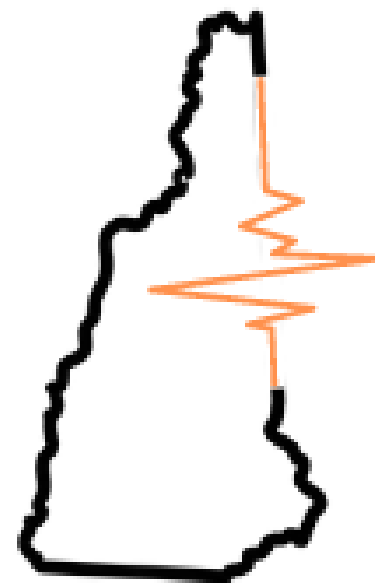


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presents

Latest Federal & State Policy Developments

Jim Monahan, Founder, NH Telehealth Alliance

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How to Participate:



Questions will be addressed at the end of each segment of the webinar.



Submit a question via the “Q&A” feature in the black toolbar located at the top or bottom of your screen.

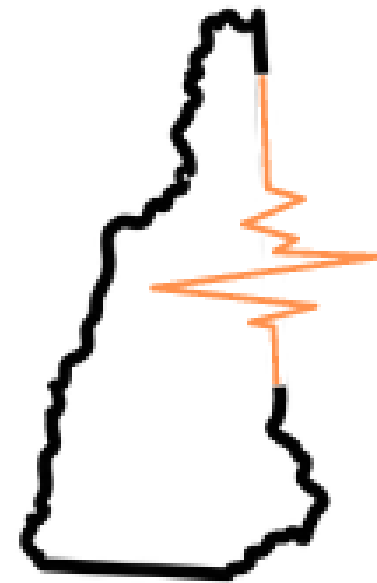


Only questions submitted via Q&A will be read by our host for the panelists to address.



A recording of this webinar will be made available to members.

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Policy Update

2022 NH Telehealth Legislation Overview : May 2022

Situational Awareness

- 2022 NH Legislative Session is Wrapping Up
- Limited Telehealth Legislation Acted on in 2022
- Legislative Telehealth Oversight Commission is gathering strong data on utilization, but limited data on economics
- Payer concerns have been limited as they await data
- Emerging issues around cross border telehealth regulation
- Detailed work underway on deployment of Federal Broadband Dollars through matching funds programs
- Other Federal Funds “on the way”

Telehealth- Related Bills



HB 503 – codifying the council on housing stability and relative to telehealth and medically assisted treatment for substance use disorder

- A Senate Amendment to this bill offers changes to how Medically Assisted Treatment within the Substance Use Disorder environment can better use Telehealth.
- The bill has Pass and is a awaiting action by the Governor

HB 602 – relative to reimbursements for telemedicine

- Filed in 2021, this bill was sent to Interim Study.
- Generally a negative bill:
 - Limited audio only telehealth
 - Eliminated payment parity
- Strong opposition from consumers and providers in 2021

HB 1390 – relative to access to language translation services in telemedicine

- This bill directs licensed health care facilities required to provide meaningful language access to limited-English proficient speakers and deaf or hard of hearing individuals to provide such access when services are provided through telemedicine.
- As a practical matter, these services do carry forward within the telehealth space and can often be more cost efficient and more widely used.
- PASSED

HB 1405 – allowing out-of-state mental health care providers to provide telehealth treatment during a mental health emergency

- This bill allows out-of-state mental health care providers to provide telehealth treatment during a mental health emergency and requires insurance coverage for out-of-state mental health services provided through telemedicine.
 - ***The bill allows for or out-of-state mental health care providers, not licensed in NH to who provide telehealth treatment to fewer than 5 patients per year during a mental health emergency***
- Inexpedient to Legislate: 16-0
 - Committee felt other legislation and licensing law should address the issue

SB 382 – relative to licensure requirements for telehealth services

- 1 Telemedicine and Telehealth Services. Amend RSA 310-A:1-g, IV to read as follows:
 - IV. [~~Notwithstanding any provision of law to the contrary~~] **Unless otherwise prescribed by statute**, an out-of-state healthcare professional providing services by means of telemedicine or telehealth shall be required to be licensed, certified, or registered by the appropriate **New Hampshire** licensing [~~board within the office of professional licensure and certification~~] **body if the patient is physically located in New Hampshire at the time of service**. This paragraph shall not apply to out-of-state physicians who provide consultation services pursuant to RSA 329:21, II.

Generally consistent with the current regulatory and legal structure.

- PASSED.

SB 390 – relative to telemedicine and telehealth

The bill offers definitions of . ***“Asynchronous interaction” and “Synchronous interaction”***

Seems to not alter the current allowable telehealth practices under NH Law.

- PASSED

SB 397 – enacting the mental health counseling compact

- Begins the process of getting several states to create a unified process for licensed professional counselors.

- Small Telehealth Section:

Member states shall recognize the right of a licensed professional counselor, licensed by a home state in accordance with RSA 330-D:2 and under rules promulgated by the commission, to practice professional counseling in any member state via telehealth under a privilege to practice as provided in the compact and rules promulgated by the commission.

- *PASSED*

Broadband Bills

SB 247 – relative to broadband infrastructure bonds

- This bill authorizes a municipality or county to issue bonds or notes for the financing of broadband infrastructure projects for any location within a municipality.
- Major Change, as it eliminate the restriction to only bond for “Under Served” locations
- REFERED TO INTERIM STUDY
- Under Served Vs. No Service dispute

SB 273-A: AN ACT relative to broadband infrastructure funding.

- This bill permits towns to authorize the borrowing of money for broadband infrastructure at special meetings.
- Current law, requires a vote at a annual meeting
- ***(c) Notwithstanding RSA 31:5, the members may hold a special meeting for the limited purpose of voting to borrow money and issue bonds or notes in accordance with RSA 33 to finance broadband infrastructure bonds under RSA 33:3-g.***
- **PASSED**

SB **395**: AN ACT relative to the broadband matching grant initiative.

- This bill allows municipalities and cell phone service providers to apply for broadband matching grant funds to upgrade local cell phone service to the standard necessary to support broadband and other advanced communication services.
- Strong bi-partisan sponsors
- PASSED

SB 445 An Act relative to the broadband matching grant initiative.

Sets the Stage for the Roll out of Federal Funds

Background

- NH Legislature Authorizes the creation of Communications Districts : 2020
- NH Legislature Creates Broadband 50-50 Matching Funds Program: 2020
- Federal COVID Relief Funding's for Broadband: 2020-2021
 - ARPA: State Recovery Funds: Capital Projects fund: \$122,000
 - Infrastructure and Jobs Act: \$100 to \$200 million for NH
- NH Stands Up Broadband Division within the Department of Business and Economic Affairs
- General Policy Decision is Made to target most of \$122 million in Capital Projects funds to Broadband Matching Funds
- Fine tuning of Program Underway – Legislation and Rules

SB 445: Refresh to Matching Grants Program

- Matching Grants rate is increased to 75%
- \$122 million Appropriation was added to bill, then removed
 - Funding path will be outside of Legislative appropriations process
 - Funding level commitment is strong, but some portion of total funds could go to other local/non-match efforts
- Limitations:
 - New Build
 - Unserved/Under Served
 - Challenge process

SB 445: Matching Grants Program Implementation: Summer 2022

- BEA Rule makings
 - Temp
 - Final
- Matching Grants Program RFP to be issues
- Eligible: Municipalities, Counties, Communications Districts and Broadband Providers
 - Role for ISP Partners

SB 445: Matching Grants Program Implementation: Summer 2022

- Speeds: 25-3 Vs. 100-20

New Paragraph; Broadband Matching Grant Initiative; Federal Conflicts. Amend RSA 12-O:62 by inserting after paragraph VII the following new paragraph:

VIII. If the provisions of RSA 12-O:61, RSA 12-O:62, or RSA 12-O:63 conflict with the provisions of the federal funding guidance, specifically for the purposes of the broadband matching grant initiative or the broadband matching grant fund, the federal funding guidance shall control.

- Funding Path
 - Legislative Fiscal Committee will need to approved Federal Funds flowing to BEA
 - Matching Grants Contracts will require approval of the Governor and Council

SB 445: Matching Grants Program Implementation: Summer 2022

- Incumbents and Challenges
 - Stranded Investments ?
 - Challenges:

SB 445: Matching Grants Program Implementation: Summer 2022

Within Rulemaking:

(b) Establishment of a challenge process, with reasonable timelines, through which information may be provided to the state to ensure that funds are not used to build projects in served areas or areas where construction has commenced. [~~Projects in planning, design, or terms negotiations, and not under construction as of January 1, 2021, shall be eligible for funding~~] ***For the purposes of this subdivision, construction has commenced when a provider initiates the make-ready process or begins construction of broadband infrastructure in the project area. A provider who successfully challenges an application's eligibility for funding because construction has commenced shall complete construction as soon as practical and without undue delay.***

Federal Funding Programs : Coming Soon

- NH Will Receive \$100 million to \$200 million in broadband funding from the Infrastructure Bill:
 - Guidelines are still underdevelopment
 - NHTA June Webinar will focus on these programs

Federal Telehealth Policy – PHE Waives Requirements for Medicare

- Federal Public Health Emergency declaration has been renewed every 90 days since March of 2020.
- **It currently runs until July 16, 2022. Observers NOW expect it to be renewed at least one more time thereafter. Think mid-terms effect.**
- States will receive at least 60 days-notice before the emergency ends.
- Medicare telehealth flexibilities are temporary and are predicated on the federal public health emergency. When the PHE ends, these flexibilities end.

Medicare and Telehealth

Telehealth has been around for a long time, but largely unused.

Medicare started paying for some telehealth services in 2001:

- Patient located in rural region
- Limited services
- Patient had to go to a medical provider's office



Current Medicare Flexibilities

- Patients can receive services via telehealth at home.
- Audio-only contact allowed.
- Hundreds of telehealth services are covered for reimbursement.
- Telehealth services are reimbursed at a rate no less than in-person services.
- Copayments for telehealth services can be waived.
- **NOT JUST MEDICARE: Privacy regulations relaxed to permit use of common technology.**

End of PHE – and Telehealth

- OCR's relaxed enforcement of HIPAA will end.
- Are providers prepared in terms of HIPAA compliance WRT their telehealth platforms?
 - Do providers have the data privacy, e-commerce, cookies, terms of use policies and protections in place for their platforms?
 - E.G. Do you know when data collected through your platform from patients goes from data to PHI?
 - **LAWYER NAG:** Policies and processes protect providers and their patients. **TALK TO COUNSEL ABOUT BEING PREPARED.**

Medicare Reimbursed Telehealth Services after PHE

- Guaranteed reimbursement for audio-only will end
 - Without adequate broadband for considerable portion of the state, what happens?
- Parity in reimbursement for all telehealth services will end
 - Without parity in reimbursement in Medicare, what will payers regulated at the state level ask for?

Medicare Reimbursed Telehealth Services after PHE

- Waivers of geographic and site of service location of patient within Medicare will end for most services, significantly limiting the ability to use telehealth.
- Will return to providers having to have patients in particular regions of the country in order to be reimbursed for Medicare telehealth services
- Will return to patients having to present at a providers' office for telehealth services in order to be reimbursed for Medicare telehealth services.
- What impact will this have on what state regulated payers ask for?

Medicare Reimbursed Telehealth Services after PHE – GOOD NEWS

- Coverage for telehealth mental health services under Medicare was put into statute and have been made permanent. Thus, they will be free from geographic and site of service limitations.
- HOWEVER, 42 CFR 405.2463(b)(3) says there must be an in-person visit within 6 months before furnishing telehealth mental health services and every 12 months while patient gets them unless physician and patient agree risks and burdens outweigh in-person visit benefits and it's documented in the medical record.
- Consolidated Appropriations bill extends telehealth flexibilities for another 151 days after the expiration of the PHE, including suspending the face-to-face requirement for mental health services under Medicare for another 151 days.

Federal Legislation

MENTAL Health for Kids and Underserved Act

[S 4039](#) (**Brown OH-D**): Require the Secretary of Health and Human Services to provide guidance to States regarding Federal reimbursement for furnishing behavioral health services and treatment under Medicaid and the Children's Health Insurance Program using telehealth services. (**Status:** 4/7/22 - *Introduced and referred to Committee on Finance*)

Save America's Hospitals Act

[HR 6400](#) (**Rep. Huffman CA-D**): Requires payment for telehealth delivered services for FQHCs/RHCs during an emergency period and for services furnished after the emergency, as an amount equal to the amount the clinic/center would have been paid if services were furnished in person. (**Status:** 1/13/22 – *Introduced and Referred to Committee on Energy and Commerce; Ways and Means; and the Budget*)

Federal Legislation

Telehealth Extension and Evaluation Act

[HR 7573](#) (**Rep. Hudson (NC-R)**): Extends certain COVID telehealth flexibilities for two years after the emergency period ends, notably the authority for audio-only telehealth services under Medicare. It would also allow a Critical Access Hospital to provide behavioral health services and any other outpatient critical access hospital services (including any authorized practitioner). The amount of payment must be 101 percent of the reasonable costs of the hospital in providing such service unless the hospital makes an election to be paid under an alternative payment methodology. It would also allow one telehealth evaluation to be sufficient to prescribe schedule II through V controlled substances. Finally, the bill also requires a study on the effects of the change to telehealth under Medicare and Medicaid programs during the COVID-19 emergency. (**Status:** 4/26/22 – *Introduced and referred to Committee on Energy and Commerce; Ways and Means; and the Judiciary*)

Points of View on Telehealth

Telehealth, Equitable Care, and Audio-Only

Telemedicine Challenges for FQHCs, Audio-Only Proves Critical

A [study](#) released earlier this year, conducted by UC Merced researchers and published in [SSM- Qualitative Research in Health](#), features the perspective of patients and clinical personnel on telemedicine implementation in community health centers (CHCs).

It features findings from interviews conducted at two northern California federally qualified health centers, one of which serves a large Latino population and the other which serves a large Chinese immigrant community. The interviews revealed that patients struggled with broadband access and digital literacy issues as well as bad translation issues. However, many of these challenges were overcome by providing audio-only visits which were much more accessible for their patient population.

The study underscores both the importance of continued reimbursement for audio-only visits post-pandemic, the need to improve the quality of language services, and patient literacy resources for patients when utilizing telemedicine.

With Friends Like These

Telehealth Impact on Medicare Spending Resulting from COVID Policy Expansions

A [report](#) released by the [Committee for a Responsible Federal Budget](#) in April details fiscal considerations in relation to the continuation of telehealth flexibilities afforded during the COVID-19 emergency. The article argues that while telehealth has potential for improvements in timely and effective access to care, it also can result in increased utilization and misaligned provider payment incentives, fraud and abuse. The authors point out that the [Congressional Budget Office \(CBO\)](#), for example, estimated that a permanent expansion in telehealth could cost Medicare \$25 billion over ten years. As such, they urge caution in how telehealth is approached in the realms of utilization, provider incentives and fraud and abuse.

CMS Provides Revises Factsheet for FQHCs and RHCs to Bill Mental Health Visits via Telecommunications

The [Centers for Medicare and Medicaid Services](#) (CMS) released a revision in early May to the [Medicare Learning Network \(MLN\) document](#) explaining how federally qualified health centers (FQHCs) and rural health clinics (RHCs) should bill for mental health visits delivered via telecommunications, which could also include audio-only technology. In the [2022 Physician Fee Schedule](#), it was announced that after the public health emergency (PHE), FQHCs and RHCs would continue to be able to be reimbursed for mental health visits delivered via telecommunications technology, although it would not be considered telehealth and therefore billing would be different. Appropriate revenue codes, HCPCS codes and modifiers are listed in the new document. It also notes the requirement for an in-person mental health visit six months before the telecommunications visit and every 12 months afterward.

<https://www.cms.gov/files/document/se22001-mental-health-visits-telecommunications-rural-health-clinics-federally-qualified-health.pdf>

What About Medicaid and the PHE?

PHE are flexibilities around the following items generally speaking:

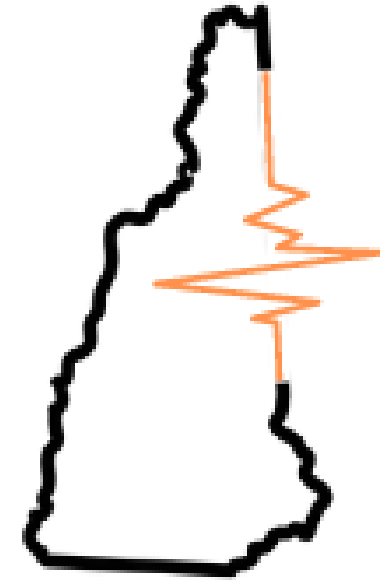
- Fee-for-service prior authorization requirements.
- Long Term Services and Supports
- Fair Hearings
- Provider Enrollment
- Reporting and Oversight
- Continuous Enrollment for Beneficiaries

Unless state law changes, Medicaid's coverage of telehealth will remain unaffected by the end of the PHE.

Thank you!

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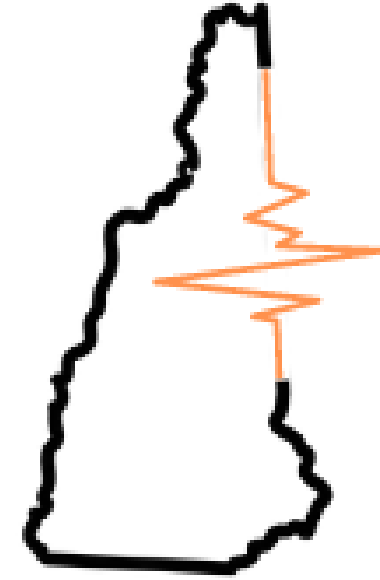


Q&A



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