

Telehealth Policies Affecting PT and OT Practitioners under COVID and Beyond



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Objectives

- Identify three policy changes in telehealth that positively affected PT and OT practitioners under the PHE.
- Describe how practice model changes meet patient needs.
- Name two advocacy efforts to promote digital health practice.
- Identify the major barriers to advancing the use of digital health in rehabilitation.
- Explain the challenges associated with the proliferation of digital health companies during the PHE.

Overview

- When providing services via telehealth two considerations for a practitioner:
 1. Does my state's practice act allow me to provide services via telehealth?
 2. Will I be reimbursed for these services?
- COVID-19 PHE – many payers, states, and therapy licensing entities offered guidance and temporary flexibilities in the immediate. Flexibilities were extended, and in some cases, adopted permanently.
- As the PHE winds down – state and federal flexibilities are disappearing and policies are being adopted that may or may not include all aspects of the previous flexibilities

The Evolution of Telehealth Under the PHE

- Federal Policy waivers facilitating access to care
- State Policy waivers and legislation
- Commercial Payer policy changes
- Practice model pivots to meet patient needs

Pre-Pandemic (Before March 2020)

- CMS did **not** reimburse for PT or OT services provided via telehealth to Medicare beneficiaries
- Statutory restriction: Congressional action needed
- Veterans Affairs allowed some therapy services via telehealth
- Some therapists were providing telehealth in the commercial, employer funded, or self-pay environments.

COVID-19 – Beginning in March 2020

- Congress granted HHS/CMS emergency authority to waive statutory provisions that excluded PTs and OTs from providing services via telehealth in Medicare
- CMS issues waiver to allow OT, PT, SLP, and audiology to provide services via telehealth
- CMS emergency waivers will end when PHE ends
 - Current End Date: October 14, 2022
 - HHS Promises 60-day notice before ending PHE (currently runs through middle of October)

Federal Waivers and Policies

- HIPPA flexibilities
- Patient location
- Expanded services
- Relationship between patient and provider
- Eligible Providers
- Supervision requirements
- Cost Sharing waivers

State laws, Regulations, Executive Orders, Policies, and Guidance Governing Telehealth

- Before the public health emergency, many states laws and regulations were silent on whether PTs could treat patients via telehealth.
- Mandated clinic closures
- As states began implementing shutdowns in spring 2020, many states issued emergency orders and guidance explicitly permitting PTs and OTs to provide services via telehealth and mandating insurance reimbursement for those services.

Commercial Payer Policies

- Expansion of eligible providers to include physical therapists and occupational therapists.
- Expansion of originating site and distant site options.
- Expansion of CPT codes recognized as billable when delivered via telehealth.
- Adjustment of claim submission requirements to allow for additional modifier use.
- Elimination of cost sharing.

Practice Model Changes

- Rapid rate of adoption of telehealth by many physical and occupational therapists across the country.
- High utilization of telehealth across the country for patients requiring physical and occupational therapy.
- High patient satisfaction ratings with telehealth visits.
- Positive outcomes associated with telehealth visits.
- Increased consumer demand for access to telehealth.
- Identification of a means by which to address access issues for situations other than a public health emergency
- Rapid Adoption of Communication Technology Based Services

Where Are We Now

- Federal Landscape
- State Landscape
- Commercial Payer Landscape

Federal Landscape

- Current COVID-19 public health emergency declaration is effective through October 14, 2022.
- Once the end of the COVID-19 public health emergency occurs, the Consolidated Appropriations Act, 2022 (PDF), has ensured a 151-day extension period before many of the policies outlined in the COVID-19 public health emergency are set to expire, to allow for a transition period.
 - Increased flexibility regarding where the patient receives Medicare telehealth services, as well as where the services originate will revert back to match the restrictions that were in place prior to the COVID-19 public health emergency.
 - Medicare reimbursement for telehealth visits furnished by physical therapists, occupational therapists, speech language pathologists, and audiologists will no longer be allowed.
 - Medicare will no longer cover audio-only visits for physical health encounters.

Federal Landscape

Challenges:

- MEDPAC doesn't like telehealth and therapy (some supporters but more vocal opposition from a fraud and abuse perspective)
- Treating SLP, PT, and OT the same

Federal Landscape

Medicare Codes Allowed -Available through end of PHE only

Code	Description	Audio Only
92526	Treatment swallowing dysfunction	No
92610	Swallowing evaluation	No
97129	Cognitive intervention 1 st 15 min	No
97130	Cognitive intervention each addl 15 min	No
97150	Group therapeutic procedures	No
97530	Therapeutic activities	No
97542	Wheelchair management training	No

Federal Landscape

Medicare Codes Allowed - Proposed to remain on Category 3 list until the end of 2023 (but only available to therapists until the end of the PHE)

Code	Description	Audio Only
97110	Therapeutic activities	No
97165	OT evaluation low complexity	No
97166	OT evaluation moderate complexity	No
97167	OT evaluation high complexity	No
97168	OT reevaluation	No
97535	Self care	Yes
97750	Physical performance testing	No
97755	Assistive technology assessment	No
97760	Orthotic management and training	No
97761	Prosthetic management and training	No

Federal Lanscape

- Medicare Codes Allowed – Available through end of PHE only

Code	Description	Audio Only
90901	Biofeedback	No
97537	Community work reintegration	No
97763	Orthotic/Prosthetic Management subsequent visit	No

Federal Landscape

Proposed to remain on Category 3 list until the end of 2023 (but only available to therapists until the end of the PHE)

Code	Description	Audio Only
97112	Neuro re-ed	No
97116	Gait Training	No
97161	PT Eval Low	No
97162	PT Eval Moderate	No
97163	PT Eval High	No
97164	PT Re-eval	No

Federal Landscape

Permanently Allowed E-visits

98970 Qualified nonphysician health care professional online digital assessment and management, for an established patient, for up to 7 days, cumulative time during the 7 days; 5-10 minutes

98971 11-20 minutes

98972 21 or more minutes

Patient initiates contact:	OT response
Patient's caregiver has questions about ADLs	Caregiver training (e.g., transfer training, ADL training, home exercise program training, positioning)
Patient sends a question regarding difficulty using adaptive device	Advise the patient on how to get the device to function properly, and provide additional patient education materials on ways to use the device most effectively in their current environment

Federal Landscape

Permanently Allowed Virtual Check In

G2250 Remote evaluation of recorded video and/or images submitted by an established patient (e.g., store and forward), including interpretation with follow-up with the patient within 24 business hours, not originating from a related service provided within the previous 7 days nor leading to a service or procedure within the next 24 hours or soonest available appointment

G2251 Brief communication technology-based service, e.g. virtual check-in, by a qualified health care professional who cannot report evaluation and management services, provided to an established patient, not originating from a related service provided within the previous 7 days nor leading to a service or procedure within the next 24 hours or soonest available appointment; 5-10 minutes of medical discussion

State Landscape

- High degree of variability
- Beginning to see some elimination of waivers particularly related to eligible providers and payment parity
- Anticipate some changes will become permanent

State Landscape – Physical Therapy

- 45 states currently permit therapists to treat via telehealth
- 5 states are silent on telehealth practice
- Some states are still operating under emergency orders
- Some states including Colorado and New Hampshire, codified into statute the emergency expansions in their states last year, recognizing that telehealth should permanently be part of their state's health care delivery system, given its success during the pandemic.

State Landscape

- 28 state Boards allow telehealth either in law, regulation, or policy
 - 20 state Boards definitely allow it: AK, CA, CO (allowed in OT scope of practice, no regs) DE, GA, IL, IA, KY, ME, NV, NJ, NC, ND, OH (statute in effect, regs pending), OK, OR, TX, WA, WV, WY
 - 4 state Boards have issued a policy or guidance doc that allows it: VA, MT, KS (emailed response), SD (emailed response)
 - 4 have issued policy on it that doesn't prohibit it: FL (Board policy says it is not precluded), MD (quotes AOTA's telehealth document from 2013), MS (Board requires state licensure before providing telehealth services), PA (not regulated beyond AOTA's Code of Ethics)
- 3 state Boards have regulations pending related to telehealth (OH (authorized in statute), WI, TX (amending current regs))

AOTA website: <https://www.aota.org/career/state-licensure> (in front of member wall)

State Landscape

- 10 states have a law in effect that is not OT-specific, but allows OT practitioners to provide services via telehealth (AZ, Ark, CT, FL, ID, MI, NH, TN, UT, VT)
 - 4 states have a law in effect that is not OT-specific, but allows only OTs to provide telehealth services (NY, IN, NM, LA)
 - 2 states have an insurance-related law that allows OT practitioners to provide telehealth services (MN (insurance law), NE (Medicaid law, must be enrolled as a Medicaid provider))
- 10 state Boards have nothing in place that addresses whether or not OT practitioners can provide services via telehealth (AL, DC, HI, MA, MO, MN, NE, PR, RI, SC)

AOTA website: <https://www.aota.org/career/state-licensure> (in front of member wall)

State Landscape

Challenges:

- 4 states have a law in effect that is not OT-specific, but allows only OTs to provide telehealth services (NY, IN, NM, LA)
- AOTA promotes & advocates for the profession, Boards protect the public
- Law is silent in some spaces – what does that mean? Board counsel will get involved, not a clinician
- Legislative sessions – where do the changes need to occur, if it's legislation, may need to wait
- Delivery method vs. Intervention – might not be a scope of practice issue

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Commercial Payer Landscape

- Payers are evaluating the use of telehealth and trying to determine what policies need to be adopted on a permanent basis.
 - Decreased covered services
 - Modified Eligible Providers
 - Changes in payment parity policies
 - Changes in billing requirements
 - Compliance standards are returning
 - Cost sharing is returning

Commercial Payer Landscape

- UHC and Cigna have already implemented permanent telehealth policies that include PT and OT
- The other 3 of the "Big Five" are still adhering to PHE flexibilities
- Smaller state or regional payers are all over the place, ex. BCBS TN was first to implement permanent telehealth (summer 2020) vs. Independence BCBS (PA) removing most therapy codes from permanent policy (summer 2021)

Commercial Payer Landscape

- Payment parity with in-person services (suggested reductions to practice expense (PE) portion of reimbursement, ex. BCBS MA)
- Determining which CPT codes should be recommended for telehealth services (eval, re-eval, timed vs untimed, etc.)
- Concerns re: fraud/abuse (MedPAC, OIG)
- Supervision requirements for OTAs and PTAs
- Advocating for telehealth to supplement rather than supplant in-person

Medicaid Landscape

- Pre-pandemic, [16 state Medicaid programs](#) allowed for physical, occupational, and speech therapy to be delivered via telehealth
- States have the flexibility to determine which services and providers are allowed to be delivered via telehealth, what types of practitioners or providers may deliver services, which specific Medicaid populations and geographic areas can be served, and what payment rates to providers will be. A separate state plan amendment (SPA) is not required if services provided via telehealth are paid at the same rate as in-person services.

Medicaid Landscape

- State Medicaid programs must follow all applicable federal and state laws for telehealth – including HIPAA, provider licensing, and scope of practice laws.
- December 2021, CMS updated the [State Medicaid & CHIP Telehealth Toolkit](#) (originally published April 23, 2020). State considerations includes the provider or practitioner delivering the service and urges states leaders to review the range of providers and practitioners authorized to bill and determine which services can be legitimately delivered via telehealth

Medicaid Landscape

- During the public health emergency, a number of states made changes to services allowed to be delivered via telehealth, including occupational and physical therapy services – many of these changes were temporary and now states are working to make some permanent
- Some states continuing to study telehealth flexibilities to decide which to continue (E.g., CT and CA)
- Permanent policies have come through legislation, permanent rules, and Department bulletins

Medicaid Landscape

Challenges:

- Overall Medicaid budget and focuses
- States (e.g., North Carolina) sunseting a number of codes used by occupational and physical therapy practitioners via telehealth
- How will permanent policies go into effect / where does advocacy need to go? (legislation, regulatory bodies, Medicaid)

What's Next

- How digital health will transform practice
- Advocacy efforts

Digital Health Impact

- Digital Health companies have been prolific during the PHE with significant venture capital investment.
- There is a great deal of heterogeneity in companies, products, target audiences for marketing, and representations.
- Digital Health is impacting every aspect of health care payment and policy.
- Challenges exist in assessing quality, establishing coding, determining appropriate pathways for different patient populations, identifying when digital tools are adjunctive or replace clinician directed or delivered care.

Federal Landscape

- Legislation enacted to extend OT/OTA and PT/PTA telehealth in Medicare for 151 days after end of PHE (if PHE ends October 14, OT/OTAs and PT/PTAs can only bill for those eligible codes)
 - Time to further review CMS data/GAO study**/MedPAC analysis
- Expanded Telehealth Access Act (HR2168 (sponsors: 71)/S3193 (sponsors: 7))
 - Would list OT/OTAs and PT/PTAs as Medicare telehealth providers
- Telehealth Modernization Act (comprehensive bill)
 - Would address nearly all telehealth waiver issues & grant CMS authority to list OT/OTAs and PT/PTAs as Medicare telehealth providers
- CONNECT 2.0 (comprehensive bill)
 - House bill does NOT address OT/OTA telehealth provider status

Advocacy

- As it relates to the delivery of physical therapy APTA is committed to ensuring that any form of telehealth represented as physical therapy is delivered in compliance with all federal and state regulations and laws governing the practice of physical therapy and provision of telehealth services.
- APTA strongly supports legislative and regulatory changes that permit PTs and PTAs to provide services via telehealth such as the Expanded Telehealth Access Act.
- This bipartisan bill permanently lists physical therapist and physical therapy assistants as authorized practitioners of telehealth under the Medicare program.
- The Public Health Emergency exemplified the need for patient choices when it comes to care. Now is the time to enact telehealth reforms.
- Telehealth in physical therapy shouldn't be an emergency-only option.

Advocacy

- OTs and OTAs should be able to provide services via telehealth
- Which CPT codes?
- What should supervision of OTAs under telehealth look like?
- Advocacy for different settings (clinic, SNF, HH, etc.)
- What kind of technology should be allowed?
 - Audio only? What kind of technology is being utilized now efficiently?
- Payment parity

References

- <https://www.cchpca.org/2022/03/TELEHEALTH-POLICY-IMPACTS-OF-2022-CONSOLIDATED-APPROPRIATIONS-ACT.pdf>
- <https://telehealth.hhs.gov/providers/policy-changes-during-the-covid-19-public-health-emergency/telehealth-licensing-requirements-and-interstate-compacts/>

Questions?

