

CURRENT STATUS OF FEDERAL & CALIFORNIA TELEHEALTH POLICY DURING COVID

As of December 1, 2020



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CENTER FOR CONNECTED HEALTH POLICY (CCHP)

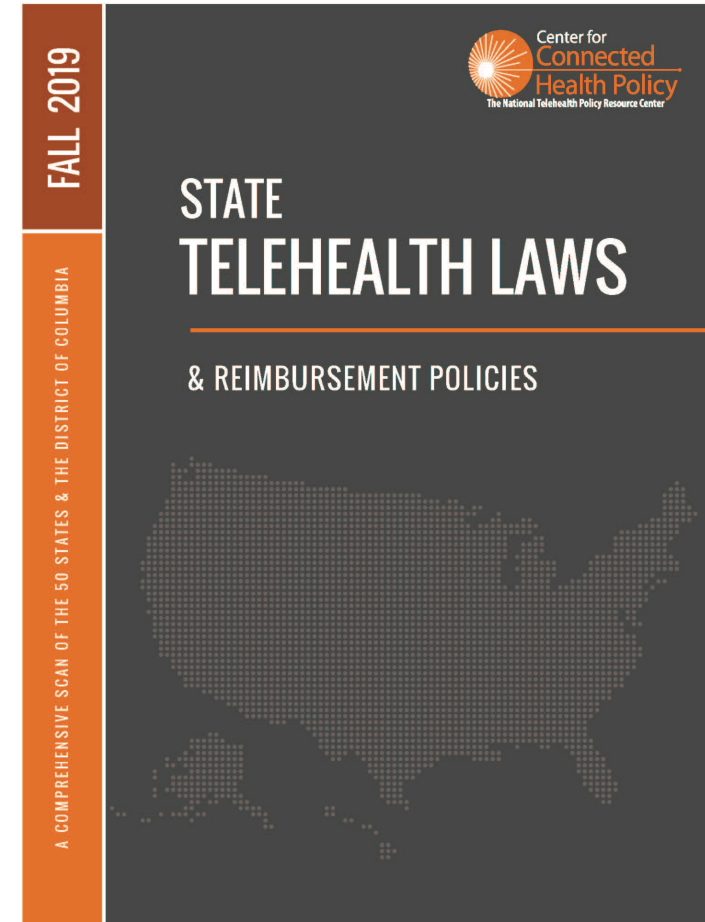
is a non-profit, non-partisan organization that seeks to advance state and national telehealth policy to promote improvements in health systems and greater health equity.

DISCLAIMERS

- **Any information provided in today's talk is not to be regarded as legal advice. Today's talk is purely for informational purposes.**
- **Always consult with legal counsel.**
- **CCHP has no relevant financial interest, arrangement, or affiliation with any organizations related to commercial products or services discussed in this program.**

CCHP PROJECTS

- **Established in 2009**
- **Program under the Public Health Institute**
- **Became federally designated national telehealth policy resource center in 2012 through a grant from HRSA**
- **Work with a variety of funders and partners**



PRE-COVID-19

- **Medicare limitations on telehealth**
 - **Must be in a rural location and a specific facility type**
 - **Limited list of services reimbursed**
 - **Limited list of providers eligible to provide services and be reimbursed**
 - **Essentially limited to live video modality**
 - **Recently allow the home to be an eligible originating site (where patient located) during the time of the telehealth interaction IF being treated for SUD. If a co-occurring mental health condition was diagnosed, can also be treated at home.**
- **Limitations on the prescription of controlled substance using telehealth**

TELEHEALTH POLICY CHANGES IN COVID-19

FEDERAL

MEDICARE ISSUE	CHANGE
Geographic Limit	Waived
Site limitation	Waived
Provider List	Expanded
Services Eligible	Added additional 80 codes
Visit limits	Waived certain limits
Modality	Live Video, Phone, some srvs
Supervision requirements	Relaxed some
Licensing	Relaxed requirements
Tech-Enabled/Comm-Based (not considered telehealth, but uses telehealth technology)	More codes eligible for phone & allowed PAs, NPs, APRNs, & other use

• Medicare is using exception/allowance provisions to cover telehealth services during this time
 • HHS has issued guidance regarding this time

STATE (Most Common Changes)

MEDICAID ISSUE	CHANGE
Modality	Allowing phone
Location	Allowing home
Consent	Relaxed consent requirements
Services	Expanded types of services eligible
Providers	Allowed other providers such as allied health pros
Licensing	Waived some requirements

- Private payer orders range from encouragement to cover telehealth to more explicit mandates
- Relaxed some health information protections

TIMELINE

Brief timeline of some of the changes made in federal telehealth policy in response to COVID-19

3/17/20

HR 6074 – Geographic/Site limitations waived

3/19/20

CMS Guidance on HIPAA

3/29/20

HR 748 – Expanded list of eligible providers & Interim Rule from CMS

4/7/20

First CMS Guidance for FQHCs/RHCs issued

4/30/20

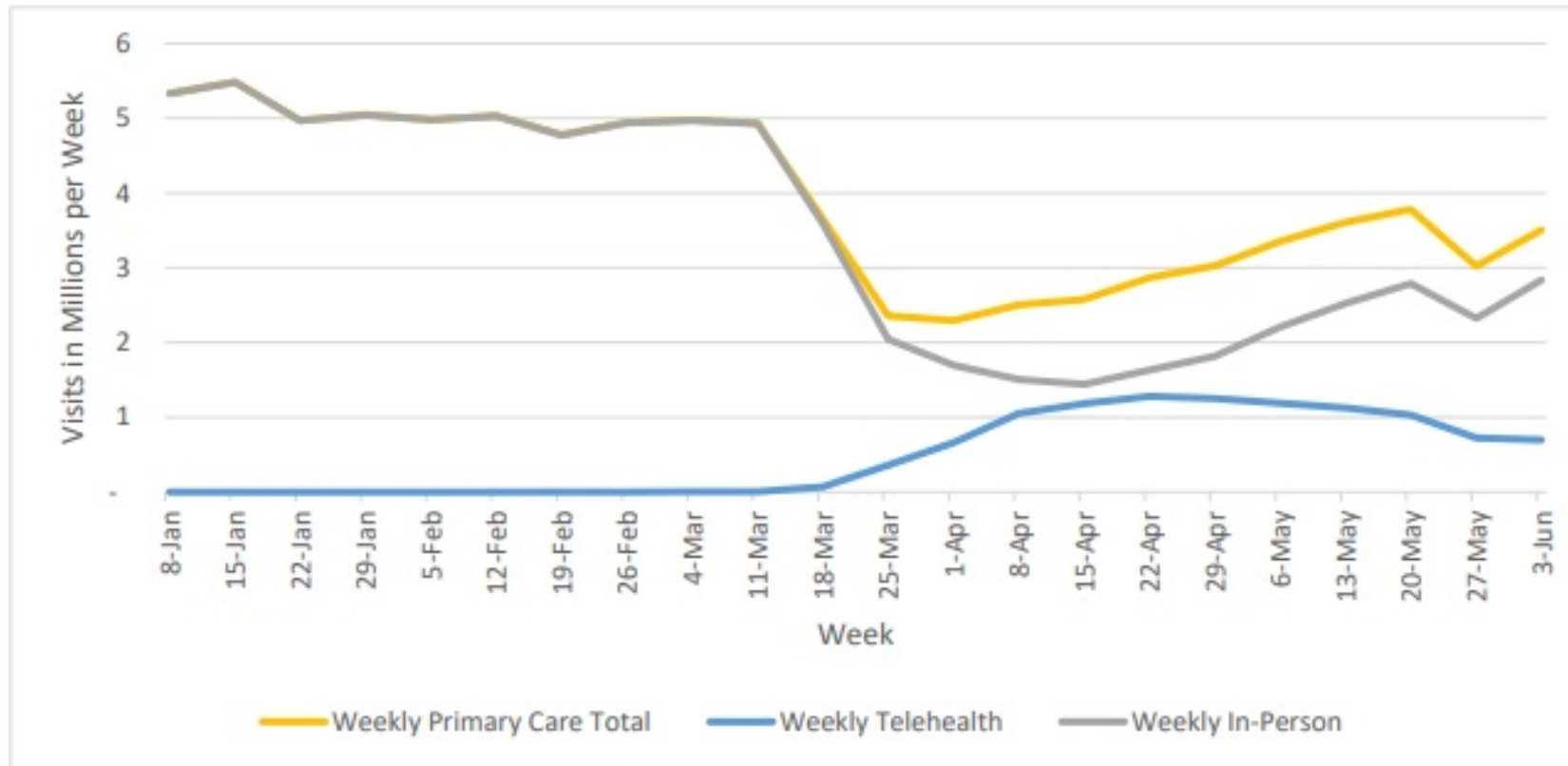
Updated CMS Guidance for FQHCs/RHCs issued

7/1/20

Proposed regulations to make permanent home health telehealth changes made in response to COVID-19

IMPACT OF TELEHEALTH POLICY CHANGES - MEDICARE

Figure 1. Primary Care Visits for FFS Medicare Beneficiaries (visits in millions per week)



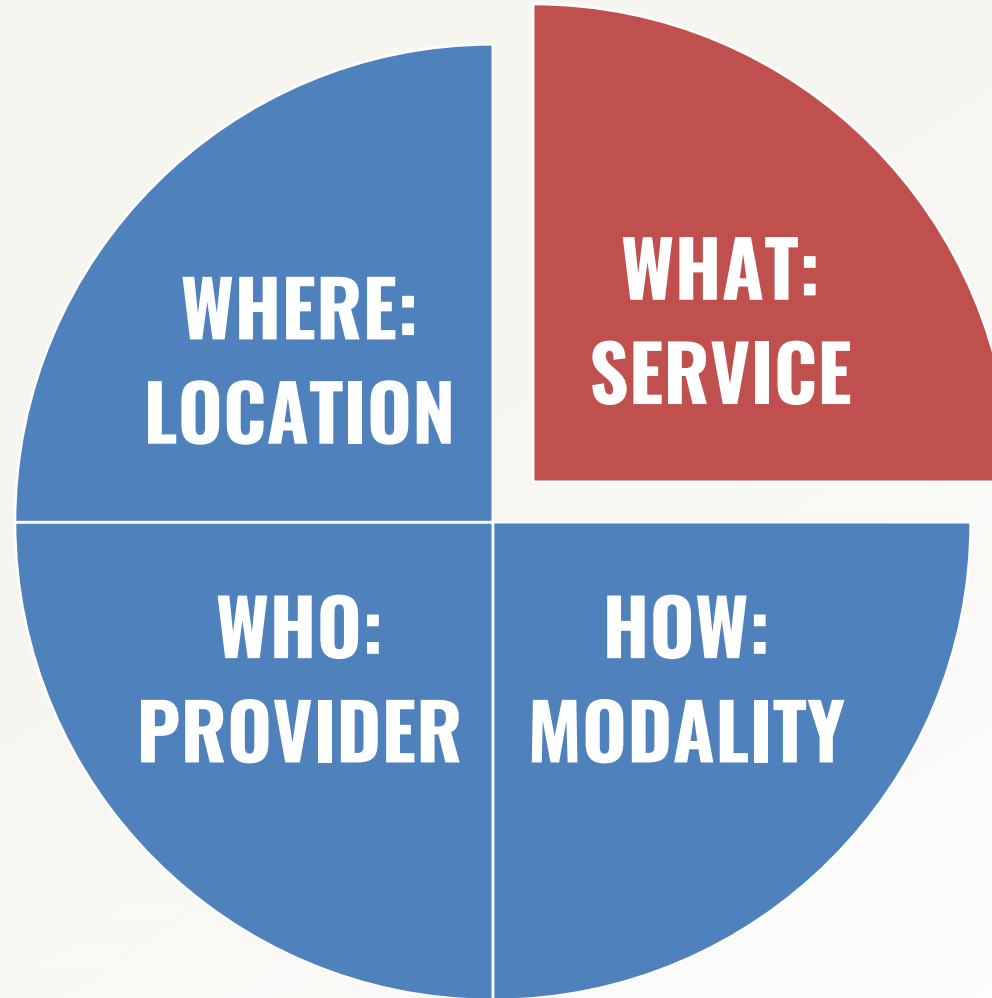
Source: Medicare claims data up to June 3rd, available as of June 16.

- *Chart from ASPE Issue Brief, July 28, 2020 “Medicare Beneficiary Use of Telehealth Visits: Early Data from the Start of the COVID-19 Pandemic”*

https://aspe.hhs.gov/system/files/pdf/263866/HP_IssueBrief_MedicareTelehealth_final7.29.20.pdf

EXISTING TELEHEALTH POLICY

Much of the telehealth policy that exists revolves around reimbursement, what gets paid. The policy is further broken down into who, what, where and how.



In Medicare, what services are covered if delivered by telehealth can be decided by CMS

CY 2021 FINALIZED PHYSICIAN FEE SCHEDULE

- **Proposal to make some of the temporary Medicare telehealth changes permanent**
 - **Included some of the services allowed during COVID-19 to be on permanent list**
 - **Proposed to allow some of the services to remain around temporarily until the end of the year the PHE is over**
 - **Request for comments on relaxing some of the supervision requirements**
 - **Clarifies that PTs, OTs, SLPs, clinical social workers, and clinical psychologists can furnish brief online assessment and management services, virtual check-ins and remote evals**
 - **Some modifications to remote physiologic monitoring**

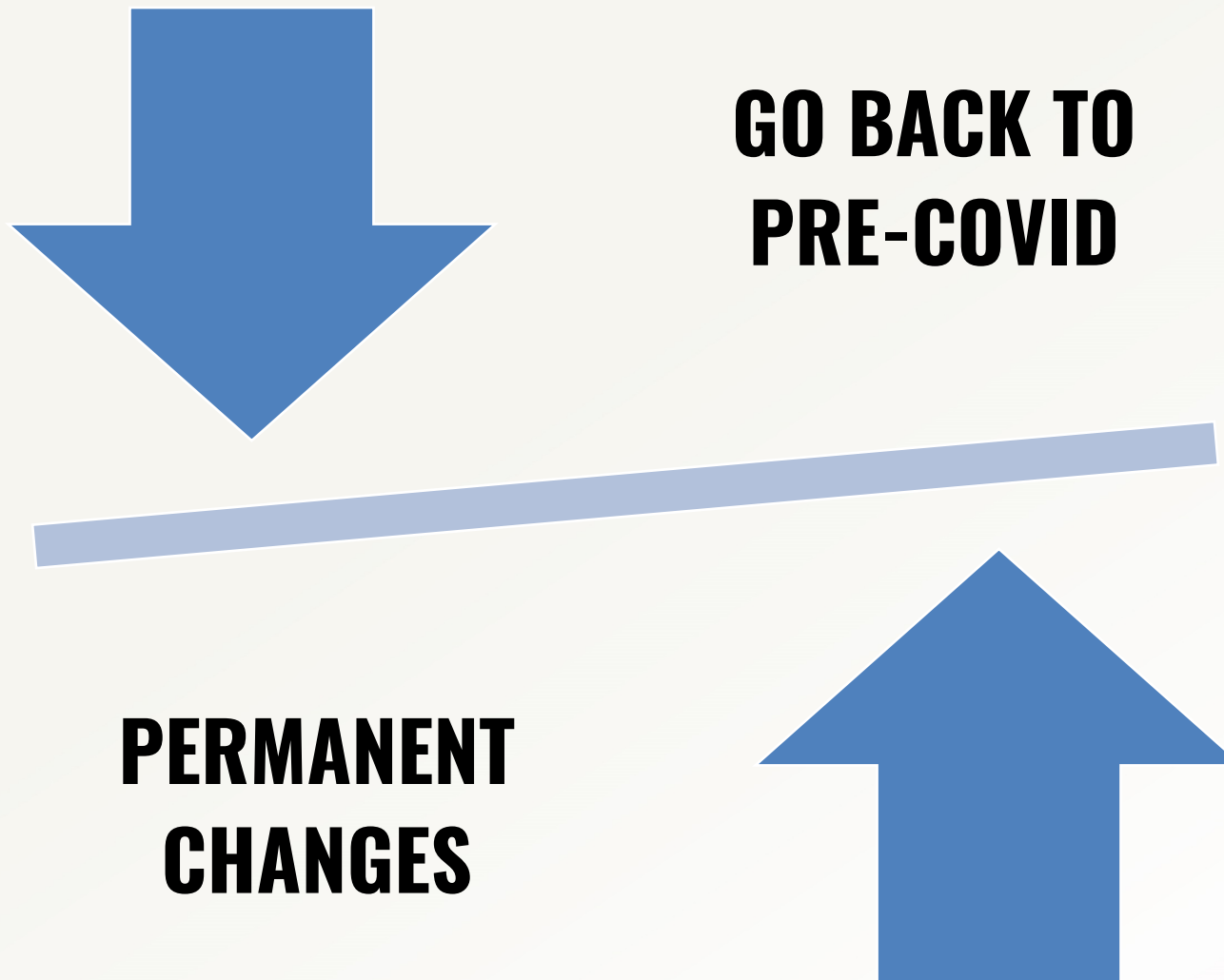
PROPOSED FEDERAL LEGISLATION

- **Many of the bills introduced deal specifically with the pandemic or to extend certain temporary waivers**
 - **S 4769 (Warren) – Establishes a task force to look addressing maternal mortality and morbidity during COVID including the utilization of smartphones or other telehealth connections**
- **Veteran-related telehealth bills**
 - **S 785 (Tester) – Commander John Scott Hannon Veterans Mental Health Care Improvement Act of 2019 (sent to President)**
- **Maternal and Mental Health Bills**
 - **HR 8060 (Trone) – Require parity in the coverage of mental health and SUD services in private plans whether provided in-person or via telehealth**
- **License Reciprocity**
 - **S 4421 (Murphy) & HR 8283 (Latta) – Provide temporary license reciprocity for**

PROPOSED FEDERAL LEGISLATION

- **S 4375 (Alexander) - Would make permanent certain temporary changes:**
 - **Allow FQHCs and RHCs to act as distant site providers**
 - **Home may serve as an originating site for all services**
 - **All types of practitioners may be eligible to furnish services and be reimbursed by Medicare**

CHANCES FOR FEDERAL LEGISLATION



PERMANENT STATE TELEHEALTH CHANGES

- **July –August 2020 - 31 states made permanent changes**
- **Most done through administrative channels, not legislation**
- **Not clear that all were done in response to COVID or had they been planned to be done before the pandemic**

PERMANENT STATE MEDICAID TELEHEALTH CHANGES

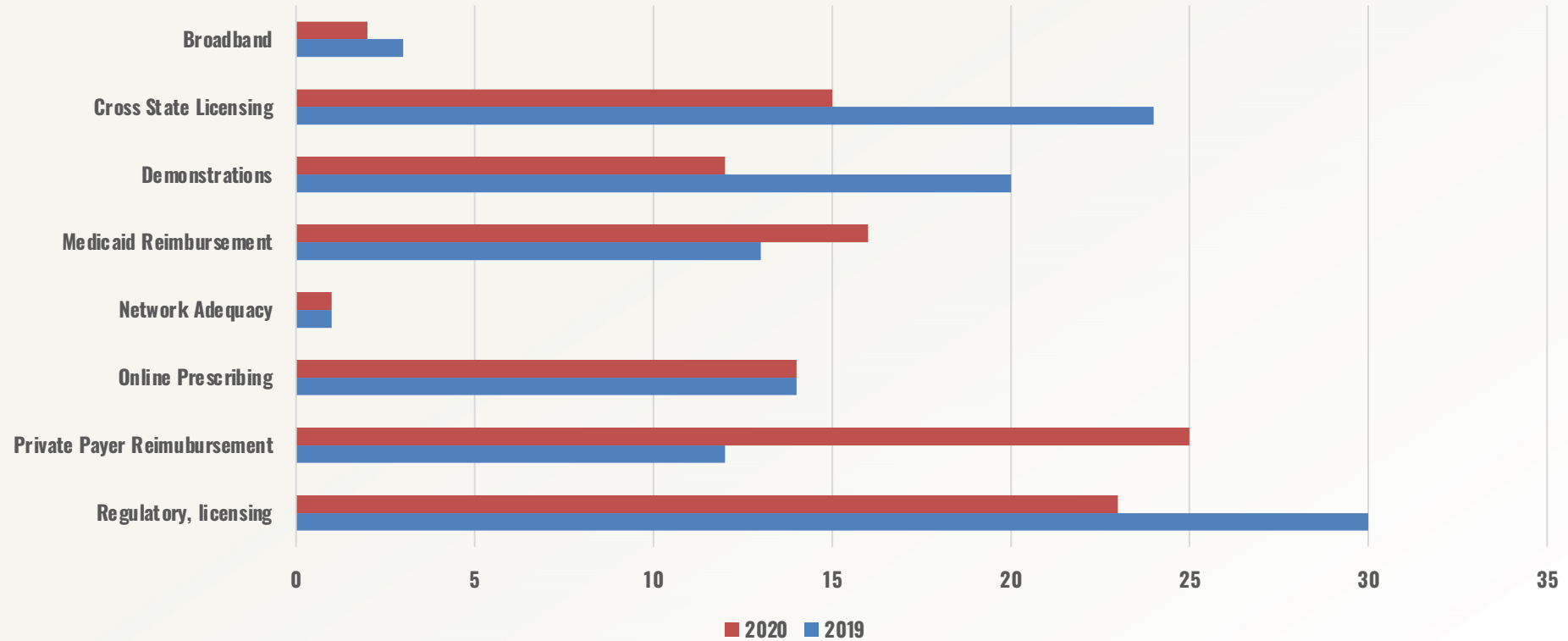
- **Several states adopted policy of telephone reimbursement in Medicaid but for narrow set of services (SC, TX, TN)**
- **Clarified that home is an eligible originating site in Medicaid (SD, CO, UT)**
- **Clarified policies around FQHCs/RHCs in Medicaid**
 - **HI – FQHCs/RHCs eligible providers**
 - **WV – Allowed psychiatrists and psychologists in FQHCs/RHCs to be eligible distant site providers**
 - **WS – Allow full PPS rate reimbursement**

PERMANENT STATE MEDICAID TELEHEALTH CHANGES

- **Allowing for telephone reimbursement. A few states and very narrow set of services:**
 - **SC – Allows for telephone delivery for dental services**
 - **TX – Allows only for supportive encounters for behavioral health and case management**
 - **TN – Allows only for ‘provider-based telemedicine’ which is strictly defined and must be HIPAA compliant**
- **AL & AK – Clarified that audio-only not allowed in their Medicaid programs**

STATE LEGISLATION 2019 VS 2020

2019 vs. 2020 Enacted Legislation



STATE TELEHEALTH LEGISLATION

- **104 Legislative bills in 36 states passed**
- **Modifications to private payer laws**
- **Medicaid Reimbursement**
- **Regulatory & licensing**
- **35 of the bills directly in response to or explicitly mentioned COVID-19**

STATE TELEHEALTH LEGISLATION

➤ Medicaid

- **MI – HB 5415 – requires Medicaid to provide coverage for RPM**
- **NY – SB 8415 – adds audio-only to definition of telehealth in Medicaid**

➤ Private Payer Bills

- **MD – HB 1208/SB502 – explicitly states that mental health care services in patient's home falls under telehealth & insurers must provide reimbursement for**

STATE TELEHEALTH LEGISLATION

- **Studies & Data**
 - **OR – HB 4212 – requires providers to collect encounter data on race, ethnicity and language whether in-person or via telehealth when providing services for COVID-19**
 - **MS – SB 2311 – allows State Board of Health to promulgate rules and collect data on the use of telehealth and EHRs to deliver telemedicine services.**

LOOKING FORWARD TO 2021 PREDICTIONS

➤ **Federal**

➤ **New Administration**

➤ **Likely to extend the PHE at least one more time**

➤ **Congress trying to pass a budget and possibly another COVID bill**

➤ **State**

➤ **Clearer picture on budgets**

➤ **May still extend exceptions if tied to federal PHE**

➤ **But clear some states will move forward**

CCHP

- **CCHP Website – [cchpca.org](https://www.cchpca.org)**
 - **Telehealth Federal Policies -**
<https://www.cchpca.org/resources/covid-19-telehealth-coverage-policies>
 - **State Emergency Waivers/Guidances -**
<https://www.cchpca.org/resources/covid-19-related-state-actions>
- **Subscribe to the CCHP newsletter at [cchpca.org/contact/subscribe](https://www.cchpca.org/contact/subscribe)**



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