CLOSING CARE GAPS THROUGH TELEHEALTH POLICY AND BROADBAND ACCESS

2024 RURAL AND PUBLIC HEALTH POLICY FORUM
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Reminder

The information contained and delivered in this presentation is for educational and informational purposes only and should not be considered legal advice.

The views, opinions, and positions expressed are mine alone and do not necessarily reflect the views, opinions, or positions of my employers or affiliated organizations.

I hope the information presented will help you better navigate telehealth policy issues and support adding your voice to the discussions.
Overview

Snapshot: Federal and state telehealth law and policy landscape in 2024

Research and resources to help close the care gap with telehealth policy

(including broadband and digital literacy)

Looking ahead: What’s next for telehealth policy in Arizona?
Telehealth policy and access to care in rural areas

**Federal**
- Reimbursement (Medicare)
- Prescribing of Controlled Substances
- Licensure
- Privacy
- Digital health equity and broadband

**State – Arizona**
- Pending legislation
- Reimbursement (Medicaid and private payer)
- Licensure
- Acute Hospital Care at Home Program and caring for our aging population in AZ

**Efforts to harmonize state laws that impact telehealth services**
- Uniform Telehealth Act
- Interstate licensure compacts
Post-PHE has become Post-December 31, 2024...

Provisions from Consolidated Appropriations Act (2023)

- Telehealth originated sites includes any site where the beneficiary is located at the time of telehealth service, including the home.
- Coverage for audio-only telehealth services
- Expand list of Medicare eligible telehealth providers: Occupational therapists, physical therapists, speech-language pathologists, and audiologists.
- Waive frequency limitations on telehealth visits for Skilled Nursing Facilities.
- Distant site providers can use their enrolled practice location instead of home address.

Disentangling Telehealth from the Public Health Emergency

By Tara Sklar, JD, MPH on Jan 12, 2023

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

Legislation signed on 12/29/22.

Sec. 4113. Advancing Telehealth Beyond COVID–19
The CONNECT for Health Act is reintroduced, again

A bipartisan group of 60 senators reintroduced the updated 2023 version of the Creating Opportunities Now for Necessary and Effective Care Technologies for Health Act. A companion bill was introduced in the House.

- Permanently removes geographic barriers.
- FQHCs and RHCs serve as distant site providers.
- First introduced in 2015... June 2023

Legislation Aims to Support Telehealth Access in Rural Areas

A group of representatives introduced new legislation to maintain telehealth access in rural America by making permanent Medicare coverage of virtual care.

- S.1636/HR 3440 - Protecting Rural Telehealth Access Act
- Introduced in May 2023
Bipartisan Bill Aims to Expand OUD Medication Access via Telehealth

The reintroduced TREATS Act would permanently allow clinicians to prescribe buprenorphine for OUD treatment through telehealth without a prior in-person exam.

Senate bill would permanently extend Covid-era rules on telehealth addiction treatment
Virtual prescribing of controlled substances extended to Dec. 31, 2024

- Approx. 37,000 comments received, which is a record for any administrative agency to receive in a public comment period.

- DEA may revisit special registration pathway that they were supposed to propose in 2019.

- DEA may start early (as opposed to right before the end of 2024) to prepare for potential avalanche of comments.
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)
"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."
50 STATE SURVEY
PREScribing OF nON-CONTROLLED SUBSTANCES VIA TELEMEDECINE.

Is a physical examination required?
Is a pre-existing provider-patient relationship required?
How is a provider-patient relationship established?
Can a physical examination be conducted via telehealth?
What are the requirements for a physical examination?

In addition to these questions, the survey dissected each states:
✓ Policies around the use of online questionnaires before prescribing
✓ State law exceptions to the above requirements/prohibitions

The Arizona Telemedicine Program Blog
https://telemedicine.arizona.edu/blog

Interest in being a guest blog author?
"While I never hesitated to pick up the phone to call the boy's parents and give them advice...

Giving medical advice to an out-of-state patient over the phone can put me at risk of losing my license, and, in states such as California and New Jersey, of criminal charges as well."

Advent of:  
Telemedicine parking lots
NJ state licensure laws violates the US Constitution under the:
- Commerce Clause
- Privileges and Immunities Clause
Privacy

Concerns about trust and unauthorized disclosures

December 2023
HHS Releases Healthcare Sector Cybersecurity Strategy

According to the Office of Civil Rights (OCR), from 2018 to 2022, there was a 93% increase in large security breaches within healthcare entities.

HIPAA
OCR moved from “exercising discretion” regarding HIPAA enforcement during PHE to updating HIPAA in 2024 to include:
- New cybersecurity requirements
- Increased penalties
- More audits and more technical assistance

[FTC Health Breach Notification Rule]


FTC and HHS Warn Hospital Systems and Telehealth Providers about Privacy and Security Risks from Online Tracking Technologies

Letters highlight concerns stemming from use of technologies that may share a user's sensitive health information
News: ACP Could Be Ending

Unless Congress acts to renew the Affordable Connectivity Program funds could run out by April 2024.

- ACP applications and enrollments will not be processed after February 7, 2024 at 11:59 PM ET.
- Households who have applied, been approved, and are receiving the monthly internet discount before February 8, 2024 will continue to receive their ACP benefit until ACP funds run out, as long as the household remains enrolled in the program.
- After the ACP funds run out (projected in April 2024), households participating in the ACP will no longer receive the ACP discounts.

ACP has helped 21 million households across the US.

Approximately 1 million households in Arizona are eligible for ACP funding

- Arizona’s enrollment is about 50% of eligible households (1 in 5 households in the state)
118TH CONGRESS
2D SESSION

S. 3565

To appropriate funds for the Affordable Connectivity Program of the Federal Communications Commission.

IN THE SENATE OF THE UNITED STATES

JANUARY 10, 2024

Mr. Welch (for himself, Mr. Vance, Mr. Cramer, and Ms. Rosen) introduced the following bill; which was read twice and referred to the Committee on Appropriations

A BILL

To appropriate funds for the Affordable Connectivity Program of the Federal Communications Commission.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SEC. 1. SHORT TITLE.

This Act may be cited as the “Affordable Connectivity Program Extension Act of 2024”.

SEC. 2. APPROPRIATION FOR AFFORDABLE CONNECTIVITY PROGRAM.
Arizona is slated to receive nearly a billion ($993 million) in Broadband Equity Access & Development (BEAD) Funds from the National Telecommunications and Information Administration (NTIA).

Over 200 miles of the middle mile network have been completed, from Flagstaff to Nogales.

Bhowmick: **Confident that BEAD will help eradicate Arizona’s digital divide.**

- Some homes may be too remote for fiber and some even too remote for fixed wireless

An additional middle mile network of 197 miles is currently being built to Flagstaff from California for $152 million, funded by the ARPA’s State and Local Fiscal Recovery Fund program.
Digital Divide in Accessing Telehealth

Think beyond providing an internet connection

- Older adults
- Racial and ethnic minority groups
- Disability
- Low socioeconomic status
- Living in rural areas
- Limited English Proficiency

https://telemedicine.arizona.edu/blog/encounters-telehealth-older-adults-limited-english-proficiency-living-rurally
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%).

- Patients’ difficulty using technology: 71%
- Limitations in patients’ access to technology: 66%
- Limited internet access and/or speed issues: 35%
Key findings

Satisfaction high

Yet, strong preference to return to in-person care

- 80% of primary care physicians
- 64% of patients
- Older patients less likely to want to use video visits (even if have internet access)
- May reflect comfort level and concerns about age-based discrimination in an online setting.

Lack of preference is a problem for digital care to become a meaningful part of the health system.

• Culmination of a year-long, statewide collaborative effort

• Attentive listening to the voices of communities across Arizona

• Written in response to requirements from National Telecommunications and Information Administration (NTIA) to address barriers faced by Arizonans bridging the digital divide.

Collected comments until February 1:
Looking ahead: What’s next for telehealth policy in Arizona?

Priorities ahead for telehealth to become more inclusive, equitable, and effective part of our state’s healthcare ecosystem.
State - Arizona

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/
Recent and pending AZ legislation

Enacted May 2023 **SB 1053**
Allows a veterinarian to establish a veterinarian client patient relationship using audio-video.

**SB 1249**
Prescribing authority for psychologists.

**SB 1173 / HB 2280**
Enacts the Counseling Compact in Arizona.

**SB 1036**
Enacts the Social Work Compact in Arizona.

**HB 2448**
Requires consent for school-based telehealth services.
Figure 1. Map of States With Laws Requiring Insurers to Implement Payment Parity (as of April 2023)

21 states: Explicit Payment Parity

6 states: Payment Parity with Caveats

23 states: No Payment Parity

Legislative Telehealth Definitions re: Modalities Parity and Reimbursement Impact Access to Healthcare

Source:
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.
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.
If enacted, provides a telehealth registration system for out-of-state providers, as alternative to licensure.
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 - [introduced in AZ]
- Social Work Compact - [introduced in AZ]
- Physician Assistant Compact
- Dentists and Dental Hygienists Compact
Telehealth registration

Exemption to licensure

- 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 eleven states:

- Arizona
- Delaware
- Florida
- Georgia
- Kansas
- Louisiana
- New Mexico
- Oregon
- Minnesota
- Vermont
- West Virginia
To date: 311 hospitals across 37 states participate in the Acute Hospital Care at Home program since Nov. 2020.
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

The New York Times

50 Million Americans Are Unpaid Caregivers. We Need Help.

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

https://telemedicine.arizona.edu/
https://southwesttrc.org/
Thank you

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