

# Summary of Virtual Care Legislative Policy Areas Directly Impacting People’s Ability to Access Care

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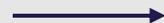
## EXECUTIVE SUMMARY

The current COVID-19 pandemic has exacerbated access to health care challenges for everyone due to the quarantine and stay-at-home measures. Decisions had to be made to quickly identify alternative ways for people to access health care. **Virtual care**--including telehealth, remote monitoring, and other remote forms of communication--is one approach that was moderately used prior to the pandemic, but has been widely implemented as part of the COVID-19 response. For example, the U.S. Department of Health and Human Services found that in April [43.5%](#) of Medicare primary care visits were provided through telehealth compared with [0.1%](#) in February prior to the public health emergency. Other forms of virtual care are also becoming more widespread; a patient companion app (apps that are often used to help patients connect to providers virtually and track their behaviors and habits related to health) which had about 2,300 downloads in 2019, found that [more than 22,300 downloads](#) occurred in the second quarter of 2020 alone. Additionally, [one survey](#) found that 76% of a cross-sector of 2,000 American respondents reported that they’ve used telehealth during the pandemic, a growth of 154%. While virtual care visits are now [decreasing](#) from their initial height, telemedicine continues to be used at rates far higher than before the pandemic.

This pandemic-induced transition to virtual care will leave a lasting impact on our health care system. However, it is important to recognize that virtual care has been advocated for, for years prior to the pandemic. It has been seen as a potential long-term fix to many problems in the health care system, such as rural health care access, provider shortages, and patient transportation barriers. The increased need for virtual care across all populations due to COVID-19 has shown just a baseline of its potential capabilities to help achieve better care and to address long-standing inequities in access to care. While emergency virtual care legislation and administrative action was enacted during the first stages of the pandemic to close immediate gaps in accessing care, state and federal policymakers now face decisions on whether to turn short-term fixes into long-term policy solutions.

We have summarized existing legislative action into nine virtual care policy areas (not listed in any ranked order) that are designed to make people’s ability to access virtual care services as easy as possible. We highlight these policy areas because, if enacted when and where clinically appropriate, they have the potential to close readily apparent gaps in virtual care access. As part of USofCare’s work moving forward, we will be evaluating the extent to which the policies listed below and future policy areas and legislation are meeting the needs of people, and recommending changes where necessary. The nine virtual care policy areas are as follows:

- ★ Ensure that people have the best virtual care opportunities by requiring studies, research, and analysis on virtual health care to inform updates to policies. This could include studies on equity, and people’s quality, cost, and access of virtual care.



- ★ Expand people's access to virtual care by removing geographic barriers on distant sites (where providers give care) and originating sites (where patients receive care) for giving and receiving of care.
- ★ Expand people's opportunities to use virtual care by allowing telemedicine visits across state lines.
- ★ Allow people to establish a physician-patient relationship initially via telehealth.
- ★ Increase people's access to virtual care by requiring a uniform (statewide or federally) virtual care payment policy.
- ★ Ensure people can safely get the medications and devices they need by allowing prescriptions to be written via virtual care.
- ★ Allow people to have access to audio-only/telephone virtual care, text message services, and remote monitoring devices by ensuring coverage reimbursement, especially for those using Medicaid, Medicare, and the Civilian Health and Medical Program operated by the Department of Veterans Affairs.
- ★ Ensure that people can utilize telehealth services from Rural Health Clinics (RHC), Indian Health Services, and Community Health Centers including Federally Qualified Health Centers (FQHC) beyond geographic barriers and with simplified coverage reimbursement structures.
- ★ Expand people's access to telemental health and telebehavioral health services including coverage for school-linked behavioral health services, people living in rural areas, and people on Medicaid and/or Medicare

Several examples, both state and federal, of legislative changes enacted and introduced during the 2019 and 2020 legislative sessions are included for each policy area below. Most of the examples are permanent changes or their expiration date is indicated below. Keep in mind that the federal and state governments have varying jurisdictions on what they can regulate. For example, the federal government has power over Medicare, where as States can determine how some Medicare plans operate and also generally have power over their Medicaid programs and regulate the practice of medicine. It is also important to note that many critical changes in virtual care policy have also been done by rule change or executive orders, which are not reflected in this memo (see the "Sources" section at the end of the memo for resources that catalogue these changes).

### **USofCare's Approach**

USofCare has [launched an initiative](#) to look at the extent to which virtual care is closing gaps in access to care for people. We are holding a national listening tour with people, providers, and other key stakeholders to learn about their diverse experience with virtual care. We will pair what we learn with what the research evidence and the experts say so we can see: *what we're missing* and *what more we can do* to ensure an equitable approach with virtual care. As we move forward in our work, we will continue to evaluate the extent to which the policies listed below and future policy areas and legislation are meeting the needs of people, and we will make recommendations on necessary changes that reflect people's priorities and close gaps in access. You can join USofCare in our initiative to create a virtual care system that works for all of us by following the latest from us on Twitter @USofCare and our website [unitedstatesofcare.org](https://unitedstatesofcare.org) or reach out at [help@usofcare.org](mailto:help@usofcare.org).



## **SUMMARY OF VIRTUAL CARE LEGISLATIVE POLICY AREAS DIRECTLY IMPACTING PEOPLE'S ABILITY TO ACCESS CARE**

**Ensure that people have the best virtual care opportunities by requiring studies, research, and analysis on virtual health care to inform updates to policies. This could include studies on equity, and people's quality, cost, and access of virtual care.** Virtual care is not a new concept, however it is rapidly increasing and has the capacity to constantly innovate to meet the changing needs of patients and the health care infrastructure. Accepting that the best practices will take time and trials to determine, it is critical to set forth studies and evaluations in these early stages.

### State Example

- ★ Colorado, Nevada, Oregon, and Washington [announced](#) they will work together to identify best practices around access, confidentiality, equity, standard of care, stewardship, patient choice, and payment/reimbursement.

### Federal Examples

- ★ [S. 3988](#) (referred to committee): Evaluates infrastructure and resource needs to ensure providers have the necessary tools, training, and technical assistance to provide telehealth services.
- ★ [S. 4318](#) (introduced): Requires the Medicare Payment Advisory Commission (MedPAC) to provide a report on the impact of telehealth flexibilities on access, quality, and cost by July 1, 2021.
- ★ [H.R. 7233](#) (referred to committee): Directs the HHS Secretary and the Comptroller General of the United States to conduct studies and report to Congress on actions taken to expand access to telehealth services under Medicare, Medicaid, and the Children's Health Insurance Program during the COVID-19 emergency.
- ★ [H.R. 7663](#) (referred to committee): CMS must report on the utilization of telehealth services specifically during the public health emergency relating to COVID-19.

**Expand people's access to virtual care by removing geographic barriers on distant sites and originating sites for giving and receiving care.** The originating site refers to the location of the patient and the distant site refers to the location of the health care provider. There have historically been reimbursement restrictions on where patients and providers are physically located to receive and give necessary care. These restrictions have created a barrier for people to use virtual care, such as in their own home, during the pandemic. For example, if a patient wants to receive virtual care from their home, a patient's home has to be considered a reimbursable originating site.

### State Examples

- ★ [Michigan H.B. 5416](#) (enacted): Covers telemedicine services for Michigan's Medicaid programs if the patient is at their home, a school, or another site considered appropriate by the provider.
- ★ [Tennessee H.B. 8002](#) (enacted): Removes geographic restrictions on originating sites.
- ★ [Delaware H.B. 348](#) (enacted): Updates definitions for distant site, originating site, telehealth, and telemedicine. For example, 'Originating Site' now includes language to allow a patient to receive care if they are outside of Delaware if the patient is a Delaware resident.



### Federal Examples

- ★ [Provisions in the CARES Act](#) allows for Medicare to pay for office and hospital visits that were delivered by telehealth regardless of geography.
- ★ [S.4375](#) (referred to committee): Modifies Medicare requirements for telehealth including allowing a patient's home to serve as the originating site, and allowing rural health clinics and federally qualified health centers to serve as the distant site.
- ★ [H.R. 7663](#) (referred to committee): Eliminates most geographic and originating site restrictions in Medicare and establishes the patient's home as an eligible distant site.

**Expand people's opportunities to use virtual care by allowing telemedicine visits across state lines.** Today, doctors, nurses and other providers must obtain a license to practice in the state their patient resides-not where the clinician resides. This requires providers to obtain multi-state licenses for any patient that travels across state lines. Virtual care allows people to see providers from a farther geographic distance, so they may run into this barrier when seeking care. The Federal Government [previously waived requirements](#) for physicians or providers to hold licenses in the state in which they provide services for Medicare and Medicaid; these have since expired.

### State Examples

- ★ [29 states](#), the District of Columbia, and the Territory of Guam are part of the [Interstate Medical Licensure Compact](#) which gives physicians from those states an expedited pathway to apply for a license to practice in a member state. Joining the compact requires the state to enact legislation.
- ★ [Delaware H.B. 348](#) (enacted): Updates definitions for distant site, originating site, telehealth, and telemedicine. For example, "Distant Site" is now defined as: a site at which a health care provider legally allowed to practice in the state or at which a health care provider licensed in another jurisdiction who would be permitted to provide services in Delaware if licensed under this title is located while providing health care services by means of telemedicine.
- ★ [North Carolina S.B. 361](#) (enacted): Enacts the Psychology Interjurisdictional Licensure Compact and increases public access to professional psychological services by allowing for telepsychological practice across state lines subject to Compact requirements.

### Federal Examples

- ★ [H.R. 7723](#) (referred to committee): Requires an interagency coordinator for behavioral health to issue guidance on collaboration among states to enable mental health and substance use disorder care professionals to treat patients across state lines through telehealth technologies
- ★ [H.R. 4900](#) (referred to committee): Establishes a uniform standard of nationwide best practices for the provision of telehealth across state lines.

**Allow people to establish a physician-patient relationship initially via telehealth.** There have historically been requirements that a first-time visit needs to be through in-person care. This became an apparent barrier for people to get their health care when the pandemic restricts the use of in-person care. For example, someone who did not have a previously established primary care doctor prior to the pandemic may not be able to receive a check-up through virtual care.

### State Examples

- ★ [Colorado S.B. 20-212](#) (enacted): Bars insurance carriers from requiring pre-established patient-provider relationships prior to a telehealth encounter, and prohibits imposing additional certification, location, or training requirements as a condition of reimbursement for telehealth services.
- ★ Maryland [S.B. 402](#) and [H.B. 448](#) (enacted): Authorizes certain health care practitioners to establish a practitioner-patient relationship through telehealth interactions. Requires a health care practitioner provide telehealth services to be held to the same standards of practice that are applicable to in-person settings and, if clinically appropriate, provide or refer a patient for in-patient services or another type of telehealth service.
- ★ [Missouri H.B. 1682](#) (enacted): Physicians may establish a physician-patient relationship via a telemedicine encounter, if the standard of care does not require an in-person encounter, and in accordance with evidence-based standards of practice and telemedicine practice guidelines that address the clinical and technological aspects of telemedicine.

### Federal Example

- ★ [Provisions in the CARES Act](#) allow telehealth to be used for “first visits” for Medicare beneficiaries, meaning that telehealth is not limited to pre-established Medicare patients during the duration of the public health emergency.

### **Increase people's access to virtual care by requiring a uniform (statewide or federal) virtual care payment policy.**

This would ensure that providers know how much they will be reimbursed and payers know how much to reimburse, incentivizing providers to offer virtual care as an option in the best way they see fit. It is important to recognize that innovations in payor-provider negotiated reimbursements in various care models will take time to develop, however some action can be taken in the meantime to ensure that patients get the outlined services.

### State Examples

- ★ Prior to COVID-19 [12 states](#) either already had payment parity laws in place for commercial payers or had recently passed telehealth payment parity legislation. Additional action states have taken are listed in the bullets below.
- ★ [Connecticut H.B. No 6001](#) (enacted): Requires payment parity for telehealth services until March 15, 2021.
- ★ [Tennessee H.B. 8002](#) (enacted): Establishes telehealth reimbursement parity for compliant real-time, interactive audio, video telecommunications, electronic technology, or store-and-forward telemedicine services.
- ★ [Utah H.B. 313](#) (enacted): Requires certain health benefits plans to provide coverage parity and “commercially reasonable” reimbursement for telehealth services.
- ★ [Washington S.B. 5385](#) (enacted): Reimburses providers for telemedicine services at the same rate as health care service provided in-person beginning January 1, 2021. Reimbursement for a facility fee must be subject to a negotiated agreement between the originating site and the health carrier.
- ★ [West Virginia HB 4003](#) (enrolled): Requires telehealth insurance coverage of certain telehealth services after July 1, 2020. The plan shall provide reimbursement for a telehealth service at a rate negotiated between the provider and the insurance company.

### Federal Examples

- ★ [Provisions in the CARES Act](#) allow Medicare to pay physicians for telehealth services at the same rate as in-office visits for all diagnoses, not just services related to COVID-19, throughout the national Public Health

Emergency. They also allow State Medicaid programs to reimburse telehealth services at parity to in-person services without federal approval.

- ★ [H.R. 8308](#) (referred to committee): Amends the Public Health Service Act to require group health plans and health insurance issuers offering group or individual health insurance coverage to provide coverage for services furnished via telehealth if such services would be covered if furnished in-person.
- ★ [S. 3998](#) (introduced): Establishes payment parity for telehealth services provided to Medicare beneficiaries at RHCs and FQHCs during the COVID-19 pandemic.

**Ensure people can safely get the medications and devices they need by allowing prescriptions to be written via virtual care.** Historically, specific medication and medical device prescriptions required an in-person visit. However, since the COVID-19 pandemic makes it potentially unsafe to go to a clinic, particularly for high-risk populations, these requirements have caused barriers for people to get the prescriptions they need.

#### State Examples

- ★ [Minnesota S.F. 13](#) (enacted): Clarifies that for purposes of prescribing certain drugs, the patient evaluation requirement can be met through the use of telemedicine during COVID-19.
- ★ [Indiana S.B. 19](#) (enacted): Removes restrictions on the prescribing of ophthalmic devices through telemedicine and sets conditions on when a provider may, through telemedicine, prescribe medical devices.
- ★ [New York A 4888](#) (introduced): Establishes and authorizes telepharmacy in this state; defines terms; creates telepharmacy satellite consultation sites and telepharmacy in hospitals; authorizes the filling of prescriptions at remote sites connected to central pharmacies via computer link, videolink and audiolink; makes exceptions.

#### Federal Examples

- ★ The Drug Enforcement Administration (DEA) loosened requirements on prescribing [controlled substances](#) without requiring an in-person visit during the Public Health Emergency. The DEA also allows practitioners to [dispense controlled substances](#) in states which their home states have reciprocity during the Public Health Emergency.
- ★ [S. 4103](#) (referred to committee): Extend ability to prescribe Medication Assisted Therapies and other necessary drugs without needing a prior in-person visit.

**Allow people to have access to audio-only/telephone virtual care, text message services (asynchronous text and app-based virtual services), and remote monitoring devices by ensuring coverage reimbursement, especially for those using Medicaid, Medicare, and the Civilian Health and Medical Program operated by the Department of Veterans Affairs.** The [majority](#) of people in America have access to a phone, however the FCC estimates that [21 million people](#) do not have access to reliable internet. People who may not have reliable internet coverage can still utilize virtual care with audio-only and text message services if their provider offers them, which in part is reliant on whether their insurer will reimburse for those services. As stated earlier, it is important to recognize that innovations in payor-provider negotiated reimbursements in various care models will take time to develop, however some action can be taken in the meantime to ensure that patients get the outlined services.

#### State Examples

- ★ [All 50 state](#) Medicaid agencies. Washington D.C., and the Centers for Medicare and Medicaid Services have issued guidance to allow for a form of audio-only telehealth services.
- ★ [23 states](#) have permanent Medicaid policies for reimbursing remote patient monitoring in some capacity.

- ★ [New York S.B. 8416](#) (enacted): Adds audio-only forms of telehealth (e.g. telephone) to the state’s definition of telehealth and telemedicine. In part, this will add audio-only telephone communication to the list of services covered by Medicaid and the State Children’s Health Insurance Program (CHIP), as determined by the state’s health commissioner.
- ★ [DC B. 23-0867](#) (enacted): Amends the definition of telehealth in the private payer law to take out the exclusion of audio only telephone from the description.

#### Federal Examples

- ★ [S. 3999](#) (referred to committee): Allows Medicare to cover audio-only telehealth services.
- ★ [S. 4515](#) (introduced): Allocates \$100 million for the Department of Veterans Affairs Telehealth and Connected Care Services for the provision of Internet-connected devices and services for veterans in rural, unserved areas.
- ★ [H.R. 7659](#) (referred to committee): Requires the inclusion of certain audio-only diagnoses in the determination of risk adjustment for Medicare Advantage plans.
- ★ Fourteen U.S. Senators [sent a letter](#) to the Secretary of the Department of Veteran Affairs encouraging the VA to provide coverage of comprehensive telehealth services, including audio-only and text messaging services, to CHAMPVA beneficiaries.

**Ensure that people can utilize telehealth services from Rural Health Clinics (RHC), Indian Health Services, and Community Health Centers including Federally Qualified Health Centers (FQHC) beyond geographic barriers and with simplified coverage reimbursement structures.** People utilizing health services from the [4,500](#) RHCs, the [1,400+](#) community health centers including [1,368](#) FQHCs, and the [117+](#) Indian Health Services’ care sites should be allowed virtual care services like their peers receiving care from another type of clinic. However, due to complicated reimbursement structures and geographically restricted reimbursement policies, people do not always have this option.

#### State Example

- ★ [Colorado S.B. 20-212](#) (enacted): Requires state Medicaid program to reimburse FQHCs, RHCs, and the federal Indian Health Services for telemedicine services provided to Medicaid recipients at the same rate as in-person services.

#### Federal Examples

- ★ [Provisions in the CARES Act](#) allow FQHCs and Rural Health Centers to provide telehealth services to beneficiaries in their own homes on an interim basis.
- ★ [H.R. 7187](#) (referred to committee): Codifies Medicare telehealth reimbursement for Community Health Centers and RHCs.
- ★ [S. 2741](#) (referred to committee): Removes the geographic restrictions for FQHCs and RHCs and allows FQHCs and RHCs to furnish telehealth services as distant sites.
- ★ [S. 4375](#) (referred to committee): Requires telehealth services to be covered by Medicare at FQHCs and RHCs.
- ★ [H.R. 6792](#) (referred to committee): Standardizes telehealth reimbursement formula for RHCs and FQHCs.

**Expand people's access to telemental health and telebehavioral health services, including coverage for school-linked behavioral health services, people living in rural areas, and people on Medicaid and/or Medicare.** The COVID-19 pandemic and economic downturn have precipitated fears of illness, job loss, and health insurance loss-all while keeping people physically apart. In the face of these compounding forces, most [kids, young adults](#), and [adults](#)



are experiencing worsening mental health. Virtual care can be a critical [tool to address](#) the mental health needs of Americans.

#### State Examples

- ★ [Louisiana H.B. 449](#) (enacted): Expands the definition of telehealth to include the delivery of behavioral health services.
- ★ [Alaska HB 29](#) (enacted): Requires insurance carriers that provide coverage for in-person mental health benefits to cover the same benefits via telehealth.
- ★ [Iowa S.F. 2261](#) (enacted): Allows an established patient-provider relationship with a student who receives behavioral health services via telehealth in a school setting and set forth requirements for schools in order to provide behavioral health services via telehealth in the school setting.
- ★ Maryland [H.B. 1208](#) and [S.B. 502](#) (enacted): Requires the Maryland Medical Assistance Program, subject to a certain limitation, to provide mental health services appropriately delivered through telehealth to a patient in the patient's home setting.

#### Federal Examples

- ★ [S. 3917](#) (referred to committee): Establishes a grant program for health providers in rural areas to expand telemental health services. Directs HHS secretary to award grants for provision of telemental services in rural areas.
- ★ [S. 3999](#) (referred to committee): Permanently removes Medicare's geographic restrictions for certain originating sites for emergency medical care services for mental and behavioral health services.

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**SOURCES:** For a comprehensive list of virtual care related policies, please see:

- Manatt, [Tracking Telehealth Changes State-by-State in Response to COVID-19](#)
- National Telehealth Policy Research Center's Center for Connected Health Policy: [Current State Laws & Reimbursement Policies](#)
- National Telehealth Policy Research Center's Center for Connected Health Policy: [Telehealth Legislation & Regulation](#)
- Alliance for Connected Care, [Introduced Legislation - COVID-19 Telehealth Bills](#)