Navigating Telehealth Legislative and Policy Changes Beyond the Public Health Emergency

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Overview

Federal
- Public Health Emergency
- Virtual Prescribing of Controlled Substances ★
- Regulatory Oversight and Drug Advertising

State Level – (Arizona)
- Licensure Pathways
- Uniform Telehealth Act

Looking Ahead
- Digital Equity Infrastructure
Definitions and Advancements

Telehealth
Delivering Care
at a Distance

Interactive Patient Care (IPC)
Live Video, Chat, or Phone Interaction
between a Clinician and a Patient

Remote Patient Monitoring (RPM)
Continuous & Periodic Transmission
of Vital Signs

Telemedicine
Practicing Medicine
at a Distance

Store & Forward (S&F)
Asynchronous Transmission
of Images, Video, Sound, etc.
Emerging Digital Health Tools and Patient’s Role

Synchronous Tools (videoconferencing)

Asynchronous Tools (secure messaging, SMS)

Audio Digital Tools (phone calls)

Digital Self-Care Tools (applications that collect and store biometric data)

Remote Home Monitoring

Services carried out using a variety of digital health technologies such as:

Only 5% of Medicare beneficiaries use RPM. Estimates project 25% by 2025.
Legislative Telehealth Definition

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.
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
Legislative Telehealth Definition

Use of synchronous or asynchronous telecommunication technology by a practitioner to provide health care to a patient at a different physical location than the practitioner.

https://www.uniformlaws.org/committees/community-home?CommunityKey=2348c20a-b645-4302-aa5d-9ebf239055bf
10.03.22
Payment parity between audio and video visits helps ensure there are no financial incentives to limit modalities that meet the standard of care.
Federal

Public Health Emergency

Virtual Prescribing of Controlled Substances
PHE is Ending
Key Dates for Telehealth

Consolidated Appropriations Act of 2023
Dec 29, 2022

PHE End Date (12th extension)
May 11, 2023

PHE End Date Set
Jan 30, 2023

Telehealth Flexibilities End
Dec 31, 2024
Five Key Telehealth Takeaways from the Consolidated Appropriations Act of 2023

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https://telemedicine.arizona.edu/blog/disentangling-telehealth-public-health-emergency

Extended to December 31, 2024

Legislation signed on 12/29/22.

Sec. 4113. Advancing Telehealth Beyond COVID–19.

#1: Home is considered an originating site.

#2: Medicare reimbursement for audio-only telehealth services.

#3: In-person visits for telebehavioral health waived under CAA, but virtual prescribing for controlled substances tied to PHE.

#4: Extend pre-deductible telehealth waiver.

#5: Expand care options with eligible practitioners, safety net providers, and acute hospital care at home programs.
DEA’s Proposed Rules for Telehealth Prescribing of Controlled Substances Post-PHE

Join us: March 23, 2023
9am PDT, 10am MDT, 11am CDT, 12pm EDT

Objectives:
1. Understand key provisions of the proposed rules and new process if the rules go into effect.
2. Increase understanding of the current public comment period and how to participate.
3. Learn what to do now in case the proposed rules go into effect post-PHE.

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Facilitator: Elizabeth Krupinski, PhD, SWTRC Director

To register visit: www.Telemedicine.Arizona.edu

Webinar recording: https://swtrc.wistia.com/medias/xrud2yhaq2
30-day public comment period ended on March 31, 2023

Telemedicine Prescribing of Controlled Substances When the Practitioner and the Patient Have Not Had a Prior In-Person Medical Evaluation

35,466 comments submitted

Federal PHE ends on May 11, 2023 with return of:


Office of Civil Rights will no longer be exercising enforcement discretion on HIPAA non-compliance. 90-day transition without penalties to August 9, 2023.

Exceptions to the Ryan Haight Act’s in-person requirement

Patient is being treated in a DEA-registered hospital or clinic.

Patient is being treated in the physical presence of a DEA-registered practitioner.

Telehealth visit conducted by a DEA-registered practitioner for Indian Health Service.

Telehealth visit conducted during a PHE as declared by Secretary of the U.S. DHHS.

Telehealth visit conducted by a practitioner with a special telemedicine registration.

Telehealth visit conducted by a VHA practitioner during a medical emergency.

Telehealth visit conducted under other circumstances specified by DEA regulations.
Telemedicine Prescribing of Controlled Substances When the Practitioner and the Patient Have Not Had a Prior In-Person Medical Evaluation

- Establish a qualified telemedicine referral pathway.

- Practitioner who issue a “telemedicine prescription,” must have a DEA registration in both the state where the patient is located and the state where the practitioner is located. DEA registered practitioners do not need a “physical address” in each state they practice medicine.

- 180-day waiver for in-person requirement for patients with an established telemedicine relationship.
Qualifying Telemedicine Referral

Referring practitioner has conducted at least one in-person medical evaluation of the patient.

A qualifying telemedicine referral must note the name and National Provider Identifier (NPI) of the practitioner to whom the patient is being referred.

If the prescribing telemedicine practitioner receives a qualifying telemedicine referral for the patient, a prescription may be issued for any controlled substance.
**Is my prescription a controlled medication?**

**NO, IT’S A NON-CONTROLLED MEDICATION**

Many common prescriptions are non-controlled medications and will **not** be impacted by these rules, including:

- Acne creams
- Blood pressure medications
- Antibiotics
- Cholesterol medications
- Birth control
- Insulin

**YES, IT’S A CONTROLLED MEDICATION**

Controlled medications are classified into one of five schedules based on medical use and potential for abuse or dependency. Examples of common controlled medications include:

<table>
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<tr>
<th>Schedule II</th>
<th>Schedule III</th>
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<th>Schedule V</th>
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<td>Adderall</td>
<td>Anabolic Steroids</td>
<td>Ambien</td>
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<td>Oxycodone</td>
<td>Buprenorphine</td>
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<td>Ritalin</td>
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<td>Vicodin</td>
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<td>Xanax</td>
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For a complete list of controlled medications visit: [https://www.deadversion.usdoj.gov/schedules/orangebook/c&s_alpha.pdf](https://www.deadversion.usdoj.gov/schedules/orangebook/c&s_alpha.pdf)

**Schedule III-V**

**UP TO 30-DAY INITIAL PRESCRIPTION**
PATIENT

I have seen my medical practitioner in person

- All prescriptions can be prescribed via telehealth

I have seen another medical practitioner in person who referred me to a new medical practitioner

- All prescriptions can be prescribed via telehealth

I have not seen a medical practitioner in person and need a Schedule III, IV, or V medication or buprenorphine for medication for opioid use disorder

- Prescription can be prescribed for 30 days via telehealth

I have not seen a medical practitioner in person and need a Schedule II medication or narcotic

- Prescription cannot be prescribed via telehealth

FOR REFILL
- Must see a medical practitioner in person before prescription
What happens next?

DEA has **41 days** - April 1 to May 11th

DEA must conclude that proposed rule **accomplishes the goals** of the problems identified.

DEA must also consider whether **alternate solutions** would be more effective or cost less.
Mismatch Between the Problem the DEA is Trying to Solve and the Proposed Rules

Effective oversight already exists via safeguards and data monitoring

Safeguards

- Business practices that confirm patient identity
- Policies that monitor for potential abuses
- Compliance with state law
- Approaches that assure effective oversight without limiting access via in-person visits

Data

- Lack of evidence indicating abuse and diversion (aggregate or anecdotal)
Gender affirming care and access to testosterone.

Patients at end of life on palliative care and hospice at home.

Veterans Health Administration and Biden Administration efforts to improve access to behavioral health for veterans.

Disproportionate impact on marginalized groups, Medicaid beneficiaries, and counter to other federal efforts.
Choosing a psychiatrist should not simply be determined by proximity. Expertise, ability, and therapeutic alliance — the trust and safety a patient feels with their psychiatrist — are all critical for successful outcomes.
Alternatives to a blanket in-person requirement

- Proposal not tenable given demand far exceeding supply. Half of U.S. counties have zero psychiatrists.

- Recognize short notice and lack of infrastructure. Change care delivery and business models (providers) Compliance and enforcement (DEA)

- Propose enforcement discretion by not require in person visit for established provider-patient relationships (beyond proposed 180-days) until end of December 31, 2024 (CAA 2023).
Almost 1 in 5 beneficiaries used certain audio-only telehealth services, with the vast majority of these beneficiaries using them exclusively.

- Older beneficiaries were more likely to use these audio-only services than younger beneficiaries.
- Notable because older beneficiaries were less likely to use all telehealth services than younger beneficiaries.

Medicare Telehealth Services During the First Year of the Pandemic: Program Integrity Risks
https://oig.hhs.gov/oei/reports/OEI-02-20-00720.pdf
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%)
States Providing Medicaid Coverage of Behavioral Health Services Delivered via Audio-Only Telehealth, as of 7/1/2022

- Audio-only coverage of mental health and SUD service (44 states incl DC)
- Audio-only coverage of mental health services (not SUD) (3 states)
- No audio-only coverage of mental health or SUD services (2 states)
- NR (2 states)
Prepare for the impact

- **DEA registration** required in states where provider is located and where patients reside otherwise in violation of federal law.

- Strategy to schedule **current patients** for an in-person visit within 180-days of post-PHE. One in-person visit establishes a virtual prescribing relationship.

- Set up process for **new patients** to have an in-person visit.

- Utilize the ‘**qualifying telemedicine referral**’

- **Hybrid visit**: In-person exam with provider, patient, and telehealth prescriber.

- Inform patients of potential new requirement and schedule in-person visits.
Prepare for the impact

- **Use communication channels**
  - Inform clinicians, patients, and colleagues
  - Use social media to inform the general public

- **Connect to congressional representatives**
  - Congress can push back on these proposed rules and some members already have published statements about the potential harm.

- **Keep going**
  - Document safeguards and publish data
Federal

Regulatory Oversight and Drug Advertising
”Digital ad spending by telehealth companies swelled to more than $100 million in 2021 from around $10 million in 2020.”
Supports a full ban of direct-to-consumer ads.

“It turns the healthcare interaction on its head where you’re starting with the treatment instead of starting with the problem,” - Jack Resneck, AMA president.

☑ Present information on each side effect and contraindication and effectiveness – a “true statement of information”
☒ Not false or misleading
☑ Approved or permitted for use
☑ Fair balance (benefits and uses with side effects and risks)

Has oversight over drug manufactures or distributors.
Takes action against misleading ads, but it doesn’t require prescription-drug ads to include risk information and potential side effects when the ads discuss drug benefits.

Telehealth companies under investigation argue they facilitate interactions between patients and providers and do not engage in prescription process.
State - Arizona

Licensure Pathways
Uniform Telehealth Act

At A Glance

MEDICAID REIMBURSEMENT
- Live Video: Yes
- Store-and-Forward: Yes
- Remote Patient Monitoring: Yes
- Audio Only: Yes

PRIVATE PAYER LAW
- Law Exists: Yes
- Payment Parity: Yes

PROFESSIONAL REQUIREMENTS
- Licensure Compacts: IMLC, NLC, OT, PSY, PTC
- Consent Requirements: Yes

https://www.cchpca.org/
https://www.cchpca.org/pending-legislation/
Virtual Prescribing in Arizona

Arizona State Law § 32-1401(27)(tt) – defines unprofessional conduct as:

“Prescribing, dispensing or furnishing a prescription medication or a prescription-only device... licensee first conducts a physical or mental health status examination of that person or has previously established a doctor-patient relationship. The physical or mental health status examination may be conducted through telehealth as defined in section 36-3601.”

Arizona State Law § 36-3602(E)

Schedule II drugs may be prescribed only after an in-person or audio-visual examination and only to the extent allowed by federal and state law.
In Arizona, proposed bill (SB 1457) permit licensed psychologists to prescribe psychotropic medications by obtaining a “prescription certificate” from the Arizona Board of Psychologist Examiners.

Conditional prescription certificate under the supervision of a licensed physician in-person, by phone or via video conference.

Full prescribing authority under a “prescription certificate” by satisfying the proposed requirements, including the following:

- Complete an additional practicum of at least 400 hours treating at least 100 patients with mental disorders under physician supervision.

- Complete a practicum of at least 80 hours in clinical assessment and pathophysiology under physician supervision.

Withdrawn on 3.31.23

Recent and pending AZ legislation

Bill Number: SB 1218
[signed by governor on 3.29.23]
Specifies that a doctor patient relationship can be established through telehealth as defined in section 36-3601.

Bill Number: SB 1053
Allows a veterinarian to establish a veterinarian client patient relationship using audio-video.

Bill Number: SB 1466
Allows an assessment for purposes of a medical marijuana certification to be completed either in person or by the use of telehealth.

Bill Number: HB 2687
Enacts the Counseling Compact in Arizona.
Compact Nation
Increasing in number of states, applications, and new compacts

- Interstate Medical Licensure Compact (IMLC)
- Nurse Licensure Compact (NLC)
- Advanced Practice Registered Nurse Compact (APRN Compact)
- Emergency Medical Services Personnel Licensure Compact (The EMS Compact)
- The Physical Therapy Compact (PT Compact)
- The Psychology Interjurisdictional Compact (PSYPACT)
- Audiology and Speech-Language Pathology Interstate Compact (ASLP-IC)
- The Occupational Therapy Licensure Compact (OT Compact)
- Counseling Compact - (CC) [introduced in AZ]

Compacts in development
- Social Work Compact
- Physician Assistant Compact
- Dentists and Dental Hygienists Compact
Telehealth Registration

- Current, valid, and unrestricted license in another state;
- Not subject to any past disciplinary proceedings in any state where the provider holds a professional license;
- Must maintain and provide evidence of professional liability insurance;
- Must not open an office or offer in-person treatment in that state; and
- Must annually register and pay a fee with the appropriate state licensing board.

Telehealth registration active in seven states:

- Arizona
- Florida
- Indiana
- Kansas
- Minnesota
- Vermont
- West Virginia
If enacted, provides a telehealth registration system for out-of-state providers, as alternative to licensure.
Licensing resources for

Occupational Therapists

Physical Therapists

Psychologists

Social Workers

https://licensureproject.org/
Looking Ahead

Digital Equity Infrastructure
We talk about medical innovation, and we talk about regulation, but we rarely talk about regulatory innovation.
Patients’ difficulty using telemedicine tools was the most common reported barrier affecting physicians’ use of telemedicine.

**FINDINGS**

- The most common barriers for telemedicine use experienced by physicians involved patients’ difficulties using and accessing telemedicine technology.
- Over 1 in 3 physicians reported internet access and speed issues as an issue affecting their use of telemedicine.
- Less than 1 in 4 physicians reported telemedicine is not appropriate for their practice (26%) and telemedicine platform is not easy to use (18%).
Population Groups Disproportionately Impacted by the Digital Divide

• Older adults
• Racial and ethnic minority groups
• Disability
• Low socioeconomic status
• Living in rural areas
• Limited English Proficiency
Infrastructure Investment and Jobs Act

$65 billion for digital equity

- $42.5 billion for broadband infrastructure
- $14.2 billion for $30 internet subsidy
- $2.8 billion for digital literacy
- Additional funds
## Opportunities for Health Care Organizations to Increase Digital Inclusion through Infrastructure Initiatives

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<th>Infrastructure Investment and Jobs Act Policy Area</th>
<th>Opportunities for Health Care Organizations</th>
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<tr>
<td>Broadband infrastructure</td>
<td>Collect information on patients’ broadband access to identify broadband coverage gaps and guide allocation of infrastructure-building resources. Ensure that digital health tools can adapt to potential bandwidth limitations.</td>
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<tr>
<td>Broadband and device affordability</td>
<td>Develop workflows that integrate digital-inclusion resources into existing care (e.g., screening for social determinants of health). Perform targeted outreach to patients who would benefit from broadband and device-subsidies programs (e.g., Emergency Broadband Benefit). Join existing digital-inclusion efforts (e.g., programs addressing digital divides in education) led by community organizations.</td>
</tr>
<tr>
<td>Digital discrimination</td>
<td>Advocate for equitable broadband-deployment practices at the local, state, and national levels. Collect patient data regarding digital disparities (e.g., disparities in broadband and device access) to support multimodal care options. Treat digital inclusion as a social determinant of health.</td>
</tr>
<tr>
<td>Digital literacy</td>
<td>Apply for funding with community organizations to codevelop digital-literacy programs that extend beyond the health care setting. Integrate digital navigation as part of the deployment of digital health tools.</td>
</tr>
<tr>
<td>Impact</td>
<td>Evaluate the effects of digital-infrastructure initiatives on health care disparities to guide future investment and policies related to digital inclusion.</td>
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Digital health literacy screening program to identify low digital health literacy and support effective use of telehealth technology, including:

- educational materials about how to access telehealth in multiple languages, and in alternative formats;
- hold digital health literacy workshops;
- integrate digital health coaching;
- offer in-person digital health navigators; and
- partner with local libraries and/or community centers that offer digital health education services and supports.
Expanding care venues into the community – libraries
To date: 277 hospitals across 37 states participate in the Acute Hospital Care at Home program.
A New York City study found that hospital-at-home care also worked well for economically disadvantaged patients.

“Twenty percent of people over 65 become delirious during a hospital stay...

Studies have found that patients in hospital-at-home programs spend less time as inpatients and, afterward, in nursing homes.

They are less sedentary, less likely to report disrupted sleep and more apt to rate their hospital care highly.”
Waitlists for Medicaid’s Home-and Community-Based Services:

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

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

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https://telemedicine.arizona.edu/
https://southwesttrc.org/
https://law.arizona.edu/health