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The Future of Virtual Care: An ATA Telehealth Policy Update

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About the ATA

As the only association focused on telehealth, we represent over 400 organizations – including leading **healthcare delivery systems, academic institutions, technology solution providers and payers** – all committed to the vision that people should access safe, effective and appropriate care where and when they need it, while enabling clinicians to do more good for more people.

Federal Policy



Federal Policy Priorities

- **Telehealth Coverage**
 - Repeal of the Telemental Health In-Person Requirement
 - Permanent Removal of Arbitrary Medicare Restrictions
 - First-Dollar Coverage for High-Deductible Health Plans (HDHPs)
 - Excepted Benefits under ERISA
- **Online Prescription of Controlled Substances via Telehealth**
- **Licensing**
- **Additional priorities (RPM, DTC, FDA, AI, CMMI, MA, Hospital at Home, Broadband, etc.)**



Top Priority Legislation in 117th Congress

Priority	Legislation	Sponsors
Medicare originating site	Advancing Telehealth Beyond COVID-19	HR 4040 Cheney, Dingell
	Telehealth Modernization Act	S 368 Scott-Schatz HR 1332 Carter-Blunt Rochester
	CONNECT for Health Act	S 1512 Schatz-Wicker HR 2903 Thompson-Schweikert-Welch-Johnson- Matsui
	Telehealth Extension Act	HR 6202 Doggett-Nunes-Thompson-Kelly-Schweikert
	Telehealth Extension and Evaluation Act	S.3593 Cortez Masto H.R.7573 Axne and Hudson
Medicare Telemental in-person repeal	Telemental Health Care Access Act	S Cassidy-Smith-Thune-Cardin HR 4058 Matsui-Johnson
HDHP safe harbor	Telehealth Expansion Act	S 1704 Daines-Cortez Masto HR 5981 Michelle Steel-Susie Lee
	Primary and Virtual Care Affordability Act	HR 5541 Schneider-Wenstrup
Online prescribing of controlled substances	TREATS	S 340 Portman-Whitehouse HR 1647 McKinley-Cicilline
	Tele-MAT	HR 5837 Curtis-Peters

Visit the ATA’s website to view our [federal legislative tracker](#)

9/27/2022

Telehealth Analysis - FY2022 Federal Funding Package ([H.R.2471](#))

Flexibilities extended 151 days post-PHE

Issue	What was included?
Medicare Part B Telehealth Flexibilities	<input checked="" type="checkbox"/>
HDHP-HSA First Dollar Coverage	<input checked="" type="checkbox"/>
In-person Requirement for Telemental Health Waiver	<input checked="" type="checkbox"/>
Online Prescribing of Controlled Substances (Ryan Haight Flexibilities)	<input type="checkbox"/>
Telehealth Utilization Reports (OIG, MedPAC, HHS/CMS)	<input checked="" type="checkbox"/>

Advancing Telehealth Beyond COVID-19 Act ([H.R. 4040](#))

- Led by Representatives Liz Cheney (R-WY) and Debbie Dingell (D-MI)
- Passed the House of Representatives on July 27, awaiting Senate action
- This legislation extends most of the Medicare telehealth flexibilities implemented during the PHE until December 31, 2024, including:
 - Geographic and originating sites flexibilities
 - Expanded eligible practitioners
 - FQHC and RHC telehealth coverage and reimbursement
 - Delay of the in-person telemental health requirement
 - Furnishment of audio-only telehealth

Physician Fee Schedule CY2023 Proposed Rule

The proposed rule includes a few notable items:

No mention of Remote Physiologic Monitoring (RPM) or amending the 16-day requirement

New Remote Therapeutic Monitoring (RTM) codes, but come with limitations

Addition of new Category 3 telehealth codes, effective through the end of 2023

Rule proposes the discontinuance of direct supervision and audio-only post PHE

Implementation of the telehealth provisions of the Consolidated Appropriations Act (CAA) of 2022

Items to Keep Your Eyes On

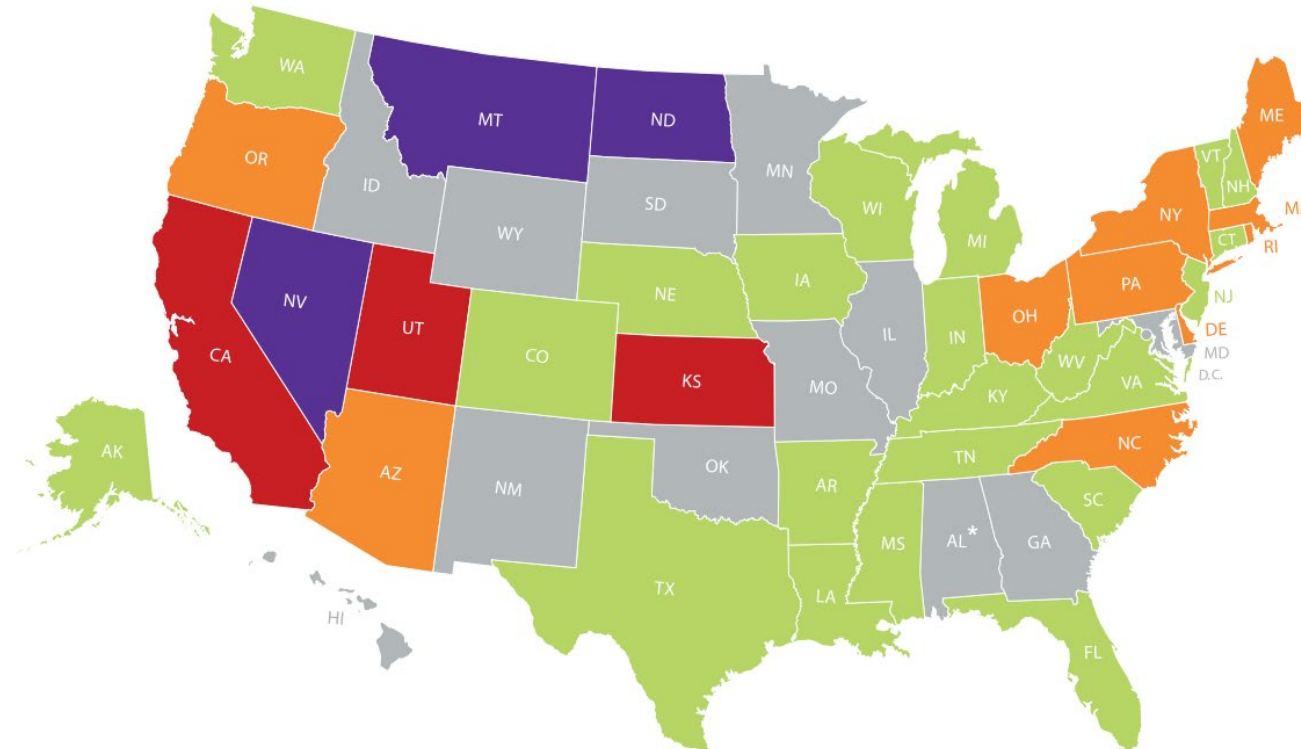
- Ending of COVID-19 Public Health Emergency
- Extension of telehealth Medicare Part B flexibilities in EOY package
- Extension of first dollar coverage of HDHP-HSAs
- Release of DEA Special Registration Telemedicine Proposed Rule
- Finalized CMS PFS CY2023 Rule



Source: Google Images

State Policy

Second Quarter Report 2022



KEY	
■	ATA-supported regulation/legislation passed
■	Legislation/regulation pending
■	ATA-opposed legislation/regulation defeated
■	State Not In Session

Provided by the ATA Action

June 6, 2022

Policy Trends in 2022

Cross state licensure



Prescribing of Controlled Substance via Telehealth



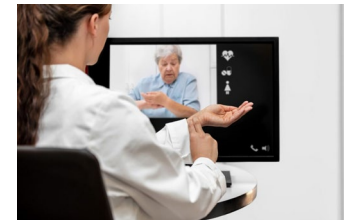
Modality neutral



Expanding provider types



Establishing a patient provider relationship via telehealth



Expanding service types



Positive Telehealth Policy: Florida

- Cross state licensure allowed through:
 - established streamlined registration program
 - compacts (NLC)
- No limits on types of providers that can use telehealth, consistent with their license
- No mandates on the types of technology practitioner may use to form relationship
- No requirements to have physical location in state
- Permits most controlled substance prescribing consistent with federal law



Barriers to Expanding Telehealth

- **Modality Mandates:** Clinically unnecessary requirements that providers always use a certain technology to form a relationship or prescribe
- **Holding Telehealth to Higher Standard with Clinically Unnecessary Barriers:** Imposing requirements on telehealth care delivery setting that is not expected in person (referral or hot handoffs)
- **Not Considering Primarily Virtual Providers:** Certain state requirements (often in Medicaid) do not contemplate providers that -- even while licensed-- might not be in physical proximity of patient
- **Prescribing of Controlled Substance Requirements Exceeding Federal Law**
- **Limiting Providers Who Can Use Telehealth Consistent with Scope:** Limit definition of telehealth providers or have supervision requirements that don't account for technology

Examples of Barriers to Telehealth: Ohio

Holding Telehealth to Higher Standard with Clinically Unnecessary Barriers:

- During the rulemaking process of HB122 this year, the Medical Board included referral requirements that contemplate a telehealth provider being able to either see patients in-person for follow up care and/or refer to a provider they have a contractual relationship with.
- ATA Action worked hard with in-state stakeholders and the Board to get the rule to a better place. The revised rules now require providers to refer to in-person care where appropriate.





Thank You.

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