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AN ANALYSIS OF STATE AND FEDERAL TELEHEALTH REFORMS DURING AND BEYOND COVID-19

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INTRODUCTION

By March 17, 2020, most states had declared a state of emergency due to the spread of COVID-19, and governors began to issue executive orders aimed at controlling the spread of the virus. Stay-at-home orders, as well as concerns over surging COVID-19 cases and hospital capacity, made in-person visits for many health-related services, including preventative care, low-priority or entirely inaccessible. Due to this shift, state and federal leaders temporarily suspended many regulations that limited the use of telehealth in order to increase virtual access to health care. All 50 states and Washington, D.C. temporarily rolled back restrictions on telehealth to varying degrees. Many rollbacks will eventually or have already expired as states end their declared state of emergency, but some states are making permanent changes to telehealth policies.¹

*Note: This is a corrected version of the paper originally published. Edits have been made to maps 1-13 to incorporate data missing at the time of original publication.

1. "States' COVID-19 Public Health Emergency Declarations, Mask Requirements and Travel Advisories," National Academy for State Health Policy, last accessed Oct. 26, 2021. <https://www.nashp.org/governors-prioritize-health-for-all>.

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A somewhat murky but continuously evolving picture of telehealth regulation in the United States emerges amongst temporary executive orders, state of emergency extensions and expirations, state and federal government agency directives and numerous proposals to make permanent changes to various telehealth policies. This paper provides a brief overview of the changing trends in telehealth policies during the pandemic for four main categories of telehealth delivery mechanisms: audio-only, live video, store-and-forward and cross-state license policies. It also provides a snapshot of permanent telehealth changes made to expand the use of these delivery mechanisms beyond the pandemic. Finally, it will offer a few key policy recommendations for policymakers seeking to expand telehealth in their state.

TELEHEALTH'S ROLE IN THE PANDEMIC

COVID-19 necessitated the widespread use of telehealth, but even before the pandemic telehealth was used to deliver care

in limited conditions.² Nevertheless, the pandemic caused the use of telehealth to skyrocket. One study found a 3,806 percent increase in the volume of telehealth claims from private payers from July 2019 to July 2020, largely due to the increased flexibility that the temporary regulatory suspensions allowed.³ Further, the Centers for Disease Control and Prevention (CDC) found that 95 percent of health centers funded by Health Resources and Services Administration (HRSA) used telehealth for services, whereas previously 43 percent of HRSA-supported health centers were capable of using telehealth in 2019.⁴ In addition to an increase in use, satisfaction with telehealth services increased. One survey found that the percentage of consumers who said they would continue to use telehealth services going forward increased from 11 percent pre-pandemic to 40 percent.⁵

However, these surges in telehealth use were a result of temporary guidelines. As these allowances expire, the telehealth market is forced to comply with pre-pandemic restrictions on its use, and patient satisfaction and convenience will suffer.⁶ For telehealth to remain a healthcare mainstay post-pandemic, the changes made to temporarily increase telehealth access must be seriously considered as permanent reforms to continue giving patients better autonomy and flexibility with their healthcare decisions.

TEMPORARY TELEHEALTH CHANGES DURING THE PANDEMIC: AN OVERVIEW

Audio-only Telehealth

Prior to COVID-19, most states did not allow audio-only telehealth, which does not employ video. In fact, only two states allowed audio-only telehealth, and only in specific cases. In

2019, Maine declared that insurance carriers must cover telephone-only services if video technology was unavailable to an existing patient, and if the medical service requested was appropriate for audio-only telehealth.⁷ Additionally, Alaska regulations effective in 2020 allowed for some audio-only psychiatric and psychological services if video communication was unavailable.⁸

During the pandemic, audio-only telehealth became crucial to health care access. In March 2020, the Centers for Medicare and Medicaid Services (CMS) announced that Medicare would temporarily allow “virtual check-ins” via telephone.⁹ States quickly followed suit, with some pointing to CMS guidance and some issuing more specific guidelines.¹⁰ In 2021, with executive orders related to telehealth expiring, 18 states have made permanent changes that allow for some forms of audio-only telehealth.¹¹

For this analysis of audio-only telehealth, we focus on five categories of medical services: evaluation and management (E/M) services; telepsychiatry and behavioral health services; substance use disorder services; teledentistry; and physical, occupational and speech therapies.

Evaluation and Management (E/M) Services

E/M services cover many types of health care appointments, but are most generally thought of as office visits and preventive services.¹² Prior to the pandemic, only Maine allowed for audio-only telehealth visits for E/M services.¹³ However, in 2020, all 50 states and Washington, D.C. temporarily expanded telehealth coverage to include audio-only communications for general E/M services. States issued short-term billing codes that physicians and other qualified health professionals could use to conduct audio-only check-ins with

2. See, e.g., “A Multilayered Analysis of Telehealth: How This Emerging Venue of Care Is Affecting the Healthcare Landscape,” FAIR Health, July 2019. <https://s3.amazonaws.com/media2.fairhealth.org/whitepaper/asset/A%20Multilayered%20Analysis%20of%20Telehealth%20-%20A%20FAIR%20Health%20White%20Paper.pdf>; Thiru M. Annaswamy et al., “Telemedicine barriers and challenges for persons with disabilities: COVID-19 and beyond,” *Disability and Health Journal* 13:4 (October 2020). <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7346769>.

3. “Monthly Telehealth Regional Tracker, July 2020,” FAIR Health, July 2020. <https://s3.amazonaws.com/media2.fairhealth.org/infographic/telehealth/july-2020-national-telehealth.pdf>.

4. Hanna B. Demeke et al., “Trends in Use of Telehealth Among Health Centers During the COVID-19 Pandemic—United States, June 26 - November 6, 2020,” *Morbidity and Mortality Weekly Report*, Centers for Disease Control and Prevention, Feb. 19, 2021. <https://www.cdc.gov/mmwr/volumes/70/wr/mm7007a3.htm>.

5. Oleg Bestsennyy et al., “Telehealth: A quarter-trillion-dollar post-COVID-19 reality?” McKinsey & Company, July 9, 2021. <https://www.mckinsey.com/industries/healthcare-systems-and-services/our-insights/telehealth-a-quarter-trillion-dollar-post-covid-19-reality>.

6. See, e.g., Frances Stead Sellers, “Patients and doctors who embraced telehealth during the pandemic fear it will become harder to access,” *The Washington Post*, Sept. 15, 2021. https://www.washingtonpost.com/national/telehealth-doctors-waivers/2021/09/10/fb6619a0-f6e1-11eb-9738-8395ec2a44e7_story.html; Larissa Scott, “Patients frustrated over changes to telehealth services after state executive order expires,” ABC Action News, July 9, 2021. <https://www.abcactionnews.com/news/state/patient-frustrated-over-changes-to-telehealth-services-after-state-executive-order-expires>.

7. “S.P. 383- L.D. 1263, An Act Regarding Telehealth,” State of Maine Legislature, June 13, 2019. http://www.mainelegislature.org/legis/bills/getPDF.asp?paper=SP0383&item=3&snum=129:%20https://www.maine.gov/dhhs/sites/maine.gov/dhhs/files/documents/pdfs_doc/COVID-19/MaineCare-Telehealth-Summary-New-Codes-and-Info-041620.pdf.

8. “Behavioral Health Services,” Alaska Medicaid, Aug. 13, 2020. http://manuals.medicaidalaska.com/FQHC_RHC/fqhc_rhc/behavioral_health_services.htm.

9. “Medicare Telemedicine Health Care Provider Fact Sheet,” Centers for Medicare & Medicaid Services, March 17, 2020. <https://www.cms.gov/newsroom/fact-sheets/medicare-telemedicine-health-care-provider-fact-sheet>.

10. “COVID-19 Audio-Only Delivery,” Center for Connected Health Policy, last accessed Sept. 25, 2021. <https://www.cchpca.org/topic/audio-only-delivery-covid-19>.

11. “Telephone Medicaid Reimbursement,” Center for Connected Health Policy, last accessed Sept. 25, 2021. <https://www.cchpca.org/policy-trends>.

12. “What Are E/M Codes?” American Association of Professional Coders, last accessed Oct. 4, 2021. <https://www.aapc.com/evaluation-management/em-coding.aspx#EMCodeCategories>.

13. “S.P. 383- L.D. 1263, An Act Regarding Telehealth.” http://www.mainelegislature.org/legis/bills/getPDF.asp?paper=SP0383&item=3&snum=129:%20https://www.maine.gov/dhhs/sites/maine.gov/dhhs/files/documents/pdfs_doc/COVID-19/MaineCare-Telehealth-Summary-New-Codes-and-Info-041620.pdf.

patients.¹⁴ Guidance on audio-only E/M services typically allowed providers to hold visits with established patients via telephone. Indiana explicitly mentioned that providers could also consult new patients via telephone.¹⁵ Otherwise, state guidance on E/M services via telephone was uniform and allowed all qualified providers to use audio-only telehealth.¹⁶

Telepsychiatry and Behavioral Health Services

E/M services cover a lot of ground for health services, but many states made specific allowances for behavioral health professionals to consult patients via audio-only telehealth. Prior to the pandemic, only Alaska allowed audio-only delivery of some behavioral health services if video telehealth was unavailable to patients.¹⁷ However, all states made temporary audio-only allowances for behavioral health professionals and their patients once CMS issued guidance allowing audio-only behavioral telehealth.¹⁸ States provided their own guidance on a spectrum of detail; for example, Arizona advised that “all services that are clinically able to be furnished via telehealth modalities (including telephone) will be covered.”¹⁹

Other states gave more pointed guidance on which behavioral health professionals could temporarily use audio-only telehealth. For example, Mississippi enabled psychiatrists, psychologists, licensed professional counselors and licensed certified social workers to use audio-only telehealth.²⁰ Finally, New Hampshire explicitly named Clinical Psychologists and School Psychologists licensed by the Board of Psychologists, Clinical Social Workers, master’s level psychiatric nurses, Pastoral psychotherapists, marriage and family therapists and clinical mental health counselors as able to use audio-only.²¹ This represented a dramatic increase in the use of telehealth for behavioral health services.

14. See, e.g., “Oregon Health Plan coverage of telephone/telemedicine/telehealth services,” Oregon Health Authority, March 20, 2020. <https://www.oregon.gov/oha/HSD/OHP/Announcements/Oregon%20Health%20Plan%20coverage%20of%20telemedicine%20services.pdf>.

15. Courtney Joslin and Chung Yi See, “Audio-Only Subcategories,” R Street Institute, last accessed October 24, 2021. <https://www.rstreet.org/2021/10/24/telehealth-database>.

Note: This database is intended to be a living document. Information included in this paper is reflective of the data available as of Nov. 12, 2021.

16. Ibid.

17. “Behavioral Health Services.” http://manuals.medicaidalaska.com/FQHC_RHC/fqhc_rhc/behavioral_health_services.htm.

18. Joslin and See, “Audio-Only Subcategories.” <https://www.rstreet.org/2021/10/24/telehealth-database>.

19. “Frequently Asked Questions (FAQs) Regarding Coronavirus Disease 2019 (COVID-19),” Arizona Health Care Cost Containment System, last accessed Sept 24, 2021. <https://www.azahcccs.gov/AHCCCS/AboutUs/covid19FAQ.html#telehealth>.

20. “Telehealth Policy Updates Related to COVID-19,” Mississippi Telehealth Association, last accessed Sept. 15, 2021. <https://www.mstelehealth.org/telehealth-policy-updates-related-to-covid-19>.

21. Christopher Sununu, “Emergency Order #8 Pursuant to Executive Order 2020-04,” State of New Hampshire, March 18, 2020. <https://www.governor.nh.gov/sites/g/files/ehbemt336/files/documents/emergency-order-8.pdf>.

Substance Use Disorder Services

Substance use disorder (SUD) services faced particular setbacks with the pandemic. Programs for SUDs are usually based on group treatments, regular face-to-face visits, frequent monitoring and developing interpersonal relationships, which were all inaccessible due to stay-at-home orders.²² However, the Drug Enforcement Administration (DEA) and Substance Abuse and Mental Health Services Administration (SAMHSA) issued guidelines allowing flexibility for providers to prescribe and dispense controlled substances, as well as provide consultations via audio-only telehealth.²³

Services for SUDs did go audio-only, usually with explicit guidance from states for SUDs, but some under the umbrella of behavioral health guidelines that states issued. Since the two are often regulated under the same state agency, audio-only telehealth for behavioral health services extended to SUD treatment. One notable distinction was found in Kentucky, in which the state’s Medicaid program did not allow residential SUD treatment services or residential crisis services to use telehealth.²⁴ Otherwise, every state permitted audio-only telehealth for SUDs relatively openly.

Teledentistry

Teledentistry is an innovative component of traditional dental care. While teledentistry was part of the industry prior to the pandemic, many states did not explicitly include teledentistry in existing telehealth regulations, making its use challenging. However, due to the pandemic 28 states made specific mention of teledentistry allowances when it came to audio-only telehealth expansion in state-level executive orders.²⁵ Illustrated in Map 1, this change allowed dentists, and in some cases hygienists, to consult with patients over the phone regarding their oral health.

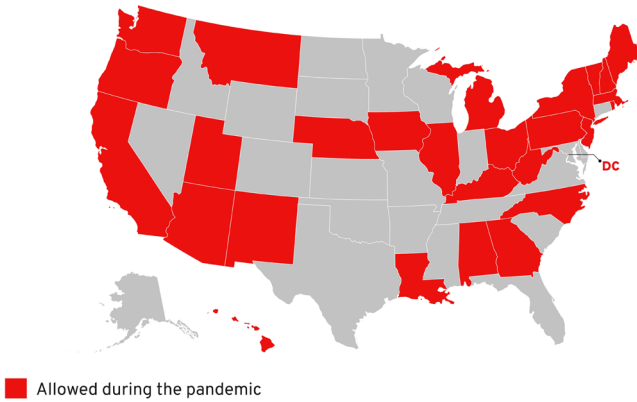
22. See, e.g., Tyler S. Oesterle et al., “Substance Use Disorders and Telehealth in the COVID-19 Pandemic Era,” *Mayo Clinic Proceedings* 95:12 (Dec 1, 2020), pp. 2709-2718. [https://www.mayoclinicproceedings.org/article/S0025-6196\(20\)31195-2/fulltext](https://www.mayoclinicproceedings.org/article/S0025-6196(20)31195-2/fulltext); Lewei (Allison) Lin et al., “Telehealth for Substance-Using Populations in the Age of Coronavirus Disease 2019: Recommendations to Enhance Adoption,” *JAMA Psychiatry* 77:12 (July 2020), pp. 1209-1210. <https://jamanetwork.com/journals/jamapsychiatry/fullarticle/2767300>.

23. Thomas W. Prevostnik, “Drug Enforcement Administration Letter to DEA Qualifying Practitioners,” U.S. Department of Justice, March 31, 2020. [https://www.deadiversion.usdoj.gov/GDP/\(DEA-DC-022\)\(DEA068\)%20DEA%20SAMHSA%20buprenorphine%20telemedicine%20\(Final\)%20+Esign.pdf](https://www.deadiversion.usdoj.gov/GDP/(DEA-DC-022)(DEA068)%20DEA%20SAMHSA%20buprenorphine%20telemedicine%20(Final)%20+Esign.pdf).

24. Andy Beshear, “Provider Letter # A-106,” Cabinet for Health and Family Services Department for Medicaid Services, March 17, 2020. <https://chfs.ky.gov/agencies/dms/ProviderLetters/behavioralhealthcovid19.pdf>.

25. Joslin and See, “Audio-Only Subcategories.” <https://www.rstreet.org/2021/10/24/telehealth-database>.

MAP 1: AUDIO-ONLY TELEDENTISTRY



Source: R Street analysis based on data compiled from the Center for Connected Health Policy. <https://www.cchpca.org/topic/audio-only-delivery-covid-19>.

Audio-only teledentistry guidance varied more than the other audio-only categories. The majority of states that allowed audio-only teledentistry during the pandemic let dentists use audio-only for dentistry E/M services, while a few made more specific exceptions regarding audio-only teledentistry. West Virginia specified that audio-only teledentistry was only “to determine if a member is experiencing an emergency requiring immediate treatment.”²⁶ Nebraska guidelines specified that staff members other than a dentist could not consult patients via teledentistry, while Washington guidelines noted that hygienists could consult patients while supervised.²⁷ Teledentistry via audio-only delivery was a notable change due to the pandemic, and its use will likely expand if allowed.

Physical, Occupational, and Speech Therapy

Therapy services typically suited for in-person visits such as physical, occupational and speech therapies also went audio-only during the pandemic for most states. In 28 states physical, occupational and speech therapists were allowed to consult with patients via audio-only telehealth (shown in Map 2).²⁸ Washington D.C. allowed audio-only for speech therapies only, and the remaining states did not issue guidance allowing these therapies to go audio-only. The Iowa Department of Human Services left guidance vague for telehealth around physical, occupational and speech therapy, but does not appear to have allowed audio-only telehealth for

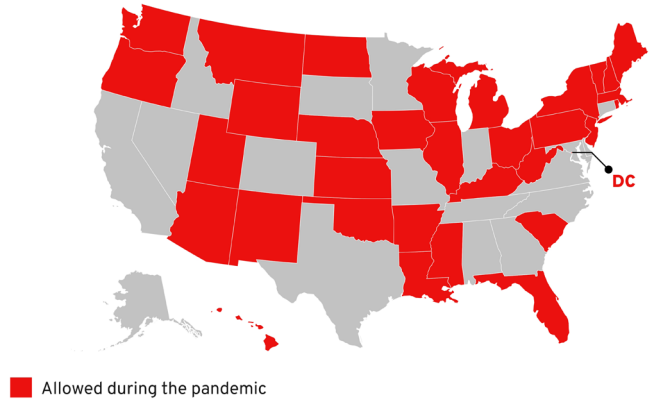
26. Bureau for Medical Services, “Memorandum,” State of West Virginia, April 1, 2020. <https://dhrwv.gov/bms/Documents/Teledentistry%20COVID%20Precautions.pdf>.

27. Joslin and See, “Audio-Only Subcategories.” <https://www.rstreet.org/2021/10/24/telehealth-database>.

28. Ibid.

these therapies.²⁹ Overall, physical, occupational and speech therapy services were given the fewest audio-only allowances during the pandemic.

MAP 2: AUDIO-ONLY PHYSICAL, OCCUPATIONAL, AND SPEECH THERAPY



Source: R Street analysis based on data compiled from the Center for Connected Health Policy. <https://www.cchpca.org/topic/audio-only-delivery-covid-19>.

LIVE VIDEO TELEHEALTH

Live video telehealth is also a form of synchronous telehealth, in which physicians interact with patients ‘face-to-face’ using real-time audio-visual technology. Compared to audio-only telehealth, live video telehealth was already used in a wide range of medical services, and is the most commonly reimbursed telehealth modality. Medicare and every state Medicaid program already offered some type of live video reimbursement prior to the pandemic.³⁰

However, the type of video telehealth service that health plans reimbursed prior to the pandemic varied greatly across states, with some state Medicaid programs restricting reimbursement to certain specialty types, service codes and types of providers. For instance, Arkansas Medicaid did not reimburse for live video telehealth provided by physicians licensed under the Arkansas Board of Examiners in Counseling, which ruled out reimbursement for distance counseling and marriage or family therapy.³¹ Other states offered specific

29. See, e.g., “COVID-19 Provider FAQs: Telehealth,” Iowa Department of Human Services, last accessed Sept. 25, 2021. <https://dhs.iowa.gov/ime/providers/faqs/covid19/telehealth>; “COVID-19 Virtual Visit & Reimbursement Guide - Iowa,” Great Plains Telehealth Resource & Assistance Center, Oct. 31, 2020. https://www.gptrac.org/file_download/01195992-22af-4489-8dc0-79353e04fa30.

30. See, e.g., “Medicaid & Medicare Live Video,” Center for Connected Health Policy, last accessed Sept. 25, 2021. <https://www.cchpca.org/topic/live-video>; Asim Kichloo et al., “Telemedicine, the current COVID-19 pandemic and the future: a narrative review and perspectives moving forward in the USA,” *Family Medicine and Community Health* 8:3 (August 2020). <https://pubmed.ncbi.nlm.nih.gov/32816942>.

31. Asa Hutchinson, “Executive Order to Amend Executive Order 20-03 Regarding the Public Health Emergency Concerning COVID-19,” State of Arkansas Executive Department, March 13, 2020. https://governor.arkansas.gov/images/uploads/executiveOrders/EO_20-05.pdf.

provisions for certain providers. For example, according to the Center for Connected Health Policy, Delaware, Georgia, North Dakota, Ohio, South Carolina and Utah all reimburse for live video teledentistry.³²

However, since the pandemic most states and the federal government have issued guidance to broaden the scope of live video telehealth, which has aligned many states with one another in three major ways. First, a number of states issued executive orders to specifically expand coverage to include live video telehealth counseling.³³ This resulted in all states allowing live video behavioral telehealth, which improved access to counseling services at an opportune time. Second, regulations under the Health Insurance Portability and Accountability Act (HIPAA) were temporarily suspended to allow patients and providers to use consumer-friendly platforms like Zoom and Google Hangouts for live video telehealth appointments.³⁴ And finally, CMS temporarily suspended one of the most restrictive requirements for live video telehealth that only allowed Medicare patients to use telehealth if they lived in a federally designated rural area and had established care with a designated clinic or hospital location.³⁵ Medicare patients could not use live video telehealth from their homes before the pandemic, so while live video was the most common form of telehealth, it still faced a number of restrictions. Live video telehealth was expanded to virtually every medical specialty during the pandemic and was made more accessible for patients by eliminating arbitrary geographic requirements.³⁶

STORE AND FORWARD TELEHEALTH

While audio-only telehealth and live video telehealth are synchronous forms of telehealth, store-and-forward telehealth is asynchronous. This method allows patients to upload medical data for a medical provider to review at a later time for diagnosis. Store-and-forward telehealth is a relatively mature form of healthcare provision in resource-limited settings, as it can be used to connect field staff in remote locations with physicians to obtain medical advice.³⁷

32. "Medicaid & Medicare Live Video," Center for Connected Health Policy, last accessed Sept. 25, 2021. <https://www.cchpca.org/topic/live-video>.

33. Joslin and See, "State Executive Orders." <https://www.rstreet.org/2021/10/24/telehealth-database>.

34. "Notification of Enforcement Discretion for Telehealth Remote Communications During the COVID-19 Nationwide Public Health Emergency," U.S. Department of Health and Human Services, last accessed Sept. 25, 2021. <https://www.hhs.gov/hipaa/for-professionals/special-topics/emergency-preparedness/notification-enforcement-discretion-telehealth/index.html>.

35. "Medicare Telemedicine Health Care Provider Fact Sheet." <https://www.cms.gov/newsroom/fact-sheets/medicare-telemedicine-health-care-provider-fact-sheet>.

36. Joslin and See, "State Executive Orders." <https://www.rstreet.org/2021/10/24/telehealth-database>.

37. John Kokesh et al., "The Alaska experience using store-and-forward telemedicine for ENT care in Alaska," *Otolaryngologic Clinics of North America* 44:6 (December 2011), pp. 1359-1374. <https://www.journals.elsevier.com/otolaryngologic-clinics-of-north-america>.

Similarly, fields such as radiology, ophthalmology and histopathology have conducted extensive research on the quality of store-and-forward telehealth in these healthcare applications.³⁸ Yet there is little availability outside of these practice areas.

As technology has advanced, store-and-forward telehealth has become increasingly popular in some primary healthcare settings like teledentistry, dermatology and ophthalmology.³⁹ Store-and-forward technology is now commonly used for services like eyeglasses and contact lens prescriptions and renewals, as well as hormonal birth control prescriptions.⁴⁰ The gain in popularity is due to store-and-forward's ability to gather comprehensive information on a patient, so that a medical provider can make a diagnosis.⁴¹ However, store-and-forward is historically unsuited for emergency applications due to the lack of immediate physician-patient interaction.⁴²

There is a lack of consensus on the role for store-and-forward telehealth in the future that hinders its widespread adoption. For instance, at the beginning of 2020, Connecticut no longer reimbursed for store-and-forward telehealth during the pandemic, due to reimbursement guidelines for electronic consultations no longer meeting the federal requirements.⁴³ Only Florida, Maine, Oregon and Washington newly expanded their telehealth definitions during the pandemic to include for store-and-forward telehealth.⁴⁴ Several states made temporary store-and-forward allowances during the pandemic for various health care services, but many states made no changes regarding store-and-forward telehealth during the state of emergency.⁴⁵ Oregon specifically allows

38. Richard Wootton et al., "Assessing the quality of teleconsultations in a store-and-forward telemedicine network," *Frontiers in Public Health* 2:82 (July 16, 2014). <https://www.frontiersin.org/articles/10.3389/fpubh.2014.00082/full>.

39. Eric Wicklund, "Store and Forward Telemedicine Services Expand Connected Health," *mHealth Intelligence*, last accessed Sept. 25, 2021. <https://mhealthintelligence.com/features/store-and-forward-telemedicine-services-expand-connected-health>.

40. See, e.g., Gwen Verchota, "Everything you need to know about getting birth control online," HealthPartners, last accessed Sept. 25, 2021. <https://www.healthpartners.com/blog/getting-birth-control-online>; "Optometrists and Contact Lens Manufacturers Want to Outlaw Online Vision Tests to Protect Their Own Profits," Americans for Vision Care Innovation, last accessed Oct 5, 2021. <https://americansforvisioncareinnovation.org/the-issue>.

41. Wicklund. <https://mhealthintelligence.com/features/store-and-forward-telemedicine-services-expand-connected-health>.

42. Kendall Ho et al., "Videoconferencing for Telehealth: Unexpected Challenges and Unprecedented Opportunities," *BC Medical Journal* 46:6 (July - August 2004), pp. 285-289. <https://bcmj.org/articles/videoconferencing-telehealth-unexpected-challenges-and-unprecedented-opportunities>.

43. "Discontinuation of the Coverage for Electronic Consultations," Connecticut Medical Assistance Program, December 2019. https://www.ctdssmap.com/CTPortal/Information/Get%20Download%20File/tabid/44/Default.aspx?Filename=PB19_75.pdf&URI=Bulletins/PB19_75.pdf.

44. Joslin and See, "State Executive Orders." <https://www.rstreet.org/2021/10/24/telehealth-database>.

45. Ibid.

for the reimbursement of store-and-forward teledentistry, while Washington allows for the reimbursement of store-and-forward behavioral health.⁴⁶ Other states that allowed store-and-forward telehealth prior to the pandemic also only allowed for the modality in certain healthcare applications. For instance, Vermont will not reimburse for teleophthalmology or teledermatology provided via store-and-forward, whereas New York specifically allows for store-and-forward technology to be used in these areas.⁴⁷

The lack of consistent legislation for what store-and-forward applications can and cannot be reimbursed, coupled with privacy concerns and different state definitions of what does and does not constitute a patient-physician relationship, all hinder store-and-forward's widespread adoption. Yet, in states with rural and remote communities, store-and-forward telehealth can greatly complement synchronous telehealth and traditional, in-person care. As for urban, metropolitan areas, store-and-forward telehealth provides greater convenience and flexibility to patients and physicians alike by eliminating the need to coordinate appointment times for simple procedures. Thus, more states should move towards legislation that reimburses store-and-forward telehealth. To do this, patients, physicians and legislators must be assured that asynchronous telehealth is a safe modality that can protect a patient's personal information. Regulations must also be altered to allow the establishment of a patient-physician relationship via telehealth.

CROSS-STATE LICENSING FOR TELEHEALTH SERVICES

Telehealth connects patients and healthcare providers in separate locations, but state regulations often mandate that patients and their providers be within the same state lines to initiate care.⁴⁸ Telehealth has the capacity to give patients access to providers across the country, but pre-pandemic regulations limited this practice. Cross-state licensing, which allows providers to treat patients across state lines with relatively few hurdles, can facilitate greater health care access. Yet, states only allow cross-state licensing in specific and limited ways.

For example, prior to the pandemic, around half of all states were part of various interstate compacts that allow some medical providers to treat patients across some state lines. Interstate compacts allow providers to treat patients in any state that has joined the compact, so long as the provider is licensed in good standing in at least one. Interstate Medical Licensure Compact (IMLC) now includes 31 states and allows physicians to work across these state lines. Likewise, 34 states are part of the Nurse Licensure Compact (NLC), 12 states are a part of the Psychology Interjurisdictional Compact (PSY), and 28 states are a part of the Physical Therapy Compact (PTC).⁴⁹ Some states—Arkansas, Georgia and Oklahoma—are a part of all 4 of the aforementioned licensure compacts. Other states, like Ohio, were not a part of any licensure compacts before the pandemic, but had existing statutory provisions to support out-of-state telemedicine for some specialties.⁵⁰ States like South Carolina, straddle an in-between as they are part of the NLC and PTC, while also having explicit guidance regarding the location of distant sites. The landscape for cross-state licensing prior to the pandemic varied greatly for medical professionals.

During the pandemic, most states, as well as CMS, temporarily waived the same state geographic requirement for telehealth.⁵¹ All states have enacted temporary or permanent measures for cross-state licensing in response to the pandemic and have detailed the types of healthcare professionals that can practice across state lines.⁵²

All states allowed physicians to practice telehealth across state lines during the pandemic, but for other professions the temporary relief from restrictions may not have applied. For instance, during the pandemic, a limited number of states allowed NLC and PTC practitioners to provide services via telehealth across state lines.⁵³ Map 3 shows the states that allowed advanced practice registered nurses and Map 4 shows the states that allowed physical, occupational and speech therapists to practice across state lines.⁵⁴ Nine states specifically made provisions for pulmonologists or respiratory physicians to practice across state lines, which is illustrated in Map 5.⁵⁵ Further, Map 6 shows where physicians could practice across state lines, and Map 7 highlights physician

46. See, e.g., "Division 123 Dental/Denturist Services, Health Systems Division: Medical Assistance Programs - Chapter 410," Oregon Secretary of State, last accessed Sept. 25, 2021. <https://secure.sos.state.or.us/oard/viewSingleRule.action?ruleVrsnRsn=274989>; "House Bill 1196," State of Washington 67th Legislature, Feb 5, 2021. <http://lawfilesexternal.wa.gov/Biennium/2021-22/Htm/Bills/House%20Bills/1196-S.E.htm>.

47. See, e.g., Agency of Human Services, "Vermont Medicaid: General Billing and Forms Manual," Department of Vermont Health Access, last accessed Sept. 25, 2021. <http://www.vtmedicaid.com/assets/manuals/GeneralBillingFormsManual.pdf>; Michael J. Melendez, "State Plan Amendment (SPA)#: - 16-0015," Centers of Medicare and Medicaid Services, Sept. 26, 2016. <https://www.medicare.gov/State-reSOURCE-center/Medicaid-State-Plan-Amendments/Downloads/NY/NY-16-0015.pdf>.

48. "Professional Requirements: Cross-State Licensing," Center for Connected Health Policy, last accessed Sept. 25, 2021. <https://www.cchpca.org/topic/cross-state-licensing-professional-requirements>.

49. Joslin and See, "CSL Compacts Before Pandemic." <https://www.rstreet.org/2021/10/24/telehealth-database>.

50. "Cross State Licensing - Ohio," Center for Connected Health Policy, last accessed Sept. 25, 2021. <https://www.cchpca.org/topic/cross-state-licensing-professional-requirements>.

51. Andis Robeznieks, "Cross-state licensing process now live in 30 states," American Medical Association, April 26, 2021. <https://www.ama-assn.org/practice-management/digital/cross-state-licensing-process-now-live-30-states>.

52. Joslin and See, "CSL Compacts Before Pandemic." <https://www.rstreet.org/2021/10/24/telehealth-database>.

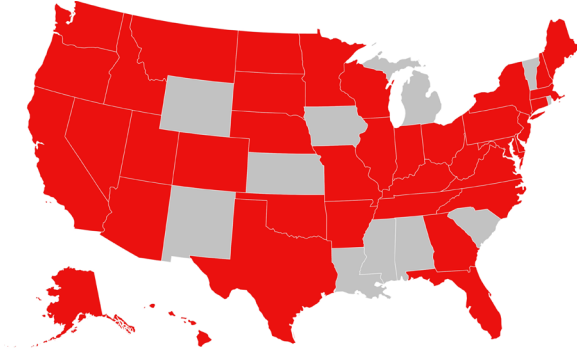
53. Ibid.

54. Ibid.

55. Ibid.

assistants' ability to work across state lines. The next three maps are likewise organized by medical specialty, with Map 8 showing where pharmacists could practice across state lines, Map 9 showing where clinical social workers could practice across state lines, and Map 10 showing where dietitians could work across state lines. Overall, the pandemic increased the use of cross-state licensure for more health-care professionals, but regulatory changes to permanently allow this are lacking, and increased adopting of interstate compacts remains to be seen.

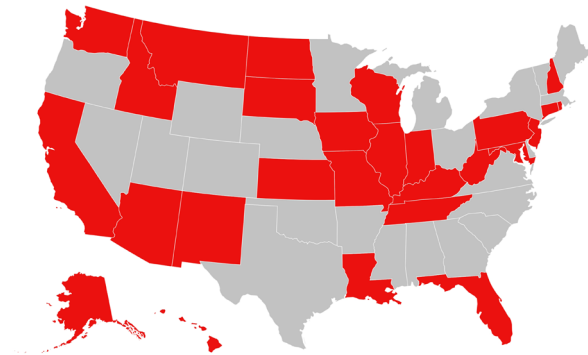
MAP 3: ADVANCED PRACTICE REGISTERED NURSES (APRNS)



Allowed during the pandemic

Source: R Street analysis based on data compiled from the Center for Connected Health Policy. <https://www.cchpca.org/topic/audio-only-delivery-covid-19>.

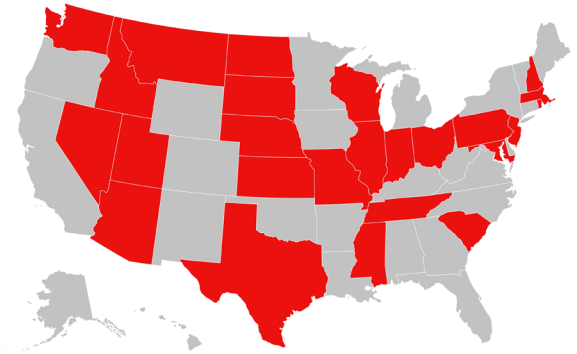
MAP 4: PHYSICAL OCCUPATIONAL SPEECH (POS) THERAPISTS



Allowed during the pandemic

Source: R Street analysis based on data compiled from the Center for Connected Health Policy. <https://www.cchpca.org/topic/audio-only-delivery-covid-19>; The Federation of State Medical Boards. <https://www.fsmb.org/siteassets/advocacy/pdf/states-waiving-licensure-requirements-for-telehealth-in-response-to-covid-19.pdf>; The Council of State Governments. <https://licensing.csg.org/covid-policy-responses/temporary-licensure/#iowa>.

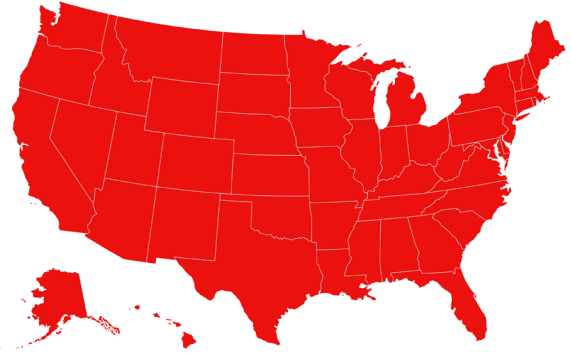
MAP 5: PULMONOLOGISTS (RESPIRATORY PHYSICIAN)



Allowed during the pandemic

Source: R Street analysis based on data compiled from the Center for Connected Health Policy. <https://www.cchpca.org/topic/audio-only-delivery-covid-19>; The Federation of State Medical Boards. <https://www.fsmb.org/siteassets/advocacy/pdf/states-waiving-licensure-requirements-for-telehealth-in-response-to-covid-19.pdf>; The Council of State Governments. <https://licensing.csg.org/covid-policy-responses/temporary-licensure/#iowa>.

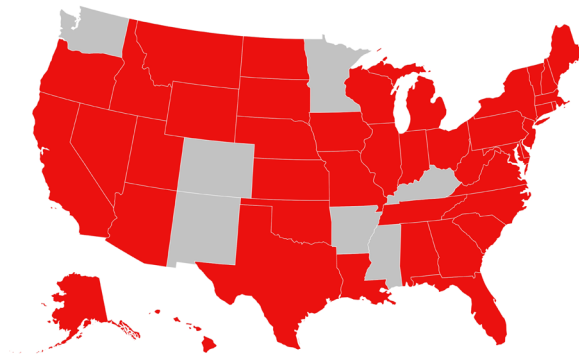
MAP 6: PHYSICIANS



Allowed during the pandemic

Source: R Street analysis based on data compiled from the Center for Connected Health Policy. <https://www.cchpca.org/topic/audio-only-delivery-covid-19>; The Federation of State Medical Boards. <https://www.fsmb.org/siteassets/advocacy/pdf/states-waiving-licensure-requirements-for-telehealth-in-response-to-covid-19.pdf>; The Council of State Governments. <https://licensing.csg.org/covid-policy-responses/temporary-licensure/#iowa>.

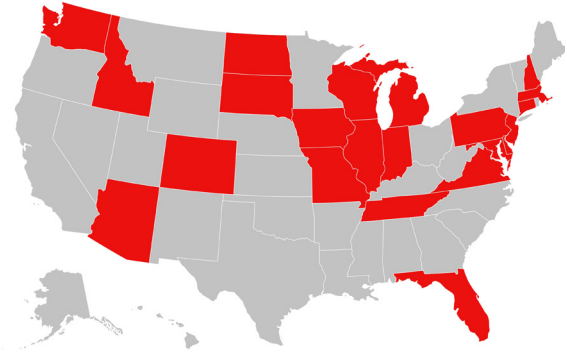
MAP 7: STATES THAT ALLOWED PHYSICIAN ASSISTANTS TO WORK ACROSS STATE LINES.



■ Allowed during the pandemic

Source: R Street analysis based on data compiled from the Center for Connected Health Policy. <https://www.cchpca.org/topic/audio-only-deliverycovid-19>; The Federation of State Medical Boards. <https://www.fsmb.org/siteassets/advocacy/pdf/states-waiving-licensure-requirements-for-telehealth-in-response-to-covid-19.pdf>; The Council of State Governments. <https://licensing.csg.org/covid-policy-responses/temporary-licensure/#iowa>.

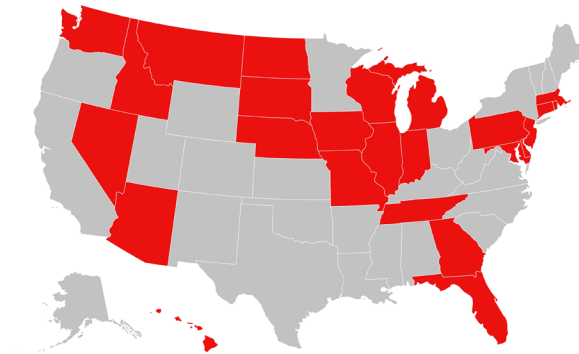
MAP 9: STATES THAT ALLOWED CLINICAL SOCIAL WORKERS TO PRACTICE ACROSS STATE LINES



■ Allowed during the pandemic

Source: R Street analysis based on data compiled from the Center for Connected Health Policy. <https://www.cchpca.org/topic/audio-only-deliverycovid-19>; The Federation of State Medical Boards. <https://www.fsmb.org/siteassets/advocacy/pdf/states-waiving-licensure-requirements-for-telehealth-in-response-to-covid-19.pdf>; The Council of State Governments. <https://licensing.csg.org/covid-policy-responses/temporary-licensure/#iowa>.

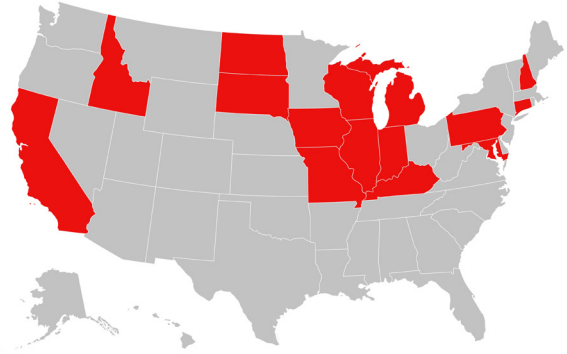
MAP 8: STATES THAT ALLOWED PHARMACISTS TO WORK ACROSS STATE LINES



■ Allowed during the pandemic

Source: R Street analysis based on data compiled from the Center for Connected Health Policy. <https://www.cchpca.org/topic/audio-only-deliverycovid-19>; The Federation of State Medical Boards. <https://www.fsmb.org/siteassets/advocacy/pdf/states-waiving-licensure-requirements-for-telehealth-in-response-to-covid-19.pdf>; The Council of State Governments. <https://licensing.csg.org/covid-policy-responses/temporary-licensure/#iowa>.

MAP 10: STATES THAT ALLOWED DIETITIANS TO WORK ACROSS STATE LINES



■ Allowed during the pandemic

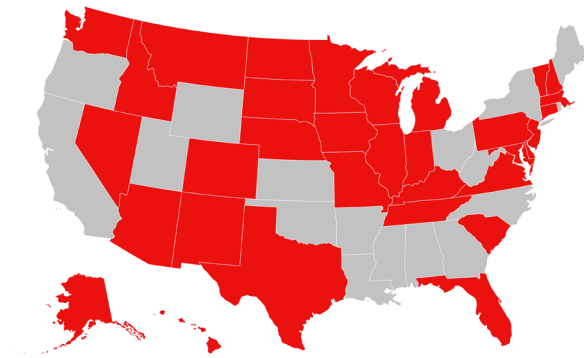
Source: R Street analysis based on data compiled from the Center for Connected Health Policy. <https://www.cchpca.org/topic/audio-only-deliverycovid-19>; The Federation of State Medical Boards. <https://www.fsmb.org/siteassets/advocacy/pdf/states-waiving-licensure-requirements-for-telehealth-in-response-to-covid-19.pdf>; The Council of State Governments. <https://licensing.csg.org/covid-policy-responses/temporary-licensure/#iowa>.

Cross-state licensing has a particularly important role in behavioral health services. Overall, the sharp increase in telehealth usage at the beginning of the pandemic was driven more by behavioral and mental telehealth than by physical telehealth.⁵⁶ The soaring popularity of behavioral telehealth is a product of not only the circumstances of the pandemic, but also the growing comfort and satisfaction that patients

56. Shira H. Fischer et al., "The Transition to Telehealth during the First Months of the COVID-19 Pandemic: Evidence from a National Sample of Patients," *Journal of General Internal Medicine* 36:3 (Jan. 6, 2021), pp. 849-851. <https://link.springer.com/content/pdf/10.1007/s11606-020-06358-0.pdf>.

experience with virtual access to behavioral health professionals.⁵⁷ Behavioral telehealth helps to reduce the stigma associated with receiving mental health treatment and reduces barriers to entry.⁵⁸ However, cross-state licensure for behavioral health professionals like psychologists has received less consideration beyond the pandemic. To illustrate, Map 11 shows the states that allowed psychologists to work across state lines, Map 12 shows mental health counseling and addiction therapists, and Map 13 shows marriage and family therapists.

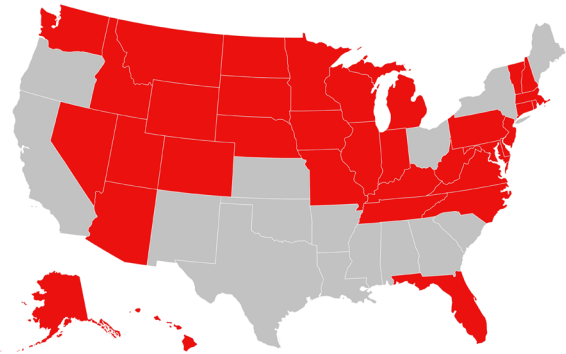
MAP 11: STATES THAT ALLOWED PSYCHOLOGISTS TO WORK ACROSS STATE LINES



■ Allowed during the pandemic

Source: R Street analysis based on data compiled from the Center for Connected Health Policy. <https://www.cchpca.org/topic/audio-only-delivery-covid-19>; The Federation of State Medical Boards. <https://www.fsmb.org/siteassets/advocacy/pdf/states-waiving-licensure-requirements-for-telehealth-in-response-to-covid-19.pdf>; The Council of State Governments. <https://licensing.csg.org/covid-policy-responses/temporary-licensure/#iowa>.

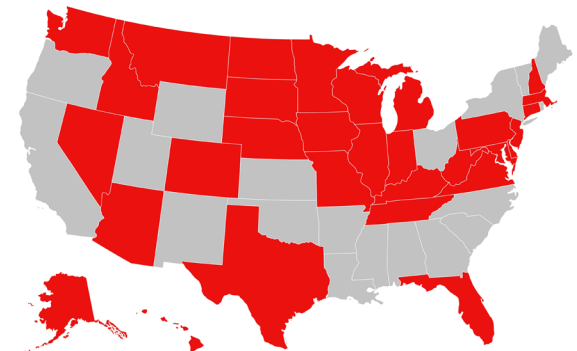
MAP 12: STATES THAT ALLOWED MENTAL HEALTH COUNSELING AND ADDICTION THERAPISTS TO WORK ACROSS STATE LINES



■ Allowed during the pandemic

Source: R Street analysis based on data compiled from the Center for Connected Health Policy. <https://www.cchpca.org/topic/audio-only-delivery-covid-19>; The Federation of State Medical Boards. <https://www.fsmb.org/siteassets/advocacy/pdf/states-waiving-licensure-requirements-for-telehealth-in-response-to-covid-19.pdf>; The Council of State Governments. <https://licensing.csg.org/covid-policy-responses/temporary-licensure/#iowa>.

MAP 13: STATES THAT ALLOWED MARRIAGE AND FAMILY THERAPISTS TO WORK ACROSS STATE LINES



■ Allowed during the pandemic

Source: R Street analysis based on data compiled from the Center for Connected Health Policy. <https://www.cchpca.org/topic/audio-only-delivery-covid-19>; The Federation of State Medical Boards. <https://www.fsmb.org/siteassets/advocacy/pdf/states-waiving-licensure-requirements-for-telehealth-in-response-to-covid-19.pdf>; The Council of State Governments. <https://licensing.csg.org/covid-policy-responses/temporary-licensure/#iowa>.

THE FUTURE OF TELEHEALTH IN THE UNITED STATES

This paper’s survey of the major telehealth modalities—audio-only, live video, store-and-forward and cross state licensuring—shows that states drastically expanded access to telehealth during the pandemic. Now, as evidence emerges on how these expansions to telehealth played out, some states are making permanent telehealth policy expansions. The most prominent example is Arizona, where a bill enacted in May 2021 facilitated a permanent overhaul in telehealth

57. Heather Landi, “Demand for virtual mental health care is soaring. Here are key trends on who is using it and why,” *Fierce Healthcare*, Oct. 23, 2020. <https://www.fiercehealthcare.com/tech/demand-for-virtual-mental-health-soaring-here-are-notable-trends-who-using-it-and-why>.

58. “What is Telepsychiatry?” American Psychiatric Association, last accessed Sept. 25, 2021. <https://www.psychiatry.org/patients-families/what-is-telepsychiatry>.

regulation. Now, insurers are required to treat telehealth visits as the same as in-person visits, patients and providers can use audio-only telehealth for all appropriate medical services, and patients can use telehealth to access doctors in other states, thereby eliminating the requirement that a provider have an Arizona license to see patients virtually in the state.⁵⁹ This reform, which was based on the success of telehealth expansion during the pandemic, represents the biggest telehealth change in a state thus far.⁶⁰ New York and West Virginia have also recently enacted bills permanently allowing out-of-state providers to consult patients via telehealth.⁶¹ Additionally, since the pandemic, Louisiana, Texas, Delaware and Ohio joined the Interstate Medical Licensure Compact, allowing physicians to more easily transfer their license across state lines.⁶² Many states have also passed permanent audio-only allowances. California, Delaware, Nevada, New Hampshire, New York, Ohio, Vermont and Virginia all enacted permanent audio-only allowances, and more states have pending legislation on the issue.⁶³ Finally, on the state level, cross-state licensing reforms are few. Arizona's new law allows for cross-state licensing, and Connecticut is considering expanding cross-state privileges related to the pandemic to 2023, but otherwise cross-state licensing for telehealth purposes is still widely underutilized.⁶⁴

Some permanent changes are also occurring for telehealth on the federal level. In December 2020, Congress made permanent changes allowing Medicare recipients to receive mental health services via telehealth regardless of their location.⁶⁵ CMS is also proposing some extensions of tele

health reimbursements into 2023, but these policies are still in development.⁶⁶

POLICY RECOMMENDATIONS

Debates continue over the appropriate applications of various telehealth methods, but one thing is clear. The regulatory environment for telehealth in the United States has changed significantly, and is moving in the direction of a more free and innovative health care delivery system. As many states decide to make pandemic-era telehealth changes permanent, there are a few key recommendations for policymakers assessing their state's telehealth landscape.

- **Consider audio-only telehealth expansions.** Audio-only telehealth became accessible in all 50 states and Washington, D.C. during the pandemic. Now, as evidence emerges on where audio-only telehealth is most useful—particularly for rural and low-income areas without broadband access—policymakers should consider which pandemic-era audio-only policies helped these communities the most, and ensure state regulations allow for them.⁶⁷
- **Make specific allowances for store-and-forward telehealth to take better advantage of its full potential.** Especially in states with rural and remote communities, store-and-forward telehealth can greatly complement synchronous telehealth and traditional in-person care. For urban areas, store-and-forward telehealth provides greater convenience and flexibility for patients and physicians alike and eases the need of taking time for appointments. Thus, more states should move towards legislation that reimburses store-and-forward telehealth. To do this, patients, physicians and legislators must be assured that asynchronous telehealth is a safe modality that can protect a patient's personal information, and is a sufficient means through which a patient-physician relationship can be established.
- **Enhance flexibility for patients and providers located in different states.** Telehealth facilitates the connection between patients and providers regardless of the geographic distance, but states are slow to adopt permanent cross-state licensing reforms with the same regularity as audio-only methods. Policymakers looking to expand telehealth should consider state restrictions on medical licenses, and look to

59. Office of the Governor Doug Ducey, "Governor Ducey Signs Legislation to Dramatically Expand Telehealth," Press Release, May 5, 2021. <https://azgovernor.gov/governor/news/2021/05/governor-ducey-signs-legislation-dramatically-expand-telehealth>.

60. Ibid.

61. See, e.g., S. 2507, The New York State Senate, 2021-2022 Legislative Session, Jan. 20, 2021. <https://www.nysenate.gov/legislation/bills/2021/s2507/amendment/original>; House Bill 2024, West Virginia Legislature, 2021 Regular Session, March 30, 2021. http://www.wvlegislature.gov/Bill_Text_HTML/2021_SESSIONS/RS/signed_bills/house/HB2024%20SUB%20ENR_SIGNED.pdf.

62. "Information Releases," Interstate Medical Licensure Compact, last accessed Sept. 25, 2021. <https://www.imlcc.org/news/press-releases-and-publications>.

63. See, e.g., "What's Next for Telehealth: States Try to Make COVID-19 Telehealth Options Permanent," Association of State and Territorial Health Officials, April 29, 2021. <https://www.astho.org/StatePublicHealth/States-Try-to-Make-COVID-19-Telehealth-Options-Permanent/04-29-21>; "U.S. States and Territories Modifying Requirements for Telehealth in Response to COVID-19," Federation of State Medical Boards, last accessed Sept. 15, 2021. <https://www.fsmb.org/siteassets/advocacy/pdf/states-waiving-licensure-requirements-for-telehealth-in-response-to-covid-19.pdf>.

64. See, e.g., H.B. 5593, Connecticut General Assembly, Session Year 2021. https://www.cga.ct.gov/asp/cgabillstatus/cgabillstatus.asp?selBillType=Bill&billnum=HB5596&which_year=2021; Julie Appleby, "Telehealth Took Off During the Pandemic. Now, Battles Over State Lines and Licensing Threaten Patients' Options," *TIME*, Aug. 26, 2021. <https://time.com/6092635/telehealth-state-lines-licensing>.

65. "H.R. 133, Consolidated Appropriations Act, 2021," 116th Congress, Dec. 11, 2019. <https://www.congress.gov/bills/116th-congress/house-bill/133>.

66. "Calendar Year (CY) 2022 Medicare Physician Fee Schedule Proposed Rule," Centers for Medicare & Medicaid Services, July 13, 2021. <https://www.cms.gov/newsroom/fact-sheets/calendar-year-cy-2022-medicare-physician-fee-schedule-proposed-rule>.

67. Jeff Lagasse, "Health plan leaders request inclusion of audio-only telehealth visits to MA risk adjustment," *Healthcare Finance*, June 7, 2021. <https://www.healthcarefinancenews.com/news/healthcare-leaders-request-inclusion-audio-only-telehealth-visits-ma-risk-adjustment>.

join licensure compacts or eliminate in-state license requirements.

CONCLUSION

The pandemic facilitated overhauls in telehealth regulation at both state and federal levels. Telehealth restrictions prior to the pandemic greatly limited the potential of some forms of telehealth delivery, such as audio-only and store-and-forward, as well as health care providers' ability to treat patients across state lines. The temporary suspensions of many telehealth regulations constitute an opportunity for permanent change to maintain open markets based on innovative telehealth delivery. As demonstrated throughout this paper, the greatest areas for improvement going forward are audio-only, store-and-forward and cross-state licensing telehealth allowances. With the future of healthcare delivery already here it is crucial that policymakers help telehealth flourish.

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