

Comparison of Telehealth Provisions During the Public Health Emergency, & After the Public Health Emergency



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The federal government first implemented a Public Health Emergency (PHE) Declaration on January 21, 2020. Since then, the PHE has been reauthorized multiple times. As of December 2022, the PHE is expected to be renewed at least one more time for 90 days in January of 2023, extending the possible end date to April 2023. Legislative action, including the Consolidated Appropriations Act of 2023, extended some of the current PHE telehealth-related flexibilities in Medicare until the end of 2024. Most importantly for psychiatry, some flexibilities – like the waiver of in-person visit requirements for the prescription of controlled substances – are not eligible for extensions and will resume the day the PHE ends barring further federal action.

The Centers for Medicare and Medicaid Services (CMS), which administers Medicare, Medicaid, and CHIP programs in partnership with states and payers, is institutionalizing expanded Medicare payment for telemental health after the PHE flexibilities expire. [CMS' 2023 Medicare Physician Fee Schedule](#) recognizes the key importance of continuity of and access to care in mental health in maintaining multiple modalities of care for mental health services post-PHE.

Below is a summary of some key telehealth policies during and after the COVID-19 PHE:

Provision	Status During PHE	Status After PHE Ends
Removal of in-person requirements to bill Medicare	During the PHE, patients can be seen in the home via telehealth without an in-person examination.	In-person exam requirements for both new and established patients are delayed until at least 2025, at which point some in-person requirements may resume for Medicare patients.
Removal originating site (patient location) requirement in Medicare	During the PHE, patients can be seen via telehealth in their homes without traveling to a Medicare-designated originating site.	Homes are acceptable as a telehealth originating site on a permanent basis.
Waiver of requirements to use HIPAA-compliant videoconferencing technology during telehealth encounters	During the PHE, clinicians could use non-HIPAA compliant software for telehealth, including FaceTime and free versions of Skype and Zoom.	Not subject to any flexibilities or extensions, clinicians will need to use a HIPAA-compliant videoconferencing solution , which will require a Business Associate Agreement (BAA) with the vendor.
Removal of frequency limitation of treatment in inpatient or nursing facility settings	During the PHE, inpatient or nursing facility patients can be seen via telehealth by a provider without specific limitations on the frequency of visits.	Not subject to any flexibilities or extensions, the rule will revert to pre-PHE requirements (every three days). The frequency limitation for nursing facility care is permanently reduced from once every 30 days to once every 14 days.

Provision	Status During PHE	Status After PHE Ends
Flexibility in state licensure for Medicare Part B providers	During the PHE, any Medicare Part B beneficiary can be seen by any Medicare provider located in any state in the US as long as they have a full and unrestricted medical license in at least one state. This doesn't mean that all states will honor that waiver for the practice of medicine in their state, and states have varying licensure waivers and timelines. Most state PHEs have already expired.	The physician will be required to hold a complete and unrestricted medical license in the state where the patient is located when receiving care (the originating site). Compacts, reciprocity, telehealth licenses, and other flexibilities that can facilitate licensure or care provision vary by state. Check with your state medical board and APA District Branch for more information.
Reimburse telehealth at the same rate as in-person visits	During the PHE, clinicians used standard CPT coding for telehealth that included video. Audio-only outpatient E/M services were billed using telephone codes. Telehealth has been reimbursed at the non-facility rate.	CMS will pay for telehealth at the facility rate rather than non-facility, constituting a slight reduction relative to in-person, in-office visits for the same codes. Starting after the PHE and flexibilities end, video and audio-only telemental health care will be billed using standard E/M codes and appropriate modifiers (for video visit, use modifier 95; for audio-only, use modifiers 93 and FQ). Place-of-Service (POS) codes will remain the same as POS would have been if the service had been delivered in-person through 2023, with additional updates pending.
Ryan Haight Act Online Pharmacy Consumer Protection Act	Under the Ryan Haight Emergency Exception, clinicians may prescribe a controlled substance via telehealth (live, synchronous audio-video communication) without an initial, in-person examination (or 24-month follow-up) to patients.	The DEA still has not released a proposed rule that would outline a "special registration" to allow clinicians to prescribe a controlled substance via telehealth without an initial, in-person examination per the Ryan Haight Act. When the PHE ends, not subject to any flexibilities or extensions , any patients that the prescriber has not seen in person, new or established, will need an in-person examination for controlled substances to be prescribed.
DEA licensure requirements	During the PHE, the DEA allows for the clinician to hold only one DEA license in a single state to prescribe a controlled substance to a patient in any state.	The DEA will revert to requiring the prescriber to hold a DEA license in each state where they prescribe a controlled substance, requiring a physical location in that state.
Supervision of auxiliary personnel via telehealth	During the PHE, direct supervision can be done via virtual presence.	On a permanent basis, auxiliary personnel providing mental health services can be under general supervision, and general supervision can be provided virtually.
Medicare coverage of audio-only services	During the PHE, beneficiaries may receive telehealth services for mental health services via audio-only.	Audio-only provision of mental health care is permanently allowed in Medicare.