Comparison of Telehealth Provisions During the Public Health Emergency, and After the Public Health Emergency

AMERICAN PSYCHIATRIC ASSOCIATION

The Secretary of the Department of Health and Human Services first implemented a Public Health Emergency (PHE) Declaration on January 21, 2020. Since then, the PHE has been reauthorized multiple times. Under federal rules, the PHE must be renewed every 90 days. It was last renewed on January 14, 2022, and will expire on April 14, 2022, unless renewed. APA recently sent a letter to the HHS Secretary asking for a renewal and at least a 90-day notice before expiring the PHE to help clinicians and patients plan and ensure continuity of care. Even without this 90-day notice, Congress has approved an extension of telehealth flexibilities for 5 months after the PHE ends.

Under the PHE, certain provisions were applied that expanded Medicare telehealth coverage. These provisions allowed for flexibility regarding how and where patients could be seen via telehealth; the reimbursement rates for telehealth services; and clinician licensure. Recognizing the benefits of these flexibilities to clinicians and patients alike, APA has advocated that many of these be retained after the PHE expires. One way that APA advocated for retaining these changes was by submitting public comments to the Centers for Medicare and Medicaid Services (CMS) Notice of Proposed Rulemaking for the 2022 Physician Fee Schedule (PFS). Subsequently, many of the flexibilities enjoyed during the PHE were retained, either total or in-part. The following table summarizes current telehealth policies (status during the PHE) and the policies that will be in effect when the PHE provisions expire.

Provision	Purpose	Status During PHE	Status After PHE Ends
Removal of the limitations for the telemedicine Originating Site requirement in Medicare	Allows a Medicare beneficiary to be seen in their home via telehealth, without having to travel to an official Medicare "Originating Site"	During the PHE, patients can be seen in the home via telehealth without an in-person examination requirement.	After the PHE CMS will require clinicians to see patients in-person (within 6 months) of treating them in the home via telehealth (including audio only). CMS also requires an in-person visit at least every 12 months thereafter with limited exceptions.* An in-person visit within 6 months of the end of the PHE is required for patients receiving care in their home over the course of the emergency. Neither of these in-person requirements apply to those patients with substance use disorders.
Removal of the Medicare geographic restrictions.	Removes previous Medicare restrictions that limited telehealth services to specific geographic areas (i.e., rural).	During the PHE patients residing an any locality can be seen via telehealth.	Telehealth (including audio-only) can be offered to patients in all localities (i.e., rural, suburban, urban).
The use of HIPAA-compliant videoconferencing technology during telehealth encounters	Determines which videoconferencing software may be used during telehealth encounters	During the PHE, clinicians could use non-HIPAA compliant software for telehealth, including FaceTime and the free version of Skype	After the PHE, clinicians will need to use a HIPAA-compliant videoconferencing solution, which will require a Business Associate Agreement (BAA) with the vendor. This may include the professional version of Zoom and Skype for Business, or a videoconferencing module integrated into the EHR.

Provision	Purpose	Status During PHE	Status After PHE Ends
Removal of frequency limitation of treatment in inpatient or nursing facility settings.	To remove the limitations on the number of times per month a patient within inpatient or nursing facilities can be seen via telehealth.	During the PHE, inpatient or nursing facility patients can be seen via telehealth by a provider without specific limitations on the frequency of visits.	CMS will reinstate the frequency limitation for inpatient care to once every three days. They have permanently reduced the frequency limitation for nursing facility care from once every 30 days to once every 14 days.
State licensure for Medicare Part B providers	To allow clinicians to provide telehealth services across state lines	During the PHE, any Medicare Part B Beneficiary can be seen by any Medicare provider located in any state in the US as long as they have a full and unrestricted medical license in at least one state but will still need to consider other states' licensure requirements.	The physician will be required to hold a complete and unrestricted medical license in the state where the patient is located; however, some states have some temporary or other special telehealth licenses that may continue after the PHE. Check with your state to see the status of this.
Reimburse telehealth at the same rate as in-person visits	To allow clinicians to be reimbursed for telehealth visits at the same rate as in-person visits.	During the PHE clinicians used standard CPT coding for telehealth for psychiatric services that included video. Audio-only outpatient E/M services were billed using one of the following codes: 99441, 99442, or 99443, and payment for these codes was made similar to that for outpatient E/M visits provided in-person. APA has advocated those payments should remain the same for all services regardless how the patient was seen (in-person, audio/video or audio-only).	CMS has approved the use of standard CPT coding for telehealth and audio-only care for the majority of psychiatric services. APA has asked CMS to clarify how coding for outpatient E/M services should be done. Updates on that and changes to Place-of-Service (POS) codes will be posted as more information is available.
Ryan Haight Act Online Pharmacy Consumer Protection Act	Remove the initial, in-person evaluation requirement for prescribing controlled substances via telehealth	Under the Ryan Haight Emergency Exception, clinicians may prescribe a controlled substance via telehealth (live, synchronous audio-video communication) without an initial, in-person examination (or 24-month follow-up) to patients. Patients with SUD and being prescribed buprenorphine can also have an initial, audio-examination to be prescribed buprenorphine.	The DEA still has not released a proposed rule that would outline the regulations for how a clinician could apply for a "special registration" to allow them to prescribe a controlled substance via telehealth without an initial, in-person examination. APA has recently submitted a letter along with 72 other organizations, calling for such a special registration process to be released and used as a glidepath toward permanently removing any requirement for an initial, in-person examination (at the clinician's discretion and clinical judgment).

Provision	Purpose	Status During PHE	Status After PHE Ends
DEA Licensure Requirements	Requires a DEA license in the state where the patient is located in order to prescribe a controlled substance, as well as a physical address in that state.	During the PHE, the DEA allows for the clinician to hold only one DEA license in a single state to prescribe a controlled substance to a patient in any state.	The DEA will revert back to requiring the prescriber hold a DEA license in each state where they prescribe a controlled substance.
Supervision of residents via telehealth	Allow for supervision of residents via telehealth, rather than requiring attending physicians to be at the same physical location as the resident.	During the PHE, CMS allows for the supervision of residents via telehealth.	At the end of the PHE, the supervision of residents by attending physicians must be in-person, unless CMS issues regulations that would continue to allow supervision via telehealth
Allows for Medicare to cover audio-only services.	For individuals who need access to care but do not have (or do not wish) to use video capability	During the PHE, beneficiaries may receive telehealth services for mental health services via audio-only.	Under the 2022 PFS, audio-only flexibilities under Medicare have been made permanent for specific mental health/SUD services. [see telehealth services list]

* While CMS has not released a list of qualified exceptions, the 2022 PFS does provide examples of what such exceptions might be for not requiring the subsequent, 12-month, in-person examination. These include, but are not likely limited to: requiring the 12-month, in-person visit would compromise the patient's care and negatively impact treatment goals; the patient is unable or unwilling to be seen in-person. The CMS Fact Sheet can be found here.