STATELINE MIDWEST

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THE BIG TURN TOWARD TELEHEALTH

States eye new laws in light of huge increase in use of these services; ideas include removing statutory restrictions, ensuring payment parity, and setting standards of care

by Jon Davis *(jdavis@csg.org)*

Greater acceptance and use of telehealth services — the transmission of audio/visual signals and data between physically disconnected sites like a hospital or doctor's office and a patient's house — seem likely to be permanent legacies of the COVID-19 pandemic.

The U.S. Centers for Medicare & Medicaid Services included 144 services (such as emergency department visits, initial inpatient and nursing facility visits, and discharge day management services) to its list of Medicare-eligible telehealth coverage for the duration of the official public health emergency.

But without legislative (or administrative) measures, that eligibility will disappear when, or shortly after, the emergency is declared over. CMS took the first step toward permanency in December when it added more than 60 telehealth services that will continue to be covered by Medicare beyond the emergency.

Will telehealth also become an enduring part of services covered by Medicaid and private insurers?

The answer will depend partly on the actions taken by states and their legislatures, with far-reaching consequences for health providers and consumers alike. For example, about one in five Americans get their health insurance through Medicaid.

"No two states [are] alike in how telehealth is defined, reimbursed or regulated," the Center for Connected Health Policy noted in its fall 2020 study of state laws. (The center, an initiative of the Public Health Institute, aims to promote a greater acceptance and use of telehealth.)

TELEHEALTH POLICIES IN MIDWEST ENTERING 2021

All U.S. states reimburse for "some form of live video" for Medicaid fee-for-service, while 21 states — including Illinois, Indiana, Kansas, Minnesota and Nebraska in the Midwest — do so for remote patient monitoring, according to the center's report.

Minnesota was among 18 U.S. states (as of 2020) reimbursing for "store-and-forward," or "asynchronous," transfers of data: pre-recorded videos or digital images stored at a point of origin (such as a patient's home) and forwarded at a later time to a doctor's office or hospital for analysis or consultation.

And Minnesota was the only Midwestern state with a Medicaid payment parity law in place, requiring that payments for telehealth services be equal to those for in-person services. A bill introduced this session, HF 1412/SF 1160, would extend this kind of "telehealth parity" to private insurance plans in Minnesota as well.

Across the Midwest, myriad telehealth-related bills have been introduced this session, and some already signed into law, a signal that many legislators envision these services being a part of their state's health system long after the COVID-19 pandemic is in the rear-view mirror.

"Telehealth parity" is the subject of several current bills.

As of late March, measures requiring parity among private health insurers were active in states such as Illinois (HF 3498) and Iowa (SF 92). In Nebraska, LB 314 would require telehealth consultations to be reimbursed at the same rate as in-person ones, and LB 487 would require parity for mental health treatments.

HB 122 in Ohio would prevent private insurers from charging different cost-sharing rates for telehealth than for in-person

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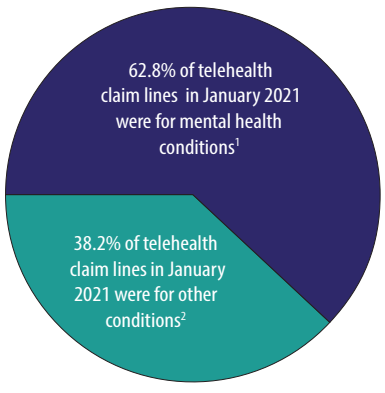
YEAR-OVER-YEAR CHANGE, BY MONTH, IN TELEHEALTH INSURANCE CLAIMS IN MIDWEST (MISSOURI INCLUDED)

Month	% change from 2019
December 2020	+4,754%
October 2020	+3,786%
August 2020	+3,169%
June 2020	+3,369%
April 2020	+6,754%
February 2020	-4%

Source: FAIR Health

MAJORITY OF DIAGNOSES FOR TELEHEALTH CLAIMS IN MIDWEST (MISSOURI INCLUDED) ARE RELATED TO MENTAL HEALTH



[1] The most common mental health diagnoses were generalized anxiety disorder, major depressive disorder, adjustment disorders, ADHD disorder and bipolar disorder.

[2] Aside from mental health conditions, the most common telehealth claims were related to acute respiratory diseases/infections, joint/soft tissue diseases/issues, developmental disorders and diabetes mellitus.

Source: FAIR Health

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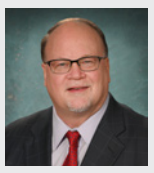

SOUTH DAKOTA AMONG FIRST MIDWEST STATES TO ADOPT NEW TELEHEALTH LAW IN 2021

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services, as well as require that health care practitioners eligible to use telehealth be reimbursed for it. Ohio's HB 122 would also allow eligible health care practitioners to bill the states' Medicaid program for such services.

'HERE TO STAY'

The Council of State Governments' Healthy States Task Force, which convened in 2019 to examine how states can meet the challenges of rapidly evolving technologies and policies, included a special section on telehealth policy in its final report (released in the fall of 2020).

That report identified several actions already taken in states, from the creation of a cabinet-level position in Kentucky to a new law in New Hampshire eliminating restrictions on where telehealth services can originate.

Ohio Rep. Brigid Kelly

"We need to make telehealth and broadband more accessible to people. We know the need for both is great," says Ohio Rep. Brigid Kelly, who served as co-chair of the task force's Interventions to Save Lives Subcommittee.

"A lot of problems that existed before COVID-19 still exist or were exacerbated by COVID-19."

Legislators should look not just at what's happening now, she adds, "but what's likely to happen in the future" and ensure that telehealth laws are flexible enough to evolve with technology.

Kyle Zebley, public policy director for the American Telemedicine Association, agrees states should be mindful to not preclude new technologies that don't exist now but might in five or 10 years.

By then, telehealth will provide better, more integrated telehealth care at every step of the process, from intake to outcomes, he says, adding that's why the association recommends technology-neutral legislative language such as South Dakota's SB 96.

Signed by Gov. Kristi Noem in early March, the bill defines telehealth as "the use of secure electronic information, imaging and communication technologies" by health care professionals to deliver services to a patient.

The new law also removes a requirement that an existing provider-patient relationship (such as a previous in-person visit) exist before telehealth services can be provided. And the state's telehealth definition allows not only for live, remote visits, but the asynchronous delivery of health care services (store-and-forward technology).

"Telehealth is here to stay," Zebley says. "We made 10 years of advances in one year, 2020; millions of Americans tried telehealth and liked it."

LEGISLATIVE ACTIVITY IN 2021

Throughout 2020, the consumer awareness group FAIR Health collected data on telehealth by region and the entire country. In January 2020, prior to the COVID-19 pandemic, telehealth services made up 0.12 percent of total insurance claims in the Midwest. In December of that same year, they accounted for 4.9 percent of all claims.

But without permanent changes to state and federal laws, many of the measures that made telehealth widely adaptable could disappear, Zebley says.

State legislators are aware of that cliff's edge and looking to update their states' laws, he adds, noting that his association has seen "an absolute explosion" of telehealth-related legislation in areas such as parity and standards of care.

South Dakota's SB 96, for example, spells out eight specific standards — verifying and disclosing the identities of participants, obtaining appropriate consent for treatment, ensuring appropriate medical practices are used to make diagnoses, and more.

Many of this year's measures also seek to specify the types of telehealth eligible for reimbursement, as well as who can provide the services.

Live video has traditionally been the telehealth mode most accepted in state laws. Other modalities include store-and-forward services, remote patient monitoring (for example, medical professionals evaluating patients at home in real-time via home monitors), and the use of smart tablets and devices.

Various proposals this year also would expand the list of telehealth-eligible practitioners.

• HB 1151, which passed the North Dakota House in January, would allow telehealth dental consultations or exams in certain situations, but would also require dentists using telehealth to "have adequate knowledge of the availability and location" of local dentists for follow-up care.

• Indiana's HB 1286 and SB 3, passed by their respective chambers in February, would expand telehealth usage beyond just prescribers to other practitioners, including veterinarians. These measures also address record-keeping and specify that a Medicaid patient waives confidentiality of medical information "that is heard by another individual in the vicinity" of the patient during a telehealth consultation.

• Ohio's HB 122 would allow telehealth to be used by advanced-practice nurses, optometrists, pharmacists, physician's assistants, psychologists (and school psychologists), and chiropractors. It would also set a technology-neutral definition of telehealth and classify home monitoring devices as "durable medical equipment" (equipment used in a home to improve a patient's quality of life).

Some bills in the Midwest are narrower in scope:

• HF 431, passed in February by the Iowa House, would require state licensing boards to allow for audio-only telehealth in their rules governing various health care providers.

• North Dakota's SB 2179 would have allowed audio-only telehealth services "if no other means of communications technology are available to the patient." It was amended to instead authorize a study of telehealth during the interim.

4 RECENT FEDERAL ACTIONS, PROPOSALS ON TELEHEALTH

1

AMERICAN RESCUE PLAN

$500 million in grants will be made available to address rural health care needs related to the pandemic. These funds can be used to increase telehealth capabilities.

2

CARES ACT

Last year's CARES Act created a $200 million COVID-19 Telehealth Program. Eligible health care providers received federal funding in order to serve patients at their homes or mobile locations during the COVID-19 pandemic. Another round of funding will be available this year.

3

MORE FUNDING FOR BROADBAND

Broadband funding approved last year included $3.2 billion for the Federal Communication Commission's Emergency Broadband Connectivity Fund for households, $300 million for Department of Commerce programs, and $100 million for the U.S. Department of Agriculture's Rural Broadband ReConnect.

4

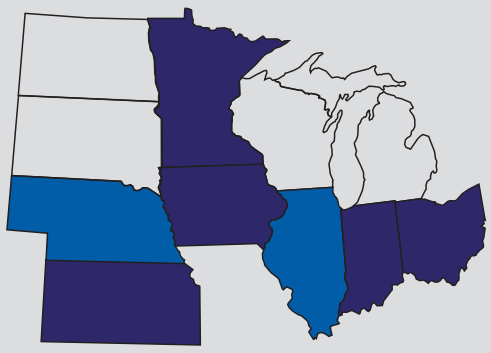
PROPOSED CHANGES IN TELEHEALTH LAWS

This year's proposed Telehealth Modernization Act (S 368 and HR 1332) would permanently allow homes to be originating sites for telehealth services. Rural health clinics and federally qualified health centers could serve as distant sites for all services, and all practitioners could use telehealth if approved by the U.S. Centers for Medicare and Medicaid. The act also would allow Medicare hospice and home dialysis patients to receive care through telehealth.

TELEHEALTH AND INTERSTATE HEALTH COMPACTS

The role of interstate licensure compacts in state health policy is likely to become more prominent with a rise in telehealth services. These agreements ease the process for professionals in one member state to practice in another member state — for example, an expedited pathway to licensure, license reciprocity, or the ability to practice telehealth. (Each health compact has its own set of rules on licensure and practice across jurisdictional lines.) Here is a look at the status of three interstate health compacts in the Midwest.

PSYCHOLOGY INTERJURISDICTIONAL COMPACT, OR PSYPACT (AS OF APRIL 2021)*



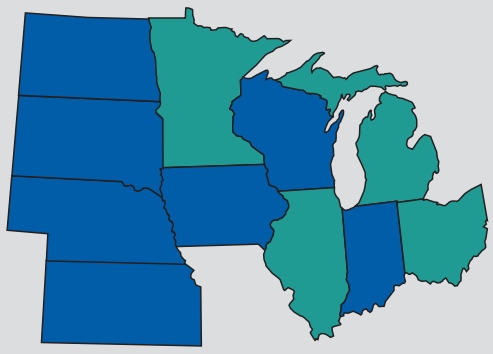
Member state

Legislation introduced to join compact

* PSYPACT allows qualified psychologists licensed in member states to practice via telehealth in other member states.

Source: PSYPACT

NURSE LICENSURE COMPACT (AS OF APRIL 2021)*



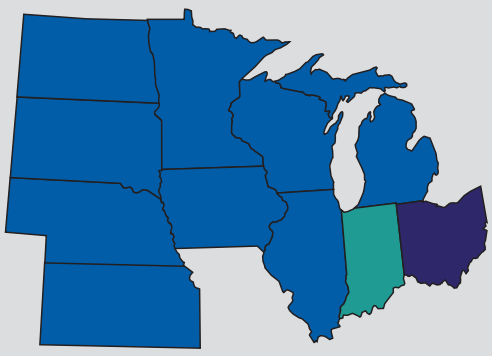
Member state

Legislation introduced to join compact

* This compact allows qualified nurses licensed in member states to practice and provide telenursing services in other member states.

Source: Nurse Licensure Compact

INTERSTATE MEDICAL LICENSURE COMPACT* (APRIL 2021)



Member state

Legislation introduced to join compact

Membership legislation passed; implementation in process or delayed

* This compact allows qualified physicians licensed in member states to practice in other member states via telehealth.

Source: Interstate Medical Licensure Compact