

**CENTER FOR CONNECTED  
HEALTH POLICY**

The Center for Connected Health Policy (CCHP) is a public interest nonprofit organization that develops and advances telehealth policy solutions to promote improvements in health and health care systems.

Telehealth expands access, particularly among underserved communities, and improves the efficiency and cost effectiveness of health care systems. With these benefits in mind, CCHP:

- Promotes policies that expand telehealth program adoption;
- Conducts objective research and policy analysis;
- Develops nonpartisan policy recommendations;
- Serves as a state and national resource on telehealth policy issues.

In its work as the federally designated National Telehealth Policy Resource Center (NTRC-P), CCHP provides technical assistance to twelve regional telehealth resource centers (TRCs) nationwide. The NTRC-P project is made possible by Grant #G22RH24746 from the Office of the Advancement of Telehealth, Health Resources and Services Administration, Department of Health and Human Services.

CCHP was created in 2008 by the California HealthCare Foundation, who remains as lead funder. CCHP is a program of the Public Health Institute.

**HR 3750 - Telehealth Modernization Act of 2013**

Reps. Doris Matsui (D-CA) and Bill Johnson (R-OH)

Author Intent: The author finds that telecommunications technology use to deliver various health services can potentially improve quality and health care access, remove traditional barriers, and change conditions of practice, particularly in rural underserved communities. The bill seeks to establish a federal standard for telehealth and serve as guidance for states, subject to a number of specified conditions.

BILL DRAFT	CURRENT LAW
<p>Defines “telehealth” to mean, “with respect to health care that a health care professional is authorized to deliver to an individual in person under State law, such health care delivered by such health care professional to such individual not in person, from any location to any other location, and by means of real-time video, secure chat or secure email, or integrated telephony.”</p>	<p>There currently is no formal definition of telehealth in federal law or regulation that applies to all federal policy and reimbursements.</p> <p>Additionally, almost all states have not included email or phone as part of the definition. It is unclear what “integrated telephony” would mean.</p>
<p>Suggests that if a State authorizes an individual to provide health care, the State should also authorize the health care professional to deliver such health care through “telehealth,” subject to certain conditions.</p>	

BILL DRAFT	CURRENT LAW
<p>Conditions for health care delivery through telehealth:</p> <ol style="list-style-type: none"> <li>1. Practitioner should have access to patient’s medical history, and review it with the patient to the same extent that the practitioner would if the service was provided in person;</li> <li>2. Practitioner should attempt to identify the conditions underlying the symptoms before providing diagnosis or treatment;</li> <li>3. Practitioner should have a conversation with the patient to adequately establish a diagnosis rendered;</li> <li>4. Practitioner should document the evaluation and treatment furnished to the patient, and at the patient’s option:               <ol style="list-style-type: none"> <li>(A) Provide the patient with medical information in standard medical record format about the evaluation and treatment; and</li> <li>(B) Send any documentation of evaluation and treatment to one or more selected health care professionals responsible for the individual’s care;</li> </ol> </li> <li>5. Practitioner should provide in electronic and paper format information regarding the health education, certification, and credentials of the health care professional at the option of the individual;</li> <li>6. Practitioner should offer no assurance that any item or service, including a prescription, will be issued in exchange for a fee, or solely in response to completing a form or questionnaire;</li> <li>7. Prescriptions issued should meet the following requirements:               <ol style="list-style-type: none"> <li>(A) Issued for a legitimate medical purpose;</li> <li>(B) Practitioner has obtained a medical history, and conducted an evaluation of the individual, adequate to establish a diagnosis;</li> <li>(C) Prescription is not for a drug or substance in schedule II, III or IV of section 202(c) of the Controlled Substances Act.</li> </ol> </li> </ol>	<p>No states have listed in their laws such specific conditions to allow for telehealth-delivered service provision. These conditions are provided as guidance for states to consider and adopt.</p> <p>Many states require some in-person visit, or prohibit the issuance of a prescription based upon only filling out a form. Condition 6 conceivably does not prevent a provider from prescribing medication to a patient who has only filled out a questionnaire or form.</p>
<p>In the construction of this bill, nothing shall be construed to change the application of HIPAA privacy regulations with respect to a health care professional’s provision of telehealth, or affect the standard of care as established by State law or policy.</p>	

## Impact and Analysis

This bill is not intended to impact Medicare telehealth definition or reimbursement criteria, and is being offered as “guidance” or a “floor” for consideration by states. However, it is unclear where in federal law this legislation would be placed if passed, and the impact on other telehealth-related programs is therefore unknown. For example, there is uncertainty about whether the Telehealth Resource Centers, established under the Public Health and Welfare code, would be obligated to follow the new “telehealth” definition.

Suggesting that states include a specific list of conditions to which telehealth-delivered health care would be subject raises several concerns. Currently, no state lists requirements on telehealth with such specificity; some states simply note that telehealth is subject to the same requirements that in-person delivered services must meet. States sometimes duplicate federal policies, such as some Medicaid programs requiring the patient to be in a rural area in order to be eligible for telehealth-delivered services.

The passage of this bill would raise several questions for states, such as:

- **Will states begin to adopt this specific list of requirements when they have not required anything like it in the past?**
- **If a state does not have any laws or regulations related to the items listed in the conditions, will the Matsui bill act as the standard in that state?**

Additionally, Conditions 6 and 7 related to e-prescribing would suggest a base level contrary to what exists in most states, where completing a form or questionnaire is inadequate for prescription issuance regardless of whether this was done in person or via telehealth. Neither Condition 6 nor 7 prohibit such an action taking place; a provider is only prohibited from offering assurances that it will take place. It appears to set a lower floor than telehealth's current standards.

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