

# *Legislative Briefing:*

## **Telehealth Policy – Where We’ve Been, Where We Are, Where Are We Going?**

October 13, 2022



California  
**Telehealth**  
Policy  
Coalition



California Health Care Foundation  
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Health Policy

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TELEHEALTH POLICY  
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# Welcome and Introduction to the Legislative Briefing

Mei Wa Kwong, JD  
Executive Director  
Center for Connected Health Policy



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TELEHEALTH POLICY  
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# About the California Telehealth Policy Coalition

## Our origin story

In 2011, when [AB 415, the Telehealth Advancement Act](#) was winding its way through the legislative process, an ad hoc group of statewide organizations supporting the bill formed. This group, including the [California Primary Care Association](#), the [California Hospital Association](#) and the [California Rural Health Association](#), came together in meetings convened by CCHP in order to be apprised of any developments around AB 415 and share information with each other.

With the successful passage of AB 415, the group continued to meet and eventually evolved into the California Telehealth Policy Coalition. CCHP leads the Coalition and hosts monthly conference calls.

In recent years, the Coalition has decided to move beyond a mere information sharing group to become a more active collective participant in telehealth policy. The Coalition has developed a slate of telehealth policy goals and issues that it is working on in a continued effort to modernize California telehealth policy.

[SEE ALL COALITION MEMBERS >](#)



Next meeting | Friday, October 21, 2022

## Monthly Coalition Meeting

We host monthly conference calls to discuss the latest California telehealth policy developments. Want to join us?



**Please visit our website for more information or if you are interested in joining.**

<https://www.cchpca.org/california-telehealth-policy-coalition/>

# Purpose and key objectives of today's webinar

Discuss recent state telehealth policy updates in context of broader state and federal telehealth policy landscape.



- **Provide an overview of state policy issues**, including how state policy has evolved over the years, remaining gaps between commercial and Medi-Cal patients and other consumer issues.
- **Provide an overview of federal policy issues**, general developments and impacts on the state related to licensure and recent *Dobbs* ruling.
- **Discuss stakeholder perspectives and the impact on patients** related to recent legislative updates.
- **Panelist discussion** on remaining policy issues and next steps.
- **Answer key questions** about legislation as well as the future outlook for telehealth in California.

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# Agenda and preliminary announcements

## Welcome

- Mei Wa Kwong, Executive Director, Center for Connected Health Policy

## State and Federal Telehealth Policy Landscape Overview

- Mei Wa Kwong, Executive Director, Center for Connected Health Policy

## Panelist Session – Opening remarks followed by discussion

- Moderated by Diana Camacho, Senior Program Officer, Improving Access, California Health Care Foundation

## Speakers

- Daniel Grossman, MD, Professor & Director, Advancing New Standards in Reproductive Health (ANSIRH), University of California, San Francisco
- Haleigh Mager-Mardeusz, Senior Policy Analyst, California Association of Public Hospitals and Health Systems (CAPH)
- Kelly Pfeifer, MD, Abortion Provider (AZ, CA, KS) & Independent Policy Consultant, Care Access Strategies
- Quinn Shean, State Advisor, Tusk Venture Partners
- Stacey Wittorff, Associate General Counsel, Planned Parenthood Affiliates of California (PPAC)

## Q&A



Attendees will remain muted during the webinar.



Please submit any questions you have during the webinar in the Q&A box, not the chat box.

# State and Federal Telehealth Policy Landscape

# STATE & FEDERAL TELEHEALTH POLICY CHANGES IN COVID-19

FEDERAL		STATE (Most Common Changes)	
MEDICARE ISSUE	CHANGE	MEDICAID ISSUE	CHANGE
Geographic Limit	Waived	Modality	Allowing phone
Site limitation	Waived	Location	Allowing home
Provider List	Expanded	Consent	Relaxed consent requirements
Services Eligible	Added additional 80 codes	Services	Expanded types of services eligible
Visit limits	Waived certain limits	Reimbursement	Parity
Modality	Live Video, Phone, some <u>srvs</u>	Providers	Allowed other providers such as allied health pros
Supervision requirements	Relaxed some	Licensing	Waived some requirements
Licensing	Relaxed requirements		<ul style="list-style-type: none"> <li>Private payer orders range from encouragement to cover telehealth to more explicit mandates</li> <li>Relaxed some health information protections</li> </ul>
Tech-Enabled/Comm-Based (not considered telehealth, but uses telehealth technology)	More codes eligible for phone & allowed PTs/OTs/SLPs & other use <small>•DEA – PHE prescribing exception/allowed phone for suboxone for OUD                      •HIPAA – OCR will not fine during this time</small>		



# FEDERAL/STATE TELEHEALTH POLICY OVERVIEW

## ➤ Federal Activity

- CCHP tracking over 200 pieces of federal telehealth legislation
  - Many bills seek to make some of the temporary changes permanent or extend them – focus on removing originating site restrictions, adding audio-only, payment parity, mental and reproductive health
- Medicare – 2021 Budget Bill - Added rural emergency to originating site; expansion of mental health services to be without geographic restriction and allows the home - BUT - one in-person visit with telehealth provider within 6-month period prior to telehealth encounter
- Medicare – 2022 Budget Bill - Extended federal telehealth flexibilities for 151 days post-PHE - includes location, provider, and audio-only expansions - delays new in-person telemental health visit
- Medicare CMS Physician Fee Schedule Post-PHE Changes
  - Some temporary eligible telehealth services extended until end of CY 2023; expansions for audio-only and FQHC/RHCs but many caveats and limited to mental health

## ➤ State Activity

- New audio-only coverage requirements
- New payment parity laws
- Licensing exceptions for out of state providers

# PERMANENT STATE UPDATES: MEDICAID REIMBURSEMENT BY MODALITY (Fee-for-Service)



## Live Video

50 states and DC



## Store and Forward

25 states



## Remote Patient Monitoring

34 states

## Allow audio-only

34 states and DC

*As of Fall 2022*

*(Context: Last year at this time store-and-forward was at 22, RPM at 28, and audio-only at 22)*

# STATE REIMBURSEMENT REQUIREMENTS FOR PRIVATE PAYERS



**43 states and DC**  
have telehealth private payer laws

**24 States have  
Payment Parity  
(up by 3 since last fall)**

Some states have “service parity” others have “payment parity” or both – in addition, some make their telehealth private payer laws “subject to the terms and conditions of the contract” which can limit true parity

*As of Fall 2022*

# OTHER FEDERAL ISSUES/IMPACTS

- ***Misperceptions related to fraud hindering telehealth expansions***
  - Despite OIG clarifications, confusion remains on difference between “telefraud” and “telehealth fraud” – fraud primarily is related to telemarketing arrangements & inappropriate DME/genetic testing prescriptions unrelated to telehealth visit
  
- ***Cross-state practice issues (i.e. state licensure/prescribing requirements)***
  - Telehealth is considered rendered at location of patient, therefore provider shall abide by laws and licensure requirements in state where patient is located
    - State laws vary widely, most COVID waivers expired
  - CA has no exceptions for out-of-state providers
  
- ***Dobbs Decision***
  - Creates additional cross-state practice concerns/limitations, i.e. CA providers seeking to provide medication abortion via telehealth to patients in certain states

# CALIFORNIA TELEHEALTH LAW

## ➤ *AB 415 (Logue, 2011)*

- Updated the original Telemedicine Act of 1996 - Replaced term “telemedicine” with telehealth; broadened range of telehealth services and providers; removed limits on location and explicit email/telephone exclusion; required consent.

Telehealth means the mode of delivering health care services and public health via information and communication technologies to facilitate the diagnosis, consultation, treatment, education, care management, and self-management of a patient’s health care. Telehealth facilitates patient self-management and caregiver support for patients and includes synchronous interactions and asynchronous store and forward transfers. *(CA Business & Professions Code Sec. 2290.5.)*

# CALIFORNIA TELEHEALTH LAW

- ***AB 809 (Logue, 2014) – Consent***
  - Clarified consent requirements and that health care providers initiating telehealth must obtain and document verbal or written consent from the patient.
  
- ***AB 744 (Aguilar-Curry, 2019) – Private Payer Reimbursement Parity***
  - Requires reimbursement, on the same basis, to the same extent and at the same rate as the same service provided in-person.
    - Was hinged upon new and amended contracts post-2021, but COVID-19 emergency guidance in essence activated a year early and the date/contract-specific language was then removed from the law under AB 457 (2021)
  
- ***AB 1264 (Petrie-Norris, 2019) – Prescribing***
  - Clarified that an appropriate prior examination does not require synchronous interaction between the patient and licensee and can be achieved through telehealth.

# CALIFORNIA MEDICAID TELEHEALTH POLICY

## PRE-COVID-19

Live Video & Store & Forward  
Reimbursed at parity; Provider  
chooses when appropriate to use.  
FQHC/RHC Limited use of both  
modalities

FQHCs/RHCs limited in where  
patient located at time of service.  
Home not eligible

No audio-only.

No RPM.

## COVID-19

Live Video & Store & Forward  
Reimbursed at parity; Provider  
chooses when appropriate to use.  
FQHC/RHC allowed to use both  
modalities

FQHC/RHC home eligible  
originating site for all modalities

Audio-only reimbursed for  
services & parity

No RPM.

## PERMANENT

Live Video, Store & Forward along  
w/audio-only, reimbursed at parity  
(new patients can only be established via  
live video)

FQHC/RHC may use all modalities  
with no site limitations and  
reimbursed at full rate  
(new patients can only be established via  
live video, with some asynch. exceptions)

Audio-only reimbursed at parity,  
(Beginning around 2024 providers must  
also offer live video in addition to audio-  
only)

RPM covered subject to separate fee  
schedule



# RECENT MEDI-CAL UPDATES

- **SB 184 (2022) – Adopted Permanent Changes Effective Jan. 1, 2023**
  - Continues coverage of and payment parity for synchronous and asynchronous telehealth, including audio-only, for all providers, including FQHCs/RHCs.
  - Coverage include for other permissible virtual communication modalities
  - Patients can only be established via live video (limited exceptions for asynchronous for FQHCs/RHCS) (no limits for commercial patients)
    - Additional exceptions may be allowed according to forthcoming DHCS guidance
    - **AB 32 (Aguiar-Curry, 2022)** – Audio-only exception for sensitive services or if patient requests/attests to lack of access to live video
  - New requirements related to consent – Now Medi-Cal patients require specific consent criteria separate from general law that already required consent
- Also different than commercial patients, no earlier than 2024, Medi-Cal providers also have to offer live video if offering audio-only (AB 32 included provision that Dept. shall consider broadband limitation exceptions to this requirement), as well as arrange for in-person care
- On or before January 1, 2023 – The department will develop a research and evaluation plan that:
  - Proposes strategies to analyze the relationship between telehealth and the following: access to care, access to in-person care, quality of care, and Medi-Cal program costs, utilization, and program integrity
  - Examines issues using an equity framework that includes stratification by available geographic and demographic factors, including, but not limited to, race, ethnicity, primary language, age, and gender, to understand inequities and disparities in care
  - Prioritizes research and evaluation questions that directly inform Medi-Cal policy



# PANEL SESSION

Moderated by Diana Camacho Senior Program Officer,  
Improving Access, *California Health Care Foundation*

# PANELISTS

**Daniel Grossman, MD**, Professor & Director, Advancing New Standards in Reproductive Health (ANSIRH), *University of California, San Francisco*

**Haleigh Mager-Mardeusz**, Senior Policy Analyst, *California Association of Public Hospitals and Health Systems (CAPH)*

**Kelly Pfeifer, MD**, Abortion Provider (AZ, CA, KS) & Independent Policy Consultant, *Care Access Strategies*

**Quinn Shean**, State Advisor, *Tusk Venture Partners*

**Stacey Wittorff**, Associate General Counsel, *Planned Parenthood Affiliates of California (PPAC)*

# PANELIST OPENING REMARKS

**Daniel Grossman, MD**

Professor & Director

Advancing New Standards in Reproductive  
Health (ANSIRH)

*University of California, San Francisco*

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**Quinn Shean**

State Advisor

*Tusk Venture Partners*

# PANELIST OPENING REMARKS

**Stacey Wittorff**

Associate General Counsel

*Planned Parenthood Affiliates of  
California (PPAC)*

# PANEL DISCUSSION

## **Moderator:**

- Diana Camacho, Senior Program Officer, Improving Access, *California Health Care Foundation*

## **Panelists:**

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# Facilitated question and answer



**Please submit your questions in the Q&A box.**

# Upcoming California Telehealth Policy Coalition Event

## Save the Date: *Annual Meeting*

### **2022 Annual Meeting**

On November 10<sup>th</sup>, the Coalition will host its annual meeting, with the theme “Connection to Care in Changing Times.” This hybrid event will take place at The California Endowment from 9am to 2pm, featuring panels with Coalition participants and keynotes from state health leaders.



- Thursday, November 10, 2022
- 9am-2pm
- The California Endowment (Hybrid event, virtual participation also available)
- Registration link: [https://whova.com/portal/registration/wam\\_202211/](https://whova.com/portal/registration/wam_202211/)

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# California Telehealth Policy Coalition

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for more information:**

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