

Coronavirus – action on telehealth

A breakdown of Congressional, regulatory, and state action to expand telehealth access during the COVID-19 emergency

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Producer

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Roadmap

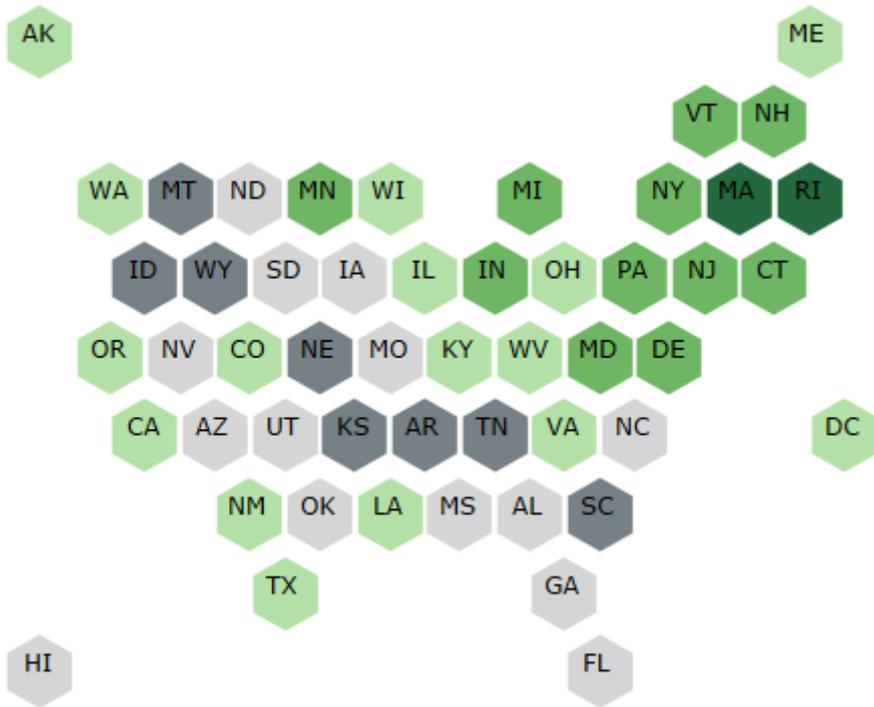
- 
- Telehealth use
 - Legislative action
 - Administration action
 - State action

Telehealth use amidst the pandemic is higher in urban counties than rural counties

Proportion of primary care visits via telehealth in April, by state

HHS

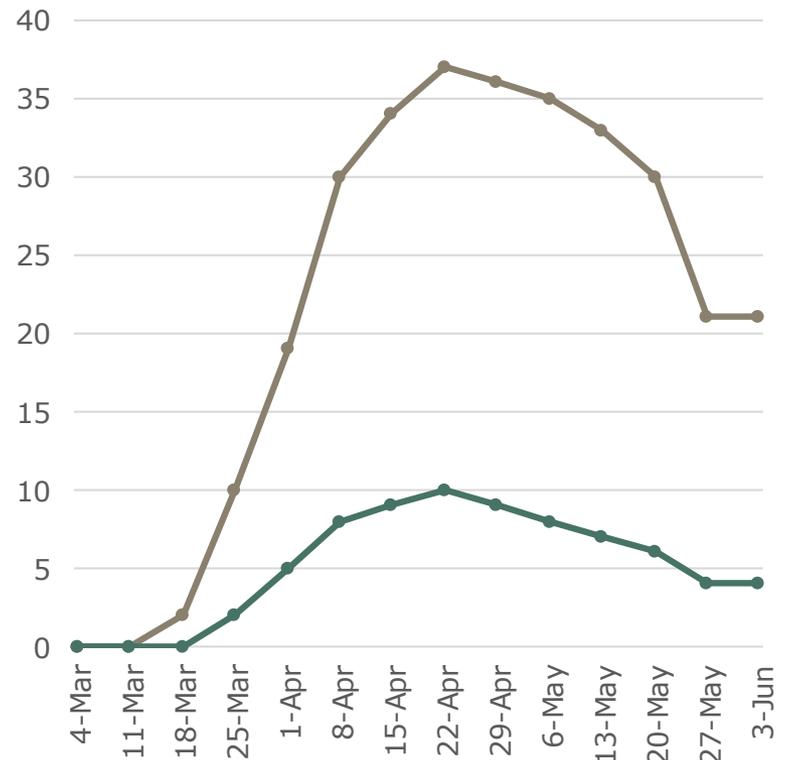
- Under 30%
- 30-40%
- 40.1-50%
- 50.1-60%
- Over 60%



Telehealth visits per 1,000 Medicare beneficiaries

HHS

- Urban counties
- Rural counties



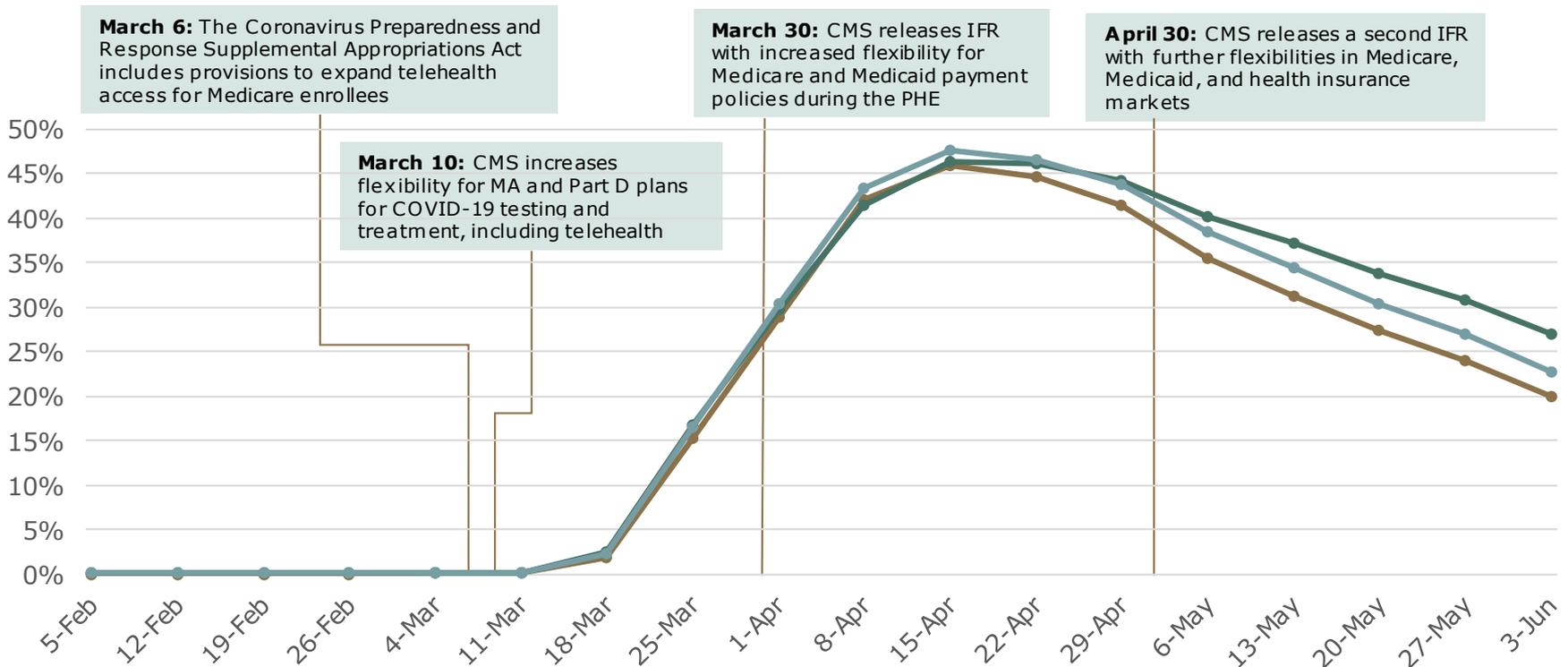
Source: HHS.

Telehealth use among Medicare beneficiaries peaked in April

Percent of total primary care visits that were telehealth visits

HHS

■ Medicare FFC beneficiaries ■ Dually enrolled in Medicare and Medicaid ■ High Cost FFS Medicare beneficiaries



Source: HHS, JDSupra

Roadmap

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The \$2 trillion CARES Act includes various provisions aimed at boosting telehealth access and use



Funding provisions

- **HRSA:** Reauthorizes the Telehealth Resource Center grant programs at \$29 million per year through 2025
- **VA:** \$14.4 billion to expand telehealth services, \$2.15 billion to expand COVID-19 related services, among other telehealth-related provisions
- **Indian Health Service:** \$1.032 billion for health care services, including mobile health units and improving telehealth capacity
- **FCC:** \$200 million to support telecommunications and services for telehealth
- **HHS:** \$27 billion for the Public Health and Social Services Emergency Fund for Coronavirus Measures, including telehealth access and infrastructure

Rule changes

- **Federally Qualified Health Centers and Rural Health Centers** can act as both the originating or distant site for telehealth services
- Loosens previous Medicare requirements that restricted coverage to real-time audio-visual technology to **allow phone-based services**
- Relaxes requirement that care providers must have **seen a patient in-person** with the past three years
- Allows **high-deductible health plans with HSAs** to cover telehealth services before the member reaches their deductible
- Eliminates requirement that **nephrologists** conduct periodic in-person home visits for dialysis patients
- Telehealth may **fulfill hospice recertification requirements** for face-to-face visits

Telehealth provisions in H.R. 6074: Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020

Bill at a glance

Introduced
3/4/20

Passed House
3/4/20

Passed Senate
3/5/20

To president
3/5/20

Signed into law
3/6/20



Rep. Nita Lowey
(D-NY-17)
Bill sponsor

Bill overview

- Provides \$8.3 billion in emergency funding in response to the coronavirus outbreak for:
 - The development and manufacturing of vaccines and other supplies
 - State, local and tribal public health agencies
 - Loans for affected small businesses
 - Evacuations and emergency preparedness activities
 - Humanitarian assistance for affected countries
- The supplemental appropriations will be provided to the FDA, CDC, NIH, Public Health and Social Services Emergency Fund, Small Business Administration, Department of State, and USAID
- Designates the supplemental appropriations as emergency spending, which is exempt from discretionary spending limits

Telehealth provisions:

- Includes \$500 million to fund waivers allowing Medicare providers to offer telehealth services to beneficiaries regardless of whether or not that beneficiary is in a rural area

Status in Congress

- **House:** Passed with a vote of 415-2
- **Senate:** Passed with a vote of 96-1

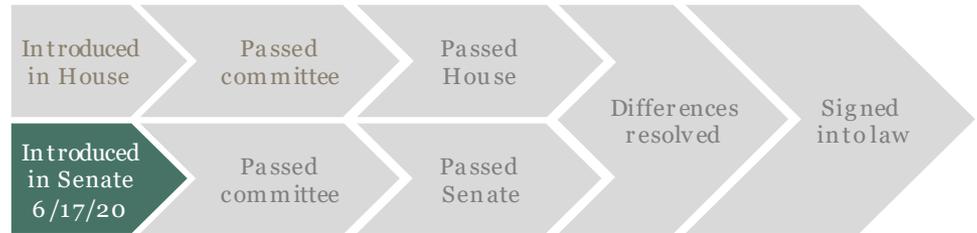


Legislation to watch: telehealth

S.3988 - Enhancing Preparedness through Telehealth Act

Senate Sponsor: Sen. Bill Cassidy (R-LA)

- Amend PHSA with telehealth enhancements for emergency response
- Reevaluate telehealth reimbursement during public health emergencies
- Evaluate the infrastructure providers need to administer telehealth services

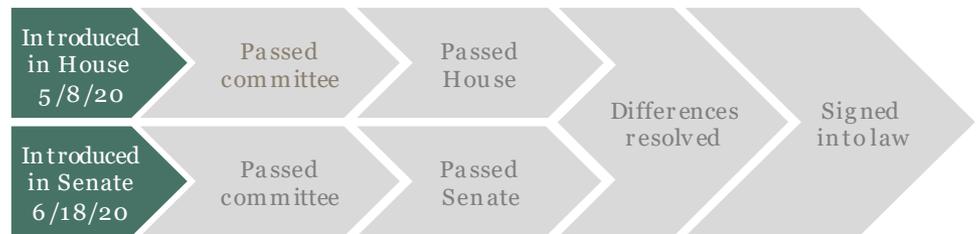


H.R. 6792/S.3998 - Improving Telehealth for Underserved Communities Act of 2020

House Sponsor: Rep. Adrian Smith (R-NE-3)

Senate Sponsor: Sen. Cindy Hyde-Smith (R-MS)

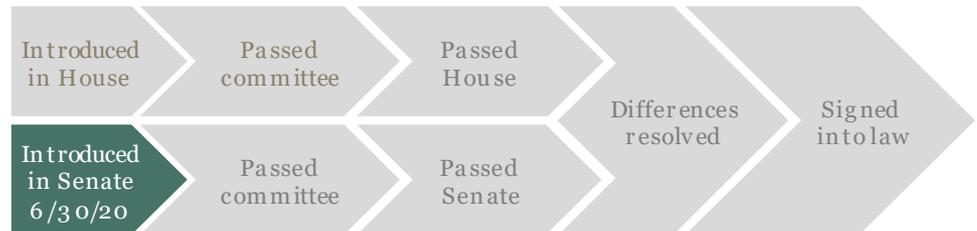
- Simplify Medicare payments to FQHCs and RHCs for telehealth services
- Increase payment caps for RHC services



S.4103 - TREATS Act

Senate Sponsor: Sen. Rob Portman (R-OH)

- Extend flexibilities allowing Medication Assisted Therapies and other necessary drugs to be prescribed without a prior in-person visit and ability to bill Medicare for audio-only services



Sources: Congress.gov, JDSupra.

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On April 30, CMS released its second document detailing directives to expand telehealth during the COVID-19 pandemic

Key changes to Medicare telehealth policies in the most recent CMS directives

- 1** CMS is **waiving limitations on the types of care providers eligible for Medicare reimbursement**, expanding reimbursement to physical and occupational therapists and speech and language pathologists
- 2** **Hospitals can bill for outpatient services offered remotely by hospital-based practitioners to patients at home**—now considered a “temporary provider-based department of the hospital”
- 3** CMS is **expanding the audio-only phone services it reimburses through Medicare** to include behavioral health and patient education services and increasing reimbursements to match similar office or outpatient services. The change is retroactive to March 1
- 4** CMS is **accelerating the process to add new services to the list of reimbursable services**
- 5** **Federally qualified health clinics (FQHCs) and rural health clinics** will be reimbursed for providing telehealth services
- 6** By **waiving the video requirement for certain evaluation and management services**, CMS is allowing providers to bill Medicare for audio-only services

Source: mHealth Intelligence.

Medicare is expanding reimbursement to include FQHC/RHCs and more audio-only visits

	Policy during COVID-19	Policy for FQHC/RHC
Patient location	No geographic restrictions. Patient may be in home during service	
Provider location	Provider may provide services at home; do not need to put home address on claim	Provider may provide services at home
Modality	Live video; phone allowed for certain services including evaluation and management and behavioral health and educational services. Other modalities are permitted for Communications Based Services	
Type of provider	All health care professionals may bill Medicare for services	Added temporarily to list of eligible providers by CARES Act
Services	Roughly 240 service codes available for reimbursement, including over 130 temporarily added for the duration of the emergency	
Reimbursement	Normal fee-for-service rate; some rates for audio-only visits have increased	\$92.03

Source: CMS, Center for Connected Health Policy.

Key changes to Medicare telehealth guidance related to visitation

Policy during COVID-19	
End state renal disease and home dialysis patients	CMS is exercising enforcement discretion on certain frequency requirements for in-person visits. Clinicians are not required to meet the National Coverage Determination or Local Coverage Determination of face-to-face visit for evaluations and assessments.
Nursing homes	CMS is waiving requirements that physicians and non-physician practitioners perform in-person visit for nursing home residents
Hospice	Telehealth may be used to meet the requirement that a hospice physician or nurse practitioner must conduct a face-to-face session to determine if the patient remains eligible for hospice care
Frequency limitation	CMS has removed frequency limitations on subsequent in-patient visits (once every three days), subsequent SNF visit (once every thirty days), and critical care consult
Prior existing relationship	Services can be offered to new and established patients

Key changes to Medicare telehealth guidance on health care providers and payment

Policy during COVID-19	
Stark Laws	CMS is allowing certain waivers, allowing health care providers to pay above or below fair market value to rent equipment or receive services from physicians
Supervision	Physician supervision can be done using live video
Provider home address on claim	Provider is not required to put their home address on the claim if the visit is conducted while at home
Out-of-Pocket costs/Co-Pays	Still apply, but health care providers have flexibility to reduce or waive fees. COVID-19 testing fees are to be waived
Prior existing relationship	Services can be offered to new and established patients
Hospitals and originating site fee	Hospitals may bill an originating site fee when the patient is at home during a visit
Hospital-only remote outpatient therapy and education services	Hospitals may use telehealth to offer behavioral health and education services furnished by hospital-employed counselors or health professionals that cannot bill Medicare directly. This also include partial hospitalization services

Source: CMS, Center for Connected Health Policy.

Leaders from both parties in Washington are calling for the changes to telehealth regulations to remain after the pandemic



- Telehealth adoption is reaching record highs, with patients and providers calling for continued coverage
- Congress is facing pressure to pass laws expanding telehealth coverage
- CMS has been open to reviewing and revising its guidelines for Medicare and Medicaid telehealth coverage

Provisions under consideration

Major telehealth policy considerations include:

- Originating site location
- State licensure barriers
- Broadband internet access
- HIPAA and privacy
- Private payer reimbursement
- Incentivizing provider adoption and implementation of telehealth
- Fraud prevention

CMS response

- CMS Administrator Seema Verma said that the agency is evaluating ways to preserve access to visits in places, including patients' homes and nursing homes
- Agency is considering ways to permanently expand eligible services
- The agency would support allowing telemedicine to be practiced across state lines
- Verma has said that the government must decide if it should still reimburse virtual visits at the same rate as in-person visits

Congressional response

- On June 15, 29 Senators sent a letter to Congressional leadership asking that telehealth provisions in the CONNECT for Health Act and included in temporary CMS guidelines be made permanent
- The letter was led by Senator Brian Schatz (D-HI); other signatories include Commerce Chair Roger Wicker (R-MS), Mark Warner (D-VA), Kyrsten Sinema (D-AZ), Lisa Murkowski (R-AK), Lindsey Graham (R-SC) and Amy Klobuchar (D-MN)

FCC is increasing investments in telehealth to support efforts to combat the COVID-19 pandemic



Highlight of FCC action on telehealth in response to the COVID-19 pandemic

1

FCC adopted an order on March 13 to carry forward \$42.1 million in unused funds to **eliminate a shortfall for the Rural Health Care Program** and waive a cap on multi-year commitments and upfront payments, which could have resulted in reduced support for rural health care providers

2

On March 18, FCC **waived gift rules for the Rural Health Care and E-Rate programs** through September 30, 2020, allowing service providers to offer improved connections and/or equipment for telemedicine or remote learning

3

Using funds appropriated to FCC in the CARES Act, FCC adopted a **\$200 million telehealth program** that allows the agency to help health care providers purchase telecommunications, broadband connectivity, and devices needed to provide telehealth services

The CARES Act authorized the \$200 million FCC COVID-19 Telehealth Program



On July 8, FCC Chairman Ajit Pai announced that the agency had committed all of the \$200 to a total of 539 recipients. Alaska, Hawaii, and Montana are the only states that received no program funding. The average award size was \$371,058

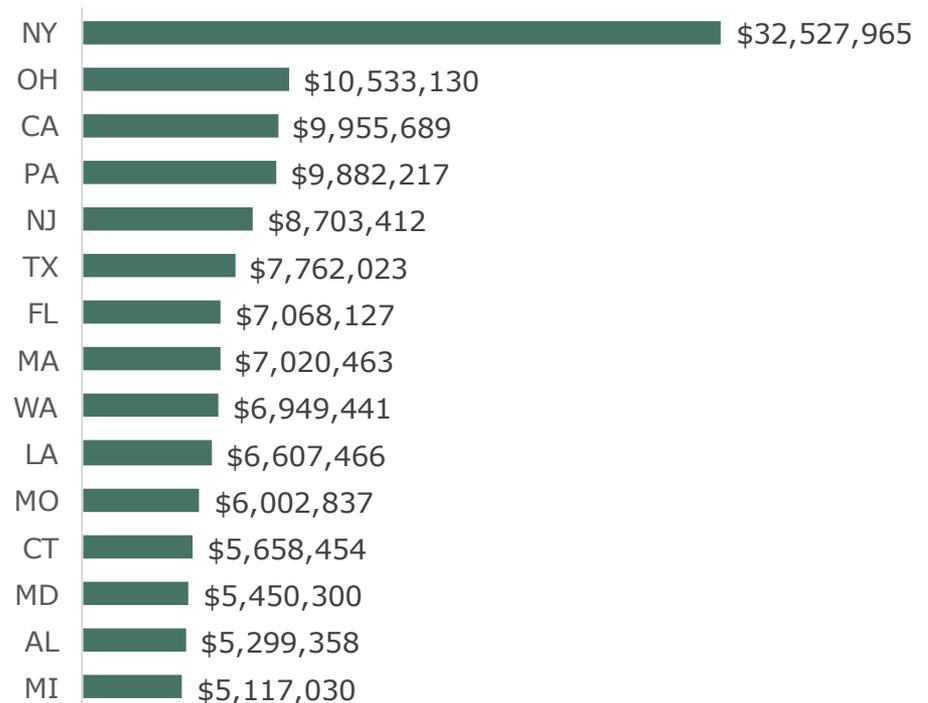
Program overview



- Adopted by FCC on April 2, 2020
- The program is **limited to nonprofit and public health care providers**, including both rural and non-rural clinics
- Funds can be used to **purchase telecommunications, information services, and connected devices** integral to patient care
- COVID-19 Telehealth program is **not a grant program**, instead offering reimbursement for eligible expenses
- FCC is no longer accepting applications

States with highest amount of program awards

FCC, AS OF JULY 8



Source: FCC.

DEA and SAMHSA are taking steps to make Medical Assisted Treatment for Substance Use Disorder available through telemedicine

Opioid agonist therapies methadone and buprenorphine generally require patients to gather in groups and attend frequent in-person visits with prescribers—requirements that now conflict with social distancing guidelines. Federal regulators are taking some steps to ensure that patients can access these drugs without risking unnecessary exposure.



Methadone & Opioid Treatment Programs

- SAMHSA issued guidance allowing OTPs to increase access to 28-day, take-home supplies of methadone for stable patients (previously only available to patients with two years of OTP enrollment) and a 14-day take-home supply for less stable patients (previously only available to patients with one year of enrollment) if the OTP determines it to be safe.
- Take-home supplies of methadone are not permitted for patients in short-term or interim treatment.
- OTP patients who are quarantined or isolated may access the methadone treatment through a surrogate pick up or a “doorstep delivery”.



Telemedicine

- DEA permits patients to be initiated on buprenorphine through a telemedicine visit without an in-person exam, including audio-only visits.
- New OTP patients starting methadone must continue to receive an in-person physical evaluation.
- Follow-up OTP visits for existing patients on methadone or buprenorphine may occur over telemedicine, including phone only.

HHS issued a limited waiver of HIPAA sanctions in response to COVID-19



On March 17, HHS announced that the agency will waive potential HIPAA violations for “good faith use of telehealth,” opening up the types of platforms that providers can use to remotely treat patients effective immediately, among other changes.



HIPAA protects patients from having their medical information shared by health care providers, which limits what kinds of technology providers can use. Previously, access was limited to HIPAA-compliant specialized services, including Zoom for Healthcare and Skype for Business.



Public facing platforms—including Facebook Live, TikTok, and Twitch—should not be used for telehealth.



The change isn't only for treating COVID-19 and covers other treatments, including dental consultations and psychological evaluations.



The waiver will likely not impact states that have their own laws and regulations regarding the protection and security of private health information.

President Trump's executive order declaring the COVID-19 pandemic a national emergency included telehealth provisions

Key takeaways from the Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak:



Trump declared the emergency under the 1988 Stafford Act, **freeing up Federal Emergency Management Agency (FEMA) funds** to address COVID-19. White House estimates place the figure at around \$40 billion.



Trump also declared an emergency under the National Emergencies Act, **allowing HHS to modify or waive regulations** for Medicare, Medicaid, and other programs, including provisions to expand telehealth access.



This emergency declaration is **stronger than the “public health” emergency announced in late January**, which was technically issued by HHS and made it easier for states to redirect staff responding to COVID-19.



Telehealth provisions

- Trump administration plans to waive certain federal rules to increase the number of doctors able to provide remote care in states other than where they are licensed
- For the rules to go into effect, governors must use emergency powers to allow those doctors permission to practice within their state
- Under this order, CMS expanded Medicare's telehealth benefits, allowing beneficiaries to receive previously denied services, including common office visits and preventative health screenings from their homes

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All states are taking action to expand telehealth access amidst the COVID-19 pandemic

Key trends in state action



States have flexibility to determine telehealth coverage in their Medicaid programs, both through CMS emergency authorities and preexisting authorities



State changes include adjustments to eligible service types, modalities, and originating sites

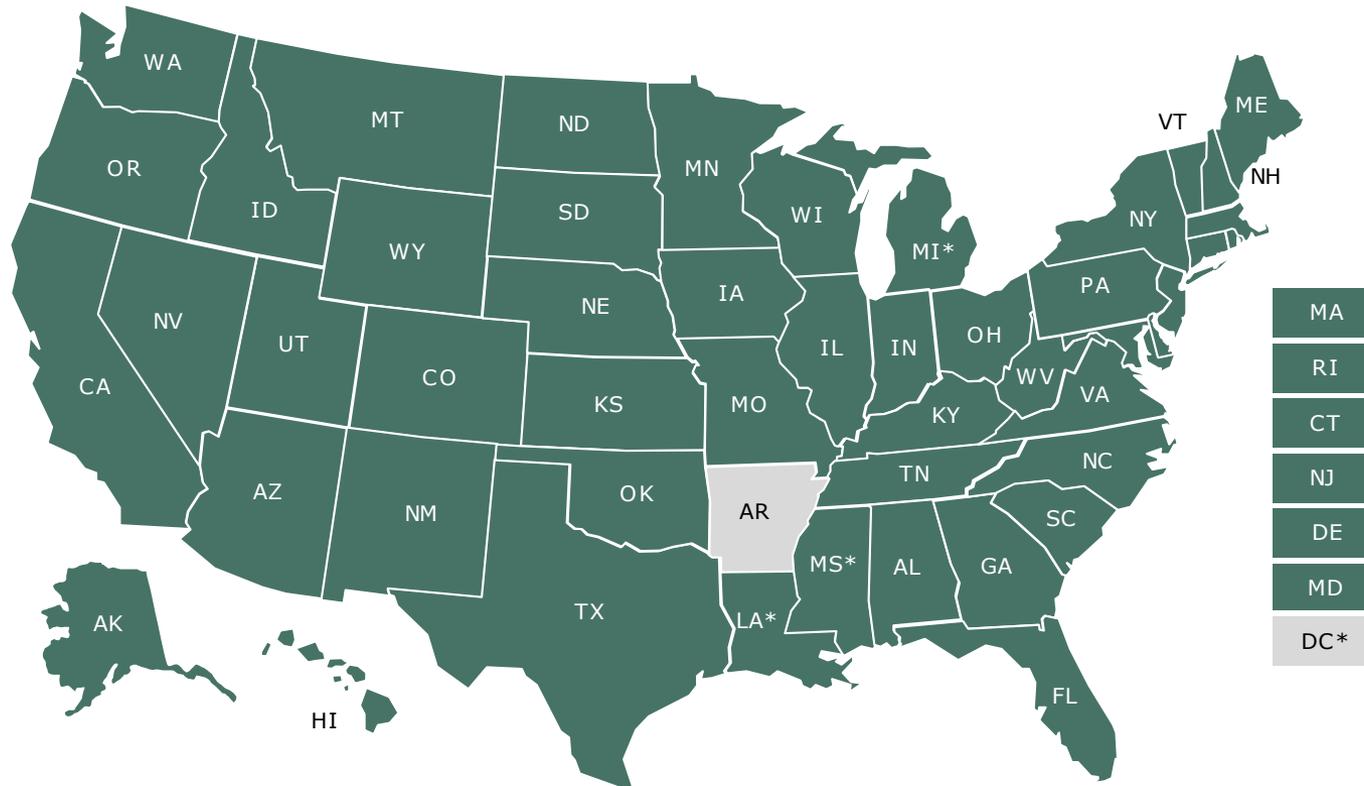


State and federal governments are taking steps to increase provider and patient access to the technologies needed for telehealth

As of June 9, 49 states have waived in-state licensure requirements for telehealth in response to COVID-19

States with temporary in-state licensure requirement waivers

FEDERATION OF STATE MEDICAL BOARDS, AS OF JUNE 9



* State is considering policy change, has a bill pending, has vague existing guidance, or requires that out-of-state practitioners have a preexisting relationship with the patient

Sources: Federation of State Medical Boards.

Multiple states have taken action to expand the availability of tele-mental health services during the pandemic

New York



- Gov. Cuomo (D) authorized the New York Licensed Office of Mental Health Programs to **waive some requirements** regarding telehealth use to **increase access to mental health treatment**.
- New York established the **COVID-19 Emotional Support Hotline** to offer free mental health services during the pandemic.

Ohio



- The Ohio Department of Mental Health and Addiction Services will **permit** telephone encounters, **eliminate** the requirement that new patients must be seen in-person, and **increase flexibility** of MAT for OUD monitoring.