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

DEVELOPING A TELEMEDICINE PROGRAM
ARIZONA TELEMEDICINE PROGRAM
AUGUST 15, 2022

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Disclosures

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

Overview

Telehealth Policy Updates

Federal and Arizona

What will happen when the PHE ends?

**Evolving Doctor-Patient Relationship and the
Healthcare Workforce of the Future**

Health Disparities and Equitable Access

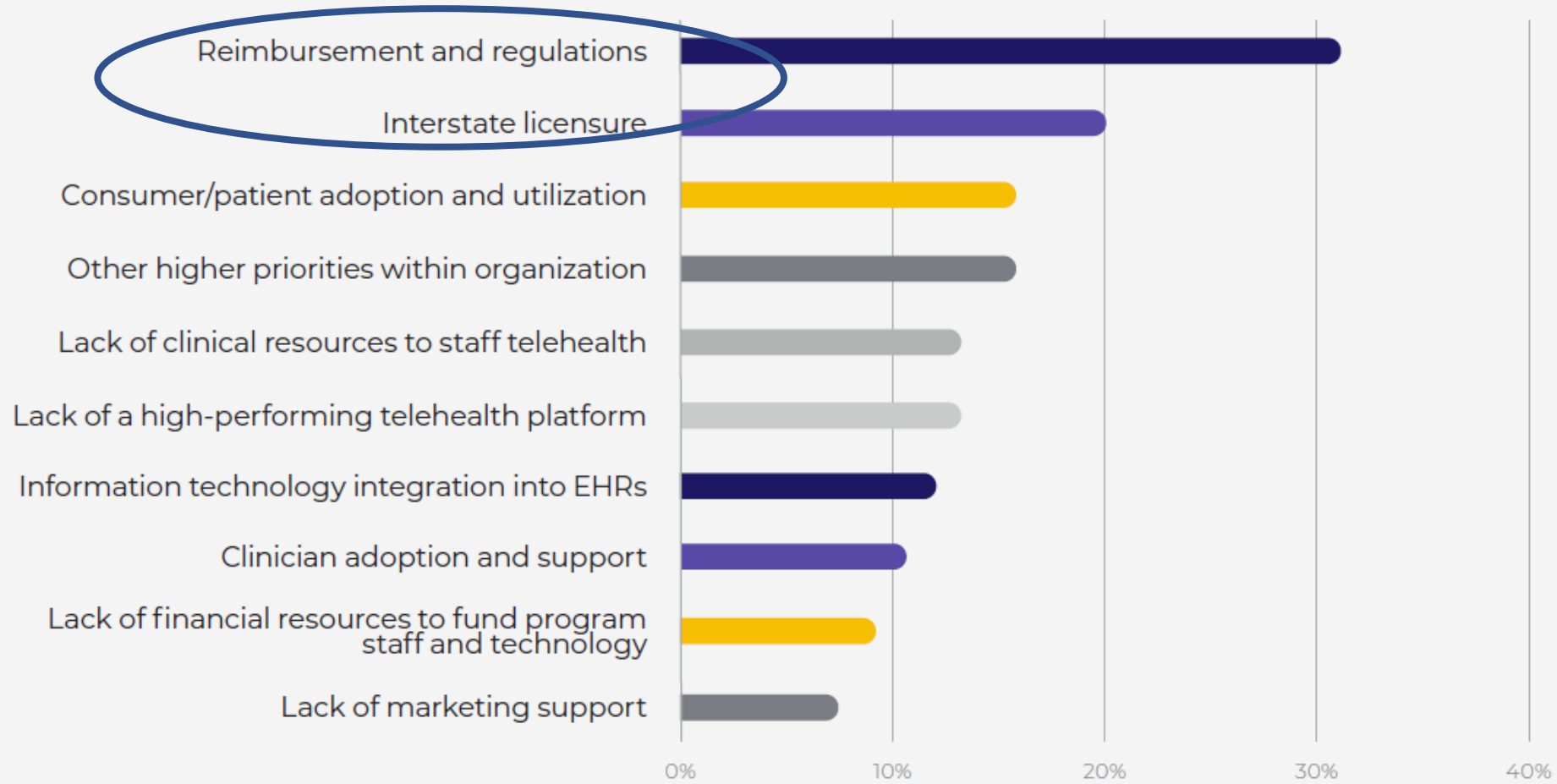
*How to not reinforce disparities
with virtual care?*

SAVE THE DATE

**ATP's 3rd Annual Policy Summit
November 15th from 1-3pm (virtual)**

Why Telehealth Law & Policy?

FIGURE 15 **Leading Barriers to Telehealth Implementation or Growth**



Promise of Telehealth Meets Law and Regulations

Access

Audio Only
In Person Requirements
Geographic Restrictions
Digital Divide

Costs

Waste
Fraud & Abuse
Unnecessary Utilization
Investment: Tech & Workforce

Quality of Care

Interstate Licensure
Practice of Medicine
Medical Boards

Privacy

HIPAA
Consumer Protection
Digital Health

Liability

Reimbursement

Parity
Billing / Coding
Providers and Services

Federal

Rep. Liz Cheney's HR 4040

Advancing Telehealth Beyond COVID-19 Act of 2022

Extends key telehealth flexibilities under the Public Health Emergency (PHE) from first day PHE ends through **to December 31, 2024 / January 1, 2025.**

- Removes geographic requirements and expand originating sites to include patients' homes
- Continue coverage for audio-only telehealth services
- Extends FQHCs and RHCs to furnish telehealth services under Medicare
- Delays the 6-month in-person requirement for telehealth mental health services
- Allows telehealth to recertify eligibility for hospice care
- Expands list of practitioners

Federal

Rep. Liz Cheney's HR 4040

Advancing Telehealth Beyond COVID-19 Act of 2022

Passed the House on July 27, 2022

Vote: 416 - 12

Extension fully paid for using Medicare Improvement Fund

Currently, the bill is in the **Senate** and referred to
Committee on Finance

Builds on the bipartisan Consolidated Appropriations Act of 2022 –
from five months to **two years** with mentions

bill should **do more, go further**, and **permanent** authorization of telehealth flexibility.

Extra time to **assess**

Support making telehealth flexibilities permanent part of Medicare

Financial impact expanded telehealth services have on the Medicare program [Medicare increased from **840,000 in 2019 to 52.7 million in 2020**, largely from seniors accessing telehealth from their homes]

- Beneficiaries' health and well-being
- Quality of care
- Integrity issues: Waste, fraud & abuse
- Protect health information privacy
- Importance of amassing and analyzing nationwide data

Access

Audio Only

In Person Requirements

Geographic Restrictions

Digital Divide

*“Telehealth has become an **integral part** of our healthcare system during this pandemic.”*

*“The waiver of Medicare’s **originating site** and **geographic restrictions**, including **audio-only services**.”*

*“We cannot allow an arbitrary and clinically unsupported **in-person requirement** to act as a barrier.”*

*Costs, health risks, and wait times associated with **in-person visits** and increasing provider shortage.*

Future direction – **post HR 4040** (beyond Medicare)

- **Incentivize employers** to provide access to telehealth for an estimated 156 million people with employer health insurance.
- Support **health savings accounts** - 32 million people to have access to use those accounts for their telehealth.
- **Stop inequitable payment policies** for safety-net providers – FQHCs and RHCs.
*Create **parity** between in person and telehealth policies*
- Promote capital **investments in the technology** through longer extensions / permanent flexibilities.

Other *Pending* Federal Legislation

Ensuring Telehealth Extension and Evaluation Act

(S. [3593](#)) – *Cost and utilization studies;*

Payment must be made in the same manner as for non-telehealth services.

Health Equity and Accountability Act of 2022 ([HR 7585](#))

Medicare providers to practice across state lines

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

May 11, 2018, 08:59:00 AM





<https://www.linkedin.com/company/ctel/>



ESTABLISHING A NATIONAL TELEHEALTH DATA WAREHOUSE

Builds on **CTeL's** Telehealth Cost Impact Study to provide analysis of access, utilization, services provided, and cost.

Telehealth Data Warehouse: Opportunities for Arizona → ATP Policy Summit on Nov 15th



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.

Practice

Audio-Only Modality

Interstate Licensing

Geographic Restrictions

In-person Visit Requirements

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.

HB 2454 – Requirements for AZ Department of Insurance and Financial Institutions

Track and report **number and type of telehealth encounters** based on claims data:

1. Number of audio-only telehealth encounters
2. Number of telehealth encounters with out-of-state providers

Telehealth Advisory Committee:

Required to submit a report with recommendations regarding **audio-only telehealth** as a substitute for an in-person or audio-visual due Dec 2021.

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

Sunset provision of 2029 removed as of 3/23/22 (**SB 1390**)

HB 2454 established a **pilot program** administered by the **Arizona Department of Health Services**

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

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

- 18 rapid-response support services
- Clinical command center
- Care response team



Expanded with **HB 2374** enacted on April 14, 2022.

- Three Year Pilot Program for **acute care services delivered at home.**
- Any **nurse visits** under the program may be virtual or in person.
- **Paramedic visits** may provide the twice required on-site visits.

19-driven capacity issues

Dec 14, 2020

Jun 14, 2021, 08:30am EDT | 1,405 views

Where Hospital-At-Home Programs Are Heading After Last Year's Boom



Ashish V. Shah Forbes Councils Member
Forbes Technology Council COUNCIL POST | Membership (Fee-Based)
Innovation

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

Kaiser, Mayo, Medically Home found coalition to promote advanced hospital-at-home services

Federal regulators should "put guardrails on, but let us continue the good work," says Mayo Clinic's Dr. Michael Maniaci.

Leading Health Innovators Launch Alliance To Advance Care In The Home

Coalition to focus on site of service flexibility for clinical care in the wake of pandemic

Amazon Care, Intermountain, Ascension launch hospital-at-home healthcare alliance

Jackie Drees - Wednesday, March 3rd, 2021 Print | Email

Hospital at Home: Users Group

**182 hospitals/systems
now have a program- up
from 5-10 pre-pandemic**

Evolving

Doctor-Patient Relationship and the Healthcare Workforce of the Future



Samuel M. Vauclain—William Hazlett Upson—James Warner Bellah
Wesley Stout—Eleanor Mercein—Samuel Crowther—Booth Tarkington



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—

***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**

The Doctor Will **Hear** You Now: Audio-Only Telehealth Carve Out

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.

As of Jan 2022, audio-only coverage reduced from 94 codes to 37.

https://www.azahcccs.gov/AHCCCS/Downloads/TelehealthAdvisoryCommittee/Agendas/TAC_AudioOnlyRecommendations-HOUSEBILL2454Report2021Final.pdf



Telehealth Legislative Definition

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



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

Increasing costs and restricting access justified?

Considerations:

- Patient-centered care?
- Provider shortage?
- *Which legislative approach is more likely to reinforce disparities in care?*

Competency and standard of care should suffice, *regardless of method*
(Federal Trade Commission)

Office for the Advancement of Telehealth (OAT)

Serves across HHS, coordinates federal agencies, and promotes the use of **telehealth technologies** for healthcare delivery, education, and health information services

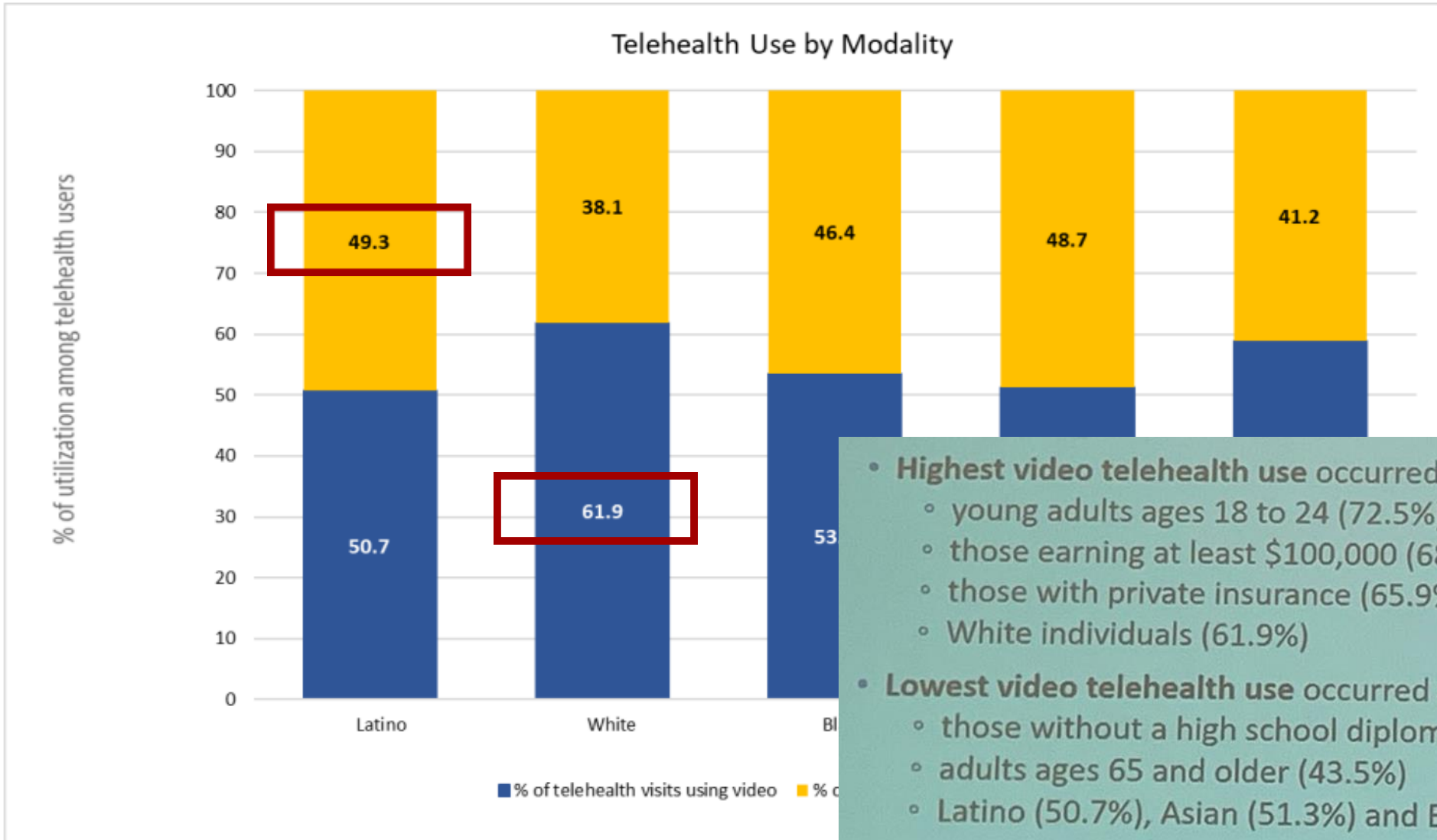
In Fiscal Year 2020, OAT awarded approximately \$8.9 million. Potentially exploring grand funding for **telehealth and long-term care** for next funding cycle in **FY 2025**.



National Telehealth Conference on May 16-17, 2022.

Recordings: <https://nationaltelehealthconference.vfairs.com/>

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



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

Source: <https://aspe.hhs.gov/sites/default/files/documents/4e1853c0b4885112b2994680a58af9ed/telehealth-hps-ib.pdf>

Issues to Consider Involving **Audio-Only**

Audio-only visits will lead to **fraud and abuse**.

Additional (unnecessary) **utilization** that will drive up healthcare costs.

Need to place **limits** on 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 Telehealth: Federal and State Legislation

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>

Louisiana House Bill 270

Ohio House Bill 122

Oklahoma House Bill 1689

Oregon Senate Bill 423

CMS Regulations

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>

Update: Audio-only Interaction Meets the Requirements

SAVE THE DATE

3rd Arizona Telemedicine Policy Summit

November 15, 2022

1-3 pm

Virtual

Thank you

**Thoughts?
Questions?**

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<https://telemedicine.arizona.edu>

<https://southwesttrc.org>

