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

AMERICAN PSYCHIATRIC ASSOCIATION

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The federal government first implemented a Public Health Emergency (PHE) Declaration on January 21, 2020. Since then, the PHE has been reauthorized multiple times. The PHE officially ended on May 11, 2023, however, many of the flexibilities granted during the PHE have been extended post-PHE. Legislative action, including the Consolidated Appropriations Act of 2023, extended some of the PHE telehealth-related flexibilities in Medicare until the end of 2024. The American Relief Act now extends the availability of telehealth services for Medicare beneficiaries until **March 31, 2025**. Most importantly for psychiatry, some flexibilities – like the waiver of in-person visit requirements for Medicare beneficiaries will expire without Congressional action.

The Centers for Medicare and Medicaid Services (CMS), which administers Medicare, Medicaid, and CHIP programs in partnership with states and payers, is institutionalizing expanded Medicare payment for telemental health after the PHE flexibilities expire. CMS' 2025 Medicare Physician Fee Schedule recognizes the key importance of continuity of and access to care in mental health in maintaining multiple modalities of care for mental health services post-PHE.

Below is a summary of some key telehealth policies during and after the COVID-19 PHE:

Provision	2020-2024	2025
Removal of in-person requirements to bill Medicare	During the PHE, patients can be seen in the home via telehealth without an in-person examination.	Will expire on March 31, 2025, without further action by Congress.
Removal originating site (patient location) requirement in Medicare	During the PHE, patients can be seen via telehealth in their homes without traveling to a Medicare-designated originating site.	Homes are acceptable as a telehealth originating site on a permanent basis.
Waiver of requirements to use HIPAA-compliant videoconferencing technology during telehealth encounters	During the PHE, clinicians could use non-HIPAA compliant software for telehealth, including FaceTime and free versions of Skype and Zoom.	As of August 9, 2023, clinicians are required to use a HIPAA-compliant video conferencing solution, which will require a Business Associate Agreement (BAA) with the vendor.
Removal of frequency limitation of treatment in inpatient or nursing facility settings	During the PHE, inpatient or nursing facility patients can be seen via telehealth by a provider without specific limitations on the frequency of visits.	No frequency limits for telehealth visits extended through December 31st, 2025.

Provision	2020-2024	2025
Flexibility in state licensure for Medicare Part B providers	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. This doesn't mean that all states will honor that waiver for the practice of medicine in their state, and states have varying licensure waivers and timelines. Most state PHEs have already expired.	The physician will be required to hold a complete and unrestricted medical license in the state where the patient is located when receiving care (the originating site). Compacts, reciprocity, telehealth licenses, and other flexibilities that can facilitate licensure or care provision vary by state. Check with your state medical board and APA District Branch for more information.
Reimburse telehealth at the same rate as in-person visits	During the PHE, clinicians used standard CPT coding for telehealth that included video. Audio-only outpatient E/M services were billed using telephone codes. Telehealth services were reimbursed at the non-facility rate.	CMS will pay for telehealth at the non-facility rate rather than facility. Place- of-Service (POS) codes will remain the same as POS would have been if the service had been delivered in-person through 2025.
Ryan Haight Act Online Pharmacy Consumer Protection Act	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.	Extension of telemedicine flexibilities allowing prescribing of schedule II-V controlled substances via telemedicine without an in-person evaluation through December 31st, 2025.
DEA licensure requirements	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.	Only one DEA license in a single state to prescribe a controlled substance to a patient in any state is required through 2025.
Supervision of residents and auxiliary personnel via telehealth	During the PHE, direct supervision can be done via virtual presence.	The use of live video to meet direct supervision requirements has been extended through December 31, 2025. Providers are able to continue to supervise residents only when the provider, resident and patient are all in separate locations. On a permanent basis, auxiliary personnel providing mental health services can be under general supervision, and general supervision can be provided virtually.
Medicare coverage of audio-only services	During the PHE, beneficiaries may receive telehealth services for mental health services via audio-only.	Audio-only provision of mental health care (including treatment for substance use disorder) is permanently allowed in Medicare.