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NEED TO KNOW

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FEDERAL AND STATE GOVERNMENT ACTIVITY ON TELEHEALTH

Governments, providers, and consumers alike have been looking to telehealth as a way to curb rising health care costs and expand access to care, especially for those residing in underserved areas. This Need to Know provides and overview of what is happening at the state and federal level to expand telehealth and incentivize its adoption.

The Administration

For years, the Centers for Medicare and Medicaid Services (CMS) has reimbursed less for telehealth services compared to face-to-face encounters. However, the agency has been loosening restrictions on telehealth services in recent years to expand coverage for high-value beneficiaries. In its 2020 Rate Announcement and Call Letter for Medicare Advantage (MA) and Part D, CMS first permitted MA plans to offer telehealth services as a part of their basic benefits package beyond what is offered under Medicare fee-for-service starting in plan year 2020. Previously, MA plans were only able to provide telehealth services under their supplemental benefits banner.

CMS outlined additional steps to expand telehealth in a proposed rule on payment policies for MA and Part D for 2021 and 2022. According to the notice, MA plans would have more flexibility to count telehealth providers in certain specialty areas like cardiology, psychiatry, and neurology toward their network adequacy requirements, allowing plans to have 10 percent fewer beneficiaries meet time and distance requirements. The proposed rule also sought feedback on additional changes to MA that would expand telehealth services to more beneficiaries in rural areas, such as updates to Certificate of Need requirements and changes to the percentage of beneficiaries that must reside within maximum time and distance standards.

Congress

Congress has also been active in taking steps to expand telehealth. In February 2018, a bipartisan agreement to raise spending caps for Fiscal Year 2018 was passed and signed into law. Included in the agreement was S. 870, the Creating High-Quality Results and Outcomes Necessary to Improve Chronic (CHRONIC) Care Act of 2017. Now public law, this legislation allows Medicare to cover more telehealth services for treating patients with chronic diseases. It also permits accountable care organizations to use telemedicine and expands MA coverage of telemedicine for all patients. Provisions of this bill provided CMS with the authority to promulgate its recent rulemaking on MA and telehealth.

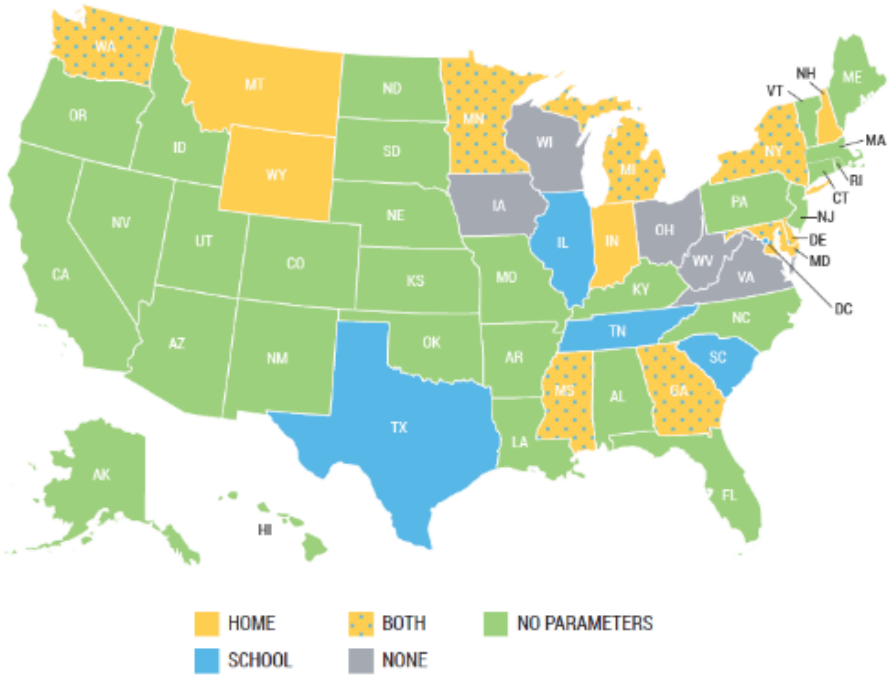
Another bipartisan effort to advance telehealth is the Creating Opportunities Now for Necessary and Effective Care Technologies (CONNECT) for Health Act. Originally introduced in 2015 as S. 2484, the CONNECT for Health Act was reintroduced in 2017 as S. 1016. Like the CHONRIC Care Act of 2017, several provisions of the CONNECT for Health Act were incorporated into 2018's budget agreement, including the removal of geographic restrictions for telehealth services relating to end-stage renal disease and stroke care.

In October 2019, Sen. Brian Schatz (D-HI) introduced S. 2741, an updated version of the CONNECT for Health Act. Included in the legislation are provisions that would allow the use of telehealth in the recertification of a beneficiary for the hospice benefit and permit telehealth restrictions to be waived during national and public health emergencies. The bill would also require CMS to improve its process of adding telehealth to approved services lists to better consider how telehealth can improve access to care. Other provisions would remove geographic and originating site restrictions for services like mental health and emergency medical care. Since its introduction, the CONNECT for Health Act has won the support of multiple stakeholders, including the American Hospital Association and American Medical Association (AMA).

State Efforts on Telehealth

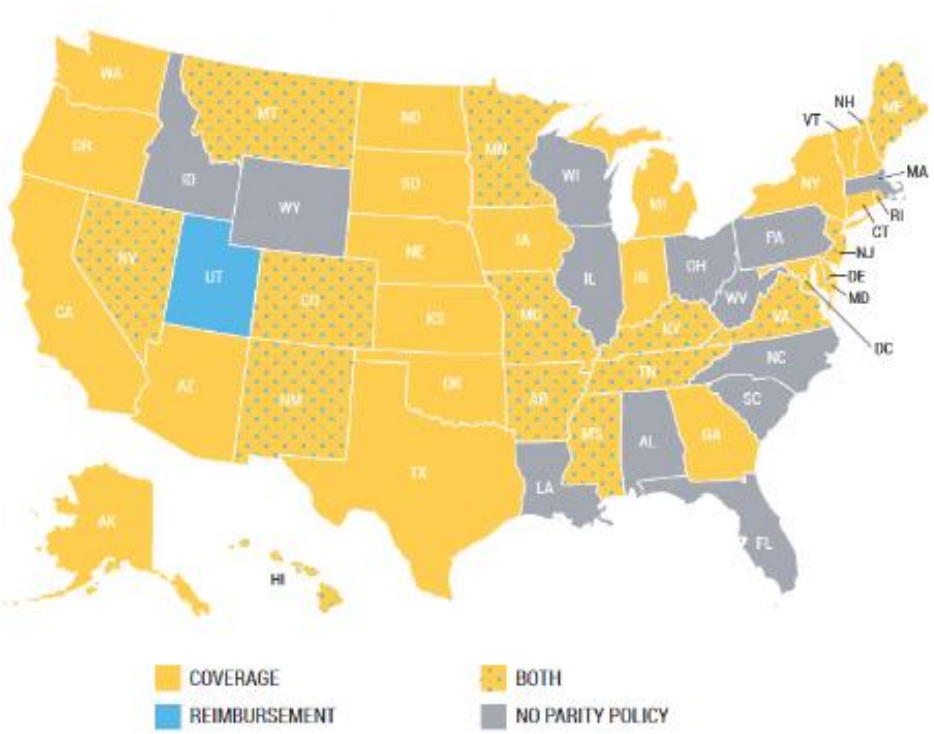
Telehealth has also gained traction in state governments in recent years. According to the American Telemedicine Association's 2019 State of the States report, 40 states and the District of Columbia have enacting meaningful policies to expand access and enhance reimbursement of telehealth since 2017.

Among the most popular areas state legislatures are reforming telehealth is the removal of restrictions on patient settings under their respective Medicaid programs. Presently, 29 states do not establish a patient setting, such as a physician office or home, as a condition for payment. Of those that do, over a dozen recognize a home and/or a school as an originating site. Ten states and DC have also eliminated or eased restrictions on originating sites since 2017. The chart below from the American Telemedicine Association provides a snapshot of state laws on patient settings, with "no parameters" referring to the 29 states that do not specify a patient setting as a condition of payment and "none" referring to states that have the fewest eligible patient settings.



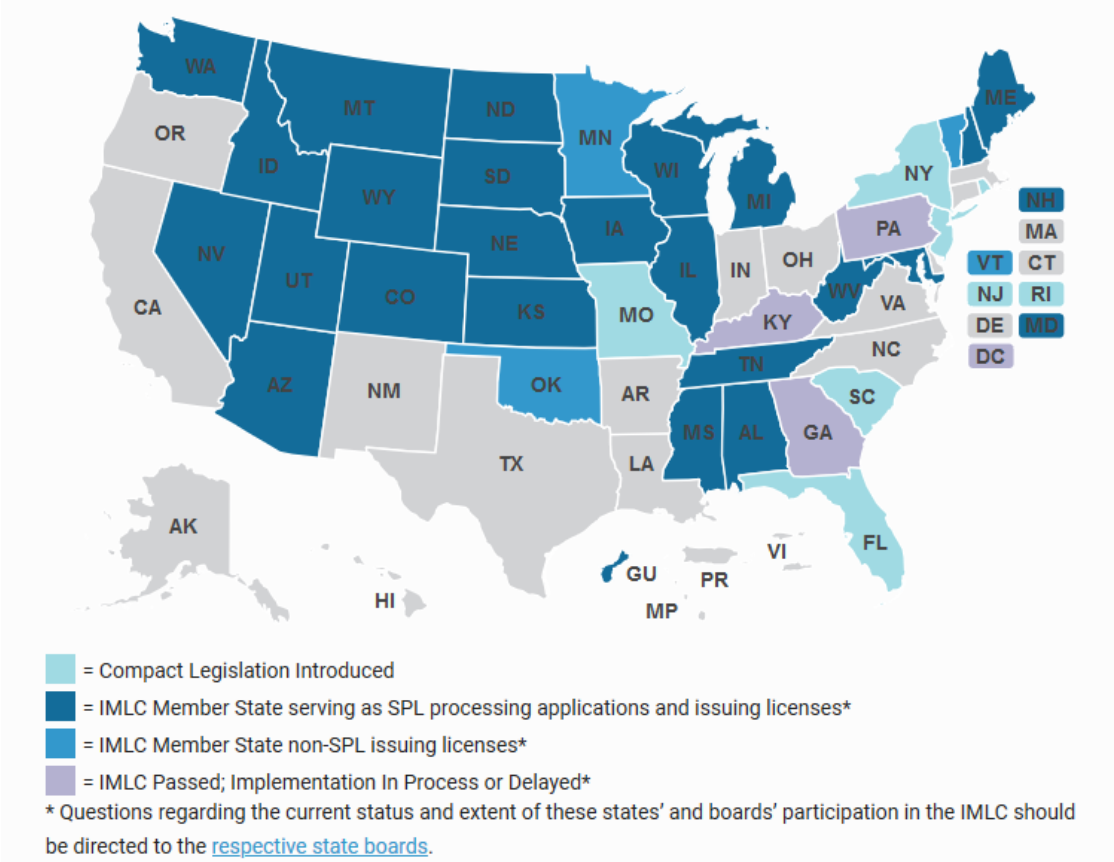
Additionally, many states have embraced a variety of modalities to provide telehealth. Currently, 22 states and DC cover remote patient monitoring, while 29 states and DC reimburse for "store and forward" transfer, whereby clinical information is collected and sent electronically to another site for evaluation. States have also taken it upon themselves to address provider shortages through telehealth. 26 states and DC currently have no restrictions on the types of providers that can be considered eligible for reimbursement by telehealth, with many covering services facilitated by physicians, mental health professionals, and physical therapists.

Another major area where state legislatures are focusing their telehealth reform efforts is private payer parity. Such policies ensure that health plans treat services provided via telehealth the same as in-person visits with a provider for the purposes of coverage or payment. While a majority of states have some degree of coverage parity and reimbursement parity, 13 states have yet to enact any policies to provide private payer parity. The chart below from the American Telemedicine Association provides a snapshot of the parity landscape by indicating which states have coverage parity, reimbursement parity, both, and in the case of 13 states, no parity whatsoever.



Another state-level effort key to the expansion of telehealth is the Interstate Medical Licensure Compact (IMLC). Launched in 2014 by the Federation of State Medical Boards, IMLC provides physicians with an expedited pathway to practicing medicine in multiple states. Most importantly, the compact was formed to facilitate the growth of telemedicine. Since the IMLC first went live in April 2017, it has issued over 6,670 state medical licenses to more than 4,440 physicians.

Below is a chart from IMLC that indicates the 29 states, DC, and the territory of Guam that are members of the compact, states in various stages of achieving membership, and states that have yet to take any steps to join.



Telehealth may not be the silver bullet to addressing all the issues facing the US health care system. However, as federal and state governments take meaningful steps to address barriers to telehealth, such as reimbursement rates and interstate licensure issues, telehealth has the potential to play a greater role in the debate over health care reform.