

Are Telehealth Laws Here to Stay? A Survey of Legislation in NJ, DE, NY, PA and MA

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As COVID-19 vaccines continue to roll out across the country, there is uncertainty as to whether certain telehealth laws that significantly impacted healthcare providers, payors and patients during the public health emergency will remain in place after the emergency is lifted.

On the federal level, the Protecting Access to Post-COVID-19 Telehealth Act (hereinafter the Act) was reintroduced in the U.S. House of Representatives on January 19, 2021. The Act, which was initially introduced in July 2020, would, among other things, expand the use of telehealth after the public health emergency by eliminating certain geographic restrictions and preventing the sudden loss of telehealth services for Medicare and Medicaid beneficiaries after the emergency period.

Many states in our region are not waiting, however, for the federal legislation. Several have introduced their own legislation to give permanency to the flexibilities afforded by telehealth during the pandemic.

New Jersey

New Jersey is in the minority of states to have introduced laws that address reimbursement for telehealth services that ensure that providers are reimbursed for telehealth services at rates that are the same as those for services provided in person. Under the current version of Senate Bill 2559 (the Bill), certain New Jersey health benefit plans, including Medicaid, are required to provide coverage and payment for all forms of medical and behavioral healthcare services that are received through telehealth and the provider is to be reimbursed at a rate equal to the reimbursement rate when such services are provided in-person in New Jersey. Among other things, the Bill also prevents those health benefits plans from imposing restrictions as to the location of the telehealth provided or the electronic or technological platform through which it is provided.

The New Jersey Senate has also introduced Bill 523 which would join the Interstate Medical Licensure Compact (the Compact). The goal of the Compact, similar to the federal Act, is to streamline the licensure process for a medical professional who is in good standing in his/her own state, thereby expanding the accessibility of providers to patients. The Compact does not interfere with individual state malpractice laws as a medical provider who is granted expedited licensure under the Compact is subject to the medical malpractice laws of the state in which the patient is located.

Delaware

In July 2020, Delaware temporarily expanded insurance coverage for the delivery of healthcare using telemedicine and telehealth through July 2021. 18 Del. Code § 3370 emphasized that telehealth does not necessarily require the use of visual communication between a patient and a provider. Further, "originating site" was broadened to include locations outside of Delaware, so long as the patient is a Delaware resident. In other words, if the patient is a Delaware resident at the time of care in question, coverage cannot be denied if the patient happens to be outside of Delaware being treated by his/her provider using some method of telehealth. It is unknown whether the State legislature will expand these changes beyond July 2021.

In January 2021, the Delaware House of Representatives introduced HB-21, which seeks to adopt the Advanced Practice Registered Nurse Compact (hereinafter the APRN Compact) to allow certain nurses (those with a Master's degree or higher) to provide healthcare to a larger area, including across state lines. Similar to the Interstate Medical Licensure Compact, the APRN Compact authorized APRNs, who are licensed in a Compact member state, to practice in another Compact member state, which is targeted on improving healthcare to rural and underserved communities.

New York

Earlier this year, New York Governor Andrew Cuomo introduced legislation that aims to permanently adopt telehealth resources implemented during the COVID-19 pandemic. The legislation is driven by the obvious disparity in healthcare access for low income communities, particularly in the behavioral healthcare space. Governor Cuomo is advocating for permanency in the following three areas of the telehealth infrastructure: (1) the requirement that Medicaid reimburse for telehealth services, regardless of the location of the services; (2) the implementation of interstate licensing reciprocity for states in the Northeast region in order to provide more services to low income communities; and (3) the expansion of mental health and substance use disorder services to make them more readily available on an outpatient basis with a larger platform of approved providers.

Pennsylvania

At the end of February 2021, a telemedicine bill, HB-642, was introduced in the Pennsylvania General Assembly. This bill addresses licensing requirements and health insurance coverage for telemedicine, including the expansion of coverage under Pennsylvania's Medical Assistance Program (Medicaid). HB-642 proposes that during the COVID-19 pandemic (expires when the disaster emergency ends) reimbursement for providers for COVID-19 related healthcare services, whether such services are provided in-person or via telemedicine, must be equal. For non-COVID-19 related health services, HB-642 requires that the reimbursement of an in-network provider by an insurer is to be negotiated consistent with the terms of the network participation agreement. According to the proposed legislation, Medicaid would be mandated to provide coverage for all services delivered via telemedicine if such services would be covered if conducted in-person. Furthermore, reimbursement through Medicaid for a consultation would no longer require that the patient and provider be in a qualified office and use live-video services to remote in an additional provider.

Pennsylvania's last attempt to pass pandemic-related telemedicine laws, Senate Bill 857, ended in veto by Governor Tom Wolf on April 29, 2020. One of the reasons Governor Wolf vetoed the Bill was because it failed to require private insurance companies to reimburse providers for telehealth services at a rate equal to the reimbursement for services provided in person. The new bill, HB-642, seeks to remedy that pay equality obstacle, albeit only during the disaster emergency.

Pennsylvania is a member of the Interstate Medical Licensure Compact, which does afford Pennsylvania residents better access to healthcare services from out-of-state providers. Additionally, Pennsylvania does issue extraterritorial licenses to medical providers who possess unrestricted licenses in an adjoining state, and providers who reside or have an office near a Pennsylvania state border and want to extend their services into Pennsylvania. Because both the Interstate Medical Licensure Compact and extraterritorial licenses apply to healthcare in general, they consequently cover telemedicine services.

Massachusetts

Massachusetts Governor Charlie Baker signed into law an omnibus healthcare bill which expands telehealth access after the COVID-19 public emergency ends. The law permanently requires payers to cover all mental health services provided by telehealth at the same rate as those services provided in person. It also requires rate parity for telehealth primary care and chronic disease management

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services for two years and rate parity for all services for 90 days past the emergency. Two years of rate parity is expected to provide the state and payers time to negotiate a long-term agreement on telehealth coverage.

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