

**COVID-19 Telemedicine Updates – State vs. Federal
As of August 12, 2021**

	New York State	Federal
Emergency Declaration	Ended on June 24, 2021	HHS has now extended the federal public health emergency (PHE) for an additional 90 days through October 20, 2021 . At this time, it appears likely that the federal PHE will remain in effect at least for the duration of 2021, if not longer. HHS has indicated that it will provide at least 60 days' notice of any change.
Coverage of Telehealth, Generally	<p>The NY telehealth statute, enacted in 2016, prohibits a health insurer from refusing to cover an <u>otherwise covered service</u> because the service is provided via telehealth. In other words, health plans are prohibited from discriminating against a health care service merely because it is rendered via telehealth. However, please keep in mind that if a service is not covered by a particular plan, for whatever reason, it will not be covered in any format, including in-person and telehealth.</p> <p>Finally, please note that there are some health plans that are not subject to state law and are not required to comply with this mandate (i.e., those plans offered by large multi-state employers and self-insured businesses and union health plans).</p>	<p>Prior to the pandemic, the Medicare program covered telehealth services only when the patient was in a designated rural area and when they left their home to go to a clinic, hospital, or other medical facility to receive the telehealth service (originating site). The practitioner rendered the health care service remotely, from a distant site.</p>
Originating/Distant Site Requirement	<u>Commercial Insurers</u> : Commercial insurance carriers never imposed an originating site/distant site requirement.	CMS is <u>proposing</u> to continue to permit the provision of telehealth services to Medicare beneficiaries in their homes, but would require one in-person, non-telehealth service to be

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	<p><u>NYS Medicaid</u>: Medicaid has now permanently removed its previous originating site requirement and will permit Medicaid beneficiaries to remain in their homes during telehealth sessions.</p>	<p>provided within the six (6) months prior to the telehealth visit and at least once every six (6) months thereafter.</p>
<p>Audio-Only Telehealth</p>	<p><u>Commercial Insurers</u>: The NYS Department of Financial Services issued emergency regulations mandating coverage for otherwise covered services via telehealth, including audio-only services, through October 1, 2021. This applies to commercial insurers.</p> <p><u>NYS Medicaid</u>: The Department of Health issued emergency regulations, effective June 25, 2021, confirming that all Medicaid providers authorized to provide in-person services are also authorized to provide such services via telehealth. Reimbursement is mandated for use of telephone and other audio-only technologies. These emergency regulations appear to duplicate state legislation enacted during 2020 that mandates coverage for both audio-only and video-only telehealth for services covered by the Medicaid program.</p>	<p>CMS is <u>proposing</u> to permanently permit audio-only communication for the diagnosis, evaluation, or treatment of mental health disorders provided to established patients at home, if the patient is unable to use, does not wish to use, or does not have access to two-way, audio/video technology. CMS intends to establish a new modifier for audio-only services to indicate that the provider had the capacity to furnish a two-way audio/video telehealth service, but utilized audio-only technology instead as a result of patient choice or other technological limitations.</p>
<p>DEA rule requiring at least one in-person visit prior to Rx of controlled substances via telehealth (Ryan Haight Act)</p>	<p>N/A</p>	<p>COVID-19 related waiver still in place through end of federal PHE</p>
<p>DEA rule to maintain a registration in each state where controlled substances are prescribed</p>	<p>N/A</p>	<p>COVID-19 related waiver still in place through end of federal PHE</p>

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<p>HIPAA Security Requirements</p>	<p>N/A</p>	<p>During the federal PHE, the HHS Office for Civil Rights has agreed not to penalize practitioners for the good faith use of telehealth communication services that are <i>not</i> HIPAA compliant. This enforcement discretion permits providers to use certain non-public facing remote communications platforms, such as Facetime and Zoom. This waiver of HIPAA security requirements will likely end once the federal PHE has ended.</p>
<p>State Licensing Issues</p> <p>During the pandemic, many states established COVID-19 waivers to permit out-of-state practitioners licensed in a different state to provide health care services to individuals within the state. Some of these waivers have now expired or been discontinued. In order to determine whether a particular state still has a waiver in place, you must review that state’s particular rules regarding the provision of telemedicine by out-of-state practitioners. A very helpful free resource is a state-by-state list maintained by PRMS: https://www.prms.com/media/2659/licensing-chart-7-21-2021.pdf</p>	<p>N/A</p>	<p>N/A</p>