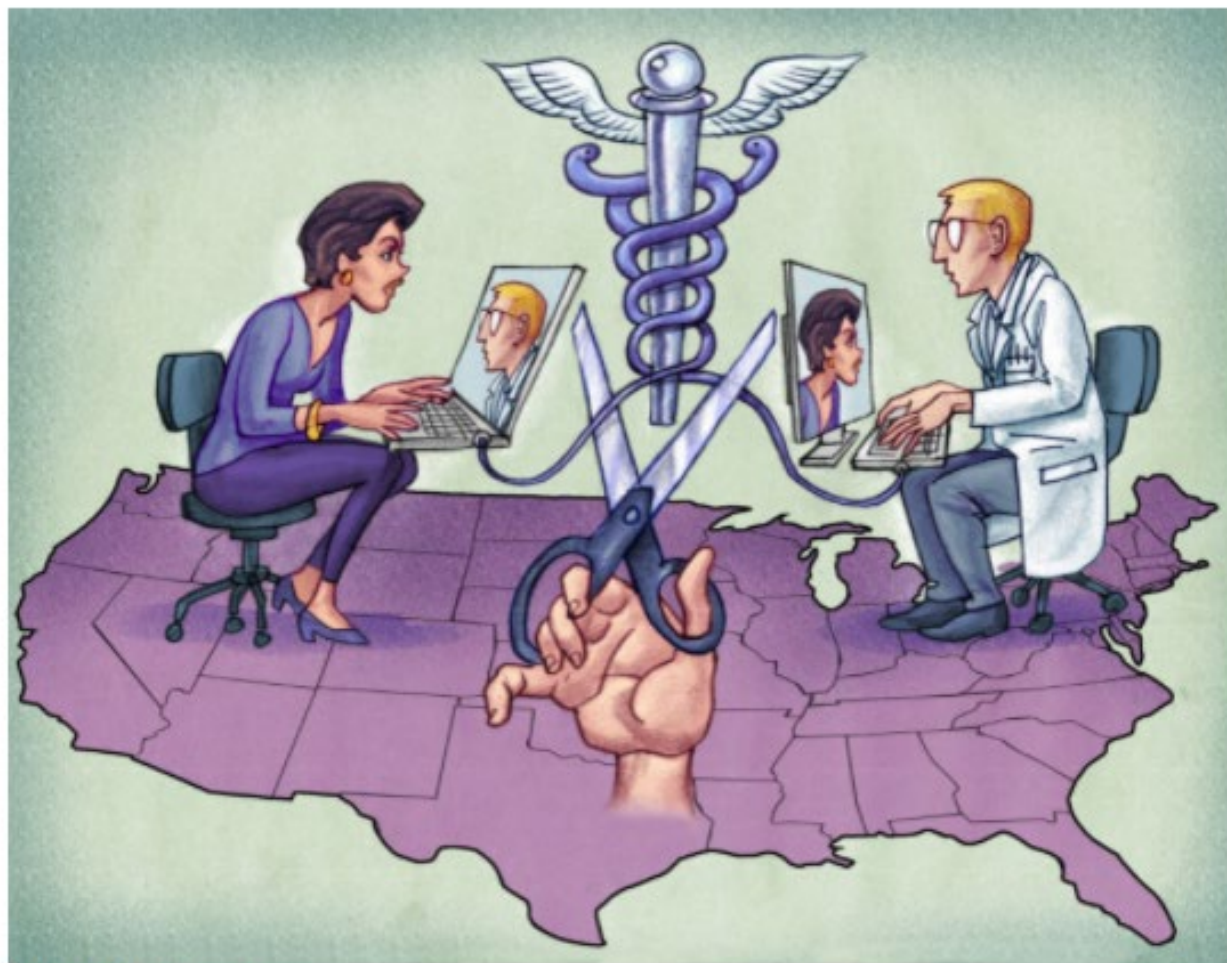


ILLUSTRATION: DAVID KLEIN

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.”

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.



Executive Order on
'Promoting Competition in the
American Economy'
will urge the FTC and the Justice
Department to
**challenge overly broad job
licensing** requirements imposed
by state governments.

If require in-person visit or limit licensure for out-of-state providers:

Doctor protectionism or patient welfare?

- Increasing costs and restricting access justified?
- Considerations: patient-centered care? provider shortage?
- Competency and standard of care should suffice, regardless of method (Federal Trade Commission)

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.



Licensure for out-of-state providers

- Register with applicable regulatory board or agency & pay fee
- Proof of professional license in another state that is current and unrestricted
- Evidence of professional liability insurance coverage
- Annually update registration and provide report on telehealth encounters



At least **seven states** **AZ, FL, IN**, KS, NY, TN, WV allow providers licensed in other states to deliver telehealth services to in-state residents.

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

New York enacted a package of telehealth reforms that seek to increase access to telehealth services by **expanding covered telehealth providers**:

Unlicensed staff

(e.g. Credentialed Alcoholism and Substance Abuse **Counselors**)

SB 416: Definition of “telehealth” changed to no longer prohibit “audio-only telephone communication.”

<https://www.governor.ny.gov/news/governor-cuomo-announces-proposal-expand-access-telehealth-all-part-2021-state-state>
<https://www.nysenate.gov/legislation/bills/2019/s8416>



AZ HB 2454 – Telehealth Advisory Committee

Consider the clinical appropriateness of **audio-only** telehealth format, including frequency and duration;

Analyze peer-reviewed medical literature and national practice **guidelines** (American Medical Association and Centers for Medicare and Medicaid); and

Weigh if would limit access to care due to lack of technology, including broadband.

AZ HB 2454 – Telehealth Advisory Committee

Submit a report to the AZ Governor, the President of the Senate and the Speaker of the House of Representatives by:

December 1, 2021 - with recommendations regarding
audio-only telehealth as a substitute for an
in-person or audio-visual telehealth encounter.

December 1, 2021

The Honorable Douglas A. Ducey
Governor of Arizona
1700 W. Washington
Phoenix, Arizona 85007

The Honorable Karen Fann
Arizona State Senate
1700 West Washington
Phoenix, Arizona 85007

The Honorable Russell Bowers
Speaker of the House
Arizona House of Representatives
1700 West Washington
Phoenix, Arizona 85007

Dear Governor Ducey, Senate President Fann, and House Speaker Bowers,

Pursuant to A.R.S. §36-3607, please find enclosed the Telehealth Advisory Committee's Recommendation Report regarding the specific health care services that are appropriate to provide through an audio-only telehealth format as a substitute for an in-person or audio-visual telehealth encounter.

Please do not hesitate to contact us if we can answer any questions or provide additional information.
Sincerely,



Christina Corieri, Telehealth Advisory Committee Co-Chair



Sara Salek, M.D., Telehealth Advisory Committee Co-Chair

Recommend for audio-only coverage beginning on January 1, 2022, is composed of 37 specific codes, **down from 94** (Table I)

Seven codes (Table II) identified to submit requests to the AMA to permit use for audio-only service delivery in the future.

Audio-Only Telehealth: Federal and State Legislation

Ensuring Parity in MA and PACE for Audio-Only Telehealth Act of 2021, <https://legiscan.com/US/text/SB150/2021>

Creating Opportunities Now for Necessary and Effective Care Technologies (CONNECT) for Health Act of 2021, https://www.schatz.senate.gov/imo/media/doc/CONNECT%20for%20Health%20Act%20of%202021_Summary.pdf

Permanency for Audio-Only Telehealth Act, <https://connectwithcare.org/wp-content/uploads/2020/12/Permanency-for-Audio-Only-Telehealth-Bill-Text.pdf>

The Telehealth Coverage and Payment Parity Act, <https://www.congress.gov/bill/117th-congress/house-bill/4480?q=%7B%22search%22%3A%5B%22hr+4480%22%5D%7D&s=1&r=1>

Protecting Rural Telehealth Access Act, [Text - H.R.5425](#)

Indiana Senate Bill , 2021

Louisiana House Bill 270

Ohio House Bill 122

Oklahoma House Bill 1689

Oregon Senate Bill 423

Services covered for audio-only coverage that had previously been required audio-visual under Medicare: <https://www.cms.gov/Medicare/Medicare-General-Information/Telehealth/Telehealth-Codes>

Raising payment parity rates: <https://www.ama-assn.org/practice-management/digital/cms-oks-pay-parity-telephone-visits-during-covid-19-crisis>

Issues to Consider Involving Audio-Only

Audio-only visits will lead to **fraud and abuse**—the need to ensure mechanisms are in place to prevent and remedy such situations

Additional (unnecessary) **utilization** that will drive up healthcare costs—limits could be placed on a number of audio-only visits

“CMS estimated that 30% of telehealth visits were audio only during the pandemic. Estimates higher because low-income patients face unique barriers to accessing video visits and FQHCs lack resources to develop the necessary infrastructure.”

-- Uscher-Pines L, Sousa J, Jones M, et al. Telehealth Use Among Safety-Net Organizations in California During the COVID-19 Pandemic. JAMA. 2021;325(11):1106–1107.

“Actively address the connectivity issue & technology divide. Bridge the gap until everyone does have **broadband access**. Such solutions could include **subsidies** to access the internet, providing **hot spots** in certain regions, offering **training** to help with digital literacy, and providing **equipment** to access live video such as laptops or smartphones.”

--Center for Connected Health Policy, Impact of Audio-only Telephone in Delivering Health Services During COVID-19 and Prospects for Future Payment Policies, p. 13, (August 25, 2021), <https://www.cchpca.org/2021/10/FSMB-Audio-Only-Reportfinal.pdf>

Audio-Only

“meet [patients] where they are”

Telemedicine during the coronavirus pandemic exposes the divide between the haves and the have-nots



- *Effect of Race and Neighborhood Disadvantage on Patient Engagement with a COVID-19 Remote Monitoring Program*
- *Audio-Only Charges Vary as High as 5x Audio-Visual Visits*

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Groups Disproportionately Impacted by Restrictions on Audio-Only and by the Digital Divide

- Older Adults
- Racial and ethnic minority groups
- Disability
- Low socioeconomic status
- Living in rural areas
- Non-English speakers

What is the “Digital Divide”?

Limited access to technology

- high speed internet/broadband
- unreliable internet

Low digital literacy

Lack inclusive designs



Digital Divide In Practice

Groups with lower technology access also have higher prevalence of chronic diseases.


Data from the peak of the pandemic in NYC demonstrated that both Blacks and Latinos saw greater use of both ED visits and in-person visits rather than use of telehealth compared to whites.

Journal of the American Medical Informatics Association, 27(12), 2020, 1949–1954
doi: 10.1093/jamia/ocaa216
Advance Access Publication Date: 31 August 2020
Brief Communications



Brief Communications

Characteristics of telehealth users in NYC for COVID-related care during the coronavirus pandemic

Ellerie Weber , Sarah J. Miller, Varuna Astha, Teresa Janevic, and Emma Benn

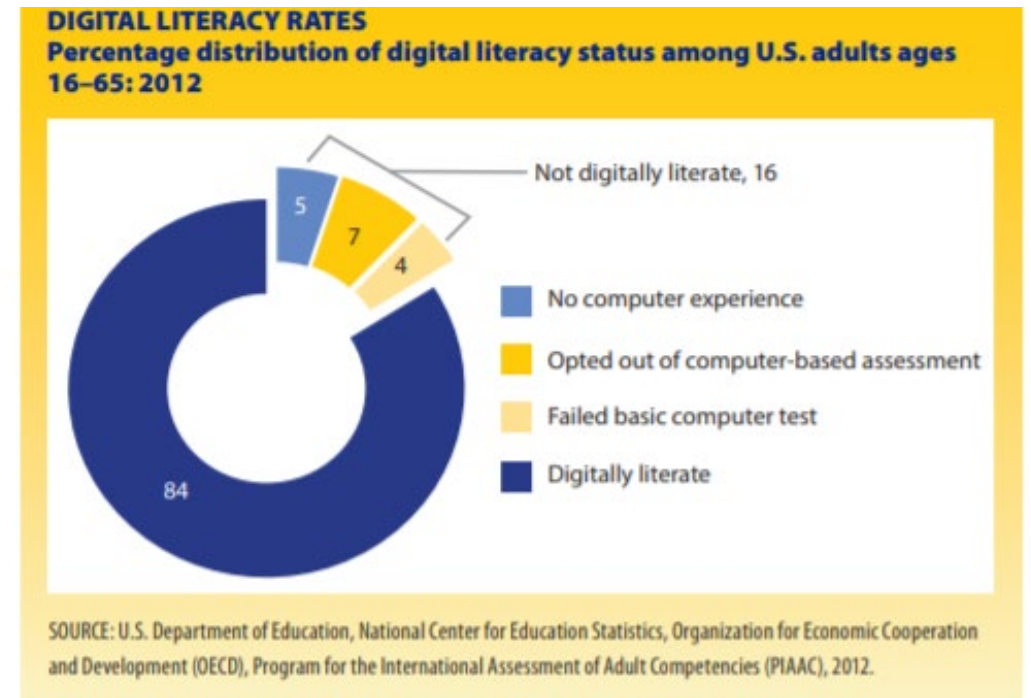
Department of Population Health Sciences and Policy, Icahn School of Medicine at Mount Sinai, New York, New York, USA
Corresponding Author: Ellerie Weber, PhD, MBA, Department of Population Health Sciences and Policy, One Gustave L. Levy Place Box 1077, New York, NY 10029, USA (ellerie.weber@mountsinai.org)

Ellerie Weber et al., Characteristics of Telehealth Users in NYC for COVID-Related Care During the Coronavirus Pandemic, J AM MED INFORMATICS ASS'N (2020), <https://academic.oup.com/jamia/article/27/12/1949/5899728>.

Kelly A Hirko et al., Telehealth in Response to the COVID-19 Pandemic: Implications for Rural Health Disparities, 27(11) J AM MEDICAL INFORMATICS ASS'N 1816–1818 (Nov. 2020).

Digital Literacy Gap

Dearth of patient education materials for persons with language and literacy challenges.



Daniel M. Walker, et al., Exploring the Digital Divide: Age and Race Disparities in Use of an Inpatient Portal, 26(5) TELEMEDICINE AND E-HEALTH, (2020).

Thiru M. Annaswamy, MD MA et al., Telemedicine Barriers and Challenges for Persons with Disabilities: COVID-19 and Beyond, 13(4) DISABILITY HEALTH J. (2020).

Design and Accessibility

Most telemedicine platforms do not have custom features to ease healthcare communications for persons who are deaf or blind or for persons with cognitive disabilities, along with a lack of translating services for non-English speakers.

Accessibility issues that prevent certain groups of people from being able to utilize telehealth, from communication with healthcare provider to navigating patient portals.

Rupa S Valdez et. al. Ensuring Full Participation of People with Disabilities in an Era of Telehealth, J AM MED INFORMATICS ASS'N 1-4 (2020).

Nicole Wetsman, Telehealth Wasn't Designed for Non-English Speakers, THE VERGE (June 4, 2020).

ADA and Split in Jurisdictions

The Americans with Disabilities Act (ADA) was passed before the Internet became a widely used public service.

The design standards of the ADA address physical spaces including healthcare facilities, but not virtual spaces or services such as with telehealth.

In principle, the ADA's coverage extends to the Internet and its virtual world. However, the law does not prescribe standards for accessibility or directions for making websites accessible.

Federal & State Response to Digital Divide

Federal Communications Commission committed funding for 2,471 **schools**, 205 **libraries** from the Emergency Connectivity Fund Program on October 12, 2021.

Colorado HB 1109: Expand Broadband Service [Enacted July 2021]

- Discounted service to low-income households.
- Reimburse certain households for up to \$600 per year for broadband.

Utah HB 304: Digital Opportunity Access

Implement measures to increase broadband infrastructure, digital access, and digital equity.

New Jersey AB 5255 requires telehealth systems to include accessible **communication features** to facilitate the use of telehealth by individuals with a disability and individuals with a sensory impairment, including, but not limited to, individuals who are deaf, hard of hearing, visually impaired, blind or deaf-blind.

Massachusetts introduced SB 678 requiring reimbursement for **interpreter services** for non-English speakers as well as those who are deaf or hard of hearing.

Older Americans and Telehealth



Difficulty
leaving the
home
(#1)



Healthcare
costs and
needs



Centers for
Medicare &
Medicaid
Services

2030:

79 million Americans will be over 65, 20% of the population

HEALTH INC.

With Workers In Short Supply, Seniors Often Wait Months For Home Health Care

June 30, 2021 · 5:03 AM ET

PHIL GALEWITZ

FROM KHN



Waitlists for Medicaid's Home-and Community-Based Services:

- Nearly 820,000 people across 41 states
- Average wait time is three years

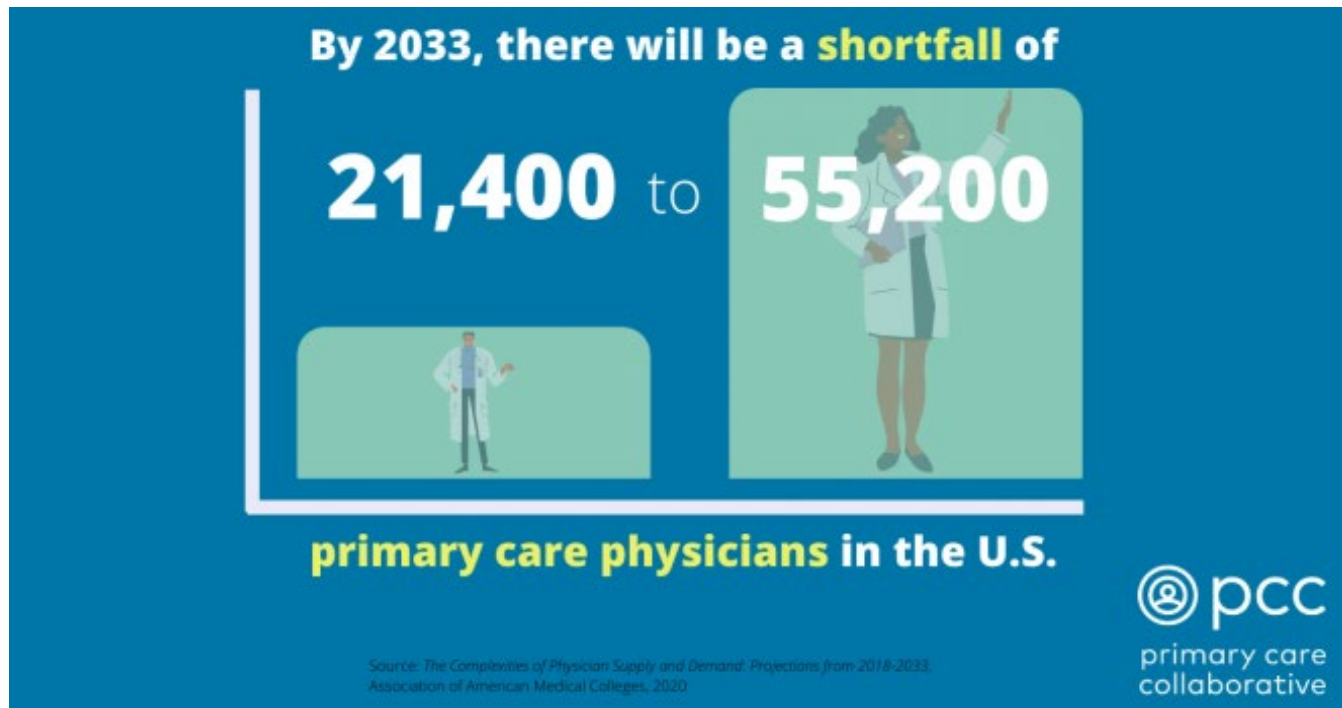
The New York Times

Opinion

50 Million Americans Are Unpaid Caregivers. We Need Help.

Ratio of working age people to seniors stands at 7:1 in 2021.
By 2050, it will be less than 3:1.

Growing Patient Demand Shrinking Clinician Supply



HEALTH

‘People are going to die’: Hospitals in half the states are facing a massive staffing shortage as Covid-19 surges



By [Olivia Goldhill](#) Nov. 19, 2020

[Reprints](#)



A health worker in the Covid-19 ICU at United Memorial Medical Center in Houston.

GO NAKAMURA/GETTY IMAGES

Considerations for technology adoption in home healthcare with an **older population**

Heightened vulnerability

Cognitive, sensory, physical impairments
“can’t see or hear” provider
Multiple comorbidities

Consent

High physical, cognitive impairments
Digital literacy barriers

Social isolation and loneliness

Decreased engagement and participation
Desire to feel connected to provider

Quality of care & continuity of care

Oversight and training for aides / caregivers

Palliative Care in Alabama

“Fewer than 40% of hospitals in Alabama offer palliative care services.”

“16% of households in rural Alabama (54 counties) lack a vehicle.”

Multidisciplinary palliative care model isn't feasible in rural areas.

*“It's an **equity issue**, patients should get access to all levels of care. Not just curative and preventative, but also humane care for serious illness.”*

Along with improving quality of life for patients, palliative care also appears to cost hospitals less than other intensive treatment.

LEADING TO HEALTH



Bass calls Susan McCammon (right), a surgeon and palliative medicine physician at the University of Alabama at Birmingham, regularly visits patients such as Janice Bass, often with her dog, Riley, to manage treatment and support advance care planning.

Bringing Palliative Care To Underserved Rural Communities

With home visits and modern technology, palliative medicine physicians in Alabama are overcoming long-held resistance.

BY CHARLOTTE HUFF

Susan McCammon, casually dressed in tanje slacks and a black cardigan, sits on the edge of a reclining chair near the foot of Janice Bass's bed in her home, making the conversation forward. The second-floor bedroom is jammed with medical supplies, the only seven-year-old woman's wall-to-wall carpeting, and adult coloring books spill over from a nearby basket. A calendar featuring family photos hangs on the wall.

They talk about the side effects of the chemotherapy pills that Bass is taking and related insurance headaches. They laugh about her shopping adventures of years, when Bass would return from his-

ting the fabric sales with a friend and then hold the evidence from her husband, reaching the bags in the bushes outside.

Bass, who has advanced renal cancer, is coping with a painful leg wound that's been slow to heal, making it difficult for her to put much weight on it. Sometimes, she tells McCammon, she's hit by a wave of excruciating pain up that leg. "What do I do? Pray. And I just ride it out." But she's been able to make it down the stairs some in recent days, when her grandchildren visited from New York City.

Finally McCammon, a surgeon and palliative medicine physician, who Bass if she's taken a look at the advance directives paperwork that she'd been sent. "I got it and I read over it," Bass says. "I was never really able to fill it out."

McCammon typically makes home visits a few times each week to seriously ill patients who are getting palliative care at the University of Alabama at Birmingham (UAB) Health System, one of many ways in which the academic system is striving to break beyond the walls of its downtown Birmingham campus. UAB, which includes the UAB Hospital, has offered palliative services for two decades, adding an inpatient unit in 2008. But over the course of the last several years, UAB clinicians have ramped up their efforts to educate more residents about its benefits, particularly those who are African American or living in rural areas of the state.

They've expanded UAB's home care program to include palliative care visits for patients like Bass. They've created an advisory group of African American patients from Birmingham to gain their insights into how to improve communications with black patients facing serious diagnoses. They're tapping video technology and, beginning this year, have been more frequently conducting virtual palliative consults with clinicians and

Photographs by Duane Stark

DECEMBER 2016 VOL 12 | HOSPITAL AFFAIRS | 1971

AZ HB 2454 - Pilot Program

Allows health systems to provide acute care services to patients in the home.

Mayo Clinic's advanced care at home model of care announced in Sept 2021:

- Partner with [Medically Home](#), a Boston-based technology-enabled services company.
- 18 rapid-response support services
- Clinical command center and
- Care response team



***Magnifies a broader concern
as care moves into the home***

Can a data-driven system,
which prioritizes 'efficiency',
adapt to the special needs of
vulnerable populations
in a fair and equitable way?



Walmart  **Health**

Walgreens


**The Patient
Company**



hims & hers

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

Promise of Telehealth:

Financial (cost-savings), Quality, and Access

Must be intentional about the development of our telehealth system to ensure existing inequities are not compounded.

- *Advocate* for interstate provider licensure and continued access to telehealth care via audio-only AND audio/video modalities
- *Work with vendors* to ensure telehealth platforms are constructed in equitable fashion and support related legislation

ARIZONA
TELEMEDICINE
PROGRAM



THE UNIVERSITY OF ARIZONA
JAMES E. ROGERS COLLEGE OF LAW

Health Law

Thank you

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 [@trsklar](https://twitter.com/trsklar)

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

<https://southwesttrc.org/>

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