



CLIENT ALERT

IMPORTANT TELEHEALTH UPDATES

Telehealth use skyrocketed during the pandemic and according to the Department of Health and Human Services Office of Inspector General March 17, 2022 data brief (“OIG report”), it was a critical tool for providing services to Medicare beneficiaries during the first year of the pandemic. Over 28 million beneficiaries used telehealth during the first year of the pandemic, 88 times more than prior years. Massachusetts residents are among the most frequent telehealth users. The extensive use of telehealth during the pandemic also demonstrates the long-term potential of telehealth to increase healthcare access.

Consistent with the growth in use, state and federal telehealth waivers which expanded access during the COVID-19 pandemic are finally beginning to crystallize with additional Massachusetts legislation currently in the works. The below state and federal updates include some permanent (or at least not time-limited) changes, some significant extensions of telehealth waivers beyond the public health emergency (PHE), and some hope for future positive developments due to continued interest and serious study by regulators and industry pressure.

I. Massachusetts – BORIM & MassHealth

The Massachusetts Board of Registration in Medicine (BORIM) recently released an updated telehealth policy (No. 20-01), found [here](#), which includes two key updates consistent with MassHealth’s Telehealth Requirements issued in an All Provider Bulletin in October 2021, found [here](#). The policy does the following:

1. Confirms that the patient needs to be physically located in Massachusetts while receiving telehealth services.
2. Permits BORIM-licensed physicians to treat Massachusetts residents from any originating site without geographic restrictions. This means that a Massachusetts-licensed physician can be sitting in another state while rendering telehealth services to a patient physically located in Massachusetts.

The policy also reaffirms both that no face-to-face encounter is required before a telehealth visit, and that the same standard of care is required for both in-person and telehealth visits.

II. Federal

In the recently enacted [Consolidated Appropriations Act of 2022](#) (see pages 756-760), Congress extended current Medicare telehealth waivers to 151 days after the end of the PHE. With the

current PHE expected to be extended through July 15, 2022, these waivers are expected remain in effect through December 14, 2022. The Act does the following:

- Extends Medicare coverage for telehealth to include physical therapists, occupational therapists, speech language pathologists, and audiologists;
- Expands what qualifies as an originating site for a telehealth beneficiaries to include any location in the U.S., including private homes and health care facilities;
- Continues telehealth services, including mental health visits, at Federally Qualified Health Centers (FQHCs);
- Waives the in-person initial visit requirement for mental health services, as well as postpones the requirement that Medicare beneficiaries obtaining behavioral health care via telehealth have an in-person visit within 6-months of the virtual visit ;
- Extends Medicare coverage for audio-only telehealth services;
- Extends providers' ability to use telehealth services to meet the face-to-face recertification requirement for hospice care but it does not address telehealth coverage for home health providers; and
- Requires the Medicare Payment Advisory Commission (MedPAC) to conduct a study on the expansion of telehealth services, and requires the Department of Health and Human Services (HHS) Secretary to publicly post data with respect to telemedicine utilization.

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