

# National Telehealth Policy Progress and Perspectives

SCOTTSDALE INSTITUTE 2021 TELEHEALTH ROUNDTABLE



August 4, 2021 | Virtual Event

Presented by:



# Executive Summary

Scottsdale Institute (SI) Member health systems experienced unprecedented adoption of virtual care as a result of the COVID-19 pandemic. During the national emergency, regulatory barriers were dramatically reduced, facilitating a massive shift and prompting SI Member health system executives to wonder how national telehealth policy might evolve in the ensuing months.

For this Roundtable, the Scottsdale Institute partnered with the American Telemedicine Association (ATA) to share their vast expertise and explore this topic at greater depth. With a vision to ensure individuals get safe, effective and appropriate care where and when they need it, all while enabling clinicians to do more good for more people, the ATA understands the continuum of needs and possibilities across the market and tailors its work to address the most critical facets. Part of this work is to facilitate policy improvements at both federal and state levels to remove barriers to care.

Since the pandemic proved beyond any doubt the incredible value of telemedicine for myriad services—from physical and behavioral health to chronic care and addiction treatment—ATA is working harder than ever to keep the ground it's gained, ensuring the positive advancements forged during COVID regarding access, equity and cost savings do not slip back to pre-COVID levels due to outdated regulations and limiting policy constraints.

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## SPONSOR

**Moderator:** Kyle Zebley, VP Public Policy, ATA

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# Introduction

With a vision to ensure individuals get safe, effective and appropriate care where and when they need it, all while enabling clinicians to do more good for more people, the American Telemedicine Association (ATA) understands the continuum of needs and possibilities across the market and tailors its work to address the most critical facets. As a nonprofit founded in 1993, and now with over 400 members representing the gamut of telehealth providers focused on transforming health and care through enhanced, efficient delivery, ATA has a unique perspective...especially in this pivotal, post-COVID landscape. As health systems and consumers alike attempt to return to “normal,” the ATA is focused on ensuring the gains made during the pandemic remain; indeed, telehealth, which experienced explosive growth during 2020 and 2021, now is an irreplaceable facet of healthcare that extends coverage, lowers costs and mitigates disparities.

“The ATA has been a wonderful advocate toward sidestepping barriers,” explained ATA’s **Kyle Zebley**, Vice President, Public Policy. “While much of our work goes toward Medicare and other federal policies, there’s also much more for direct-to-consumer, state-level decisions...but all of it is geared toward having access to care through virtual means.”

One main priority entails defining what hybrid care means. For ATA, telehealth *is* healthcare: It’s not a separate entity, or something different, alien or foreign—it’s simply another tool for providers to deliver clinically appropriate care for patients.

“Telehealth actually has been the silver lining of COVID in that we’re finally getting virtual healthcare into the 21st century, but it also has revealed inequities,” Zebley said. “Telehealth will not solve all our equity health challenges but, if we’re serious about tackling them, telehealth must be present.”

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## AVOIDING THE CLIFF

In a rare display of continuity, public health emergency (PHE) flexibilities that started with the Trump administration continued with the Biden administration and are still in place to avoid the proverbial cliff as cohorts strive to make certain policies (mostly Medicare-related) permanent. Since it was last updated in 1997, the restrictions as to how Medicare beneficiaries may access telehealth (e.g., audio-visual, or audio only) were so specific as to be severely limiting, with defined rural areas and other in-person requirements that determined reimbursements for care. Beyond these absolutes, there also were limitations that excluded using patients’ homes as originating sites



*“We’ve had over a thousand bills introduced, a lot of remarkable records and lots of urgency in 2021. We need to seize momentum, with all this wind at our back: We can’t take this progress for granted.”*

*– Kyle Zebley, VP,  
Public Policy, ATA*

and omitted certain ancillary providers (e.g., OTs, SLPs, PTs, etc.). Supporters are advocating for these services to remain available to Medicare beneficiaries, because this also will influence how commercial payers approach such limits moving forward. Many states have enacted very progressive legislation of their own to further enable and support the use of telemedicine.

“This is a mind-blowing prospect considering all that has happened and been updated during COVID, when they waived some of the geographic limitations,” Zebley commented. “But what’s going to happen if and when this PHE ends, and Congress hasn’t acted to address these limitations? We’ll go back to a world where we only have reimbursable services in rural scenarios. We have reason to be optimistic, but we cannot rest on our laurels.”

## BROADENING BOUNDARIES

Ultimately, ATA would like to see the telemental health in-person requirement repealed, as well as permanent reform and removal of provider type and geographic and originating site barriers. There’s been some movement toward these ends as telemental health was made a permanent part of the late-2020 COVID-19 relief package. In one of the longest bills ever—some 6,500 pages spelling out various details—this provision was included for Medicare beneficiaries; however, there also was added a new, in-person requirement. For individuals to access telemental health, those not in a defined rural area or in a provider’s office must physically visit the same provider within six months. According to Zebley, this runs counter to trends at the state level while also acting as a guardrail of sorts to limit access and tamp down costs. But Medicare beneficiaries can’t always drive across town to their practitioners and, with an overall shortage of mental health providers, it’s rarer still to find someone who offers both in-person and virtual care.

“The moment that was passed into law, it was launched to high priority: We had 36 hours to react to the good in the bill (i.e., telemental health services) and the bad (horrible restrictions and the bad precedent regarding expanding permanence),” recalled Zebley. “We want access to

reimbursable telehealth services regardless of where a person lives or where their originating site (home, work, etc.) is located. We’re seeking to make that permanent.”

Finally, reform supporters agree both established and new patients should be accepted for reimbursable telehealth services. During the pandemic, waivers removed the obstacle of having to demonstrate an existing relationship between patient and provider; however, it’s been more a temporary enforcement exception versus a lasting positive confirmation that new patient visits are indeed covered via telehealth. But for many consumers who are unable to travel to a medical campus, telehealth visits often are clinically appropriate, and establishing an initial relationship with a provider in this manner is both suitable and more convenient in terms of augmenting critical patient access.

## NEWS FROM THE ADMINISTRATION

**“We are absolutely supportive of efforts to give us the authority to utilize telehealth in greater ways,” said HHS Secretary Xavier Becerra during a [June 24 interview with The Washington Post](#), emphasizing the following needs.**

- For all communities, *regardless of geographic location*, to have access to telehealth
- To close the digital divide by ensuring equitable access and quality broadband are available to all communities
- For accountability to protect patients

### **[AHRQ Telehealth Blog, June 28](#)**

“Telehealth has and will continue to change the healthcare landscape. It has the potential to enhance access. It may make care more equitable. *But we must be intentional about its use.*”

## DEFINING PRIORITIES

Beyond in-person requirements, PHE flexibilities and permanent reform, ATA's other federal policy priorities include the following.

- **Federally Qualified Health Centers (FQHCs) and Rural Health Clinics (RHCs):** Aiming for Congress to permanently allow both to provide telehealth and be reimbursed fairly
- **Medicare coverage of services:** Striving for continuing coverage of additional telehealth services by Centers for Medicare and Medicaid (CMS)
- **Medicare coverage of remote patient monitoring (RPM):** Working so CMS will cover remote patient monitoring services in accordance with clinical practice

## GAINING MOMENTUM

"We had a friend on both sides on inauguration day, and it was really unique that we had such effusive support; however, the tools of the current administration will not be able to solve the main issue if Congress is not going to act," Zebley reasoned. "They could still fail to get past the hurdle that's embedded into law regarding geographic limitations."

Zebley shared details on several notable, comprehensive bills designed to move certain facets of telemedicine toward permanent status, including the following.

- The **Telemental Health Care Access Act** (S. 2061/H.R. 4058) would amend title XVIII of the Social Security Act to ensure coverage of mental and behavioral health services furnished through telehealth.
- The **CONNECT (Creating Opportunities Now for Necessary and Effective Care Technologies) for Health Act of 2021** (S. 1512/H.R. 2903) aims to expand the use of telehealth by waiving certain requirements, removing geographic/in-person limits for telehealth services, and expanding originating sites, among other improvements.
- The **Telehealth Modernization Act** (S. 368), included in the June release of the 21st Century Cures Act 2.0 discussion draft, would amend title XVIII of the Social

## ATA'S TAKE ON SI MEMBER CONCERNS

### Expanding telehealth providers to include PTs, OTs, SLPs and pharmacists:

There are bills to do it, especially at the state level for those that have allowed for reimbursements. There are lots of use cases for various forms of therapies, nurses, psychologists and others. We're very supportive of these bills but they haven't been in the comprehensive bills to date. Why? Costs, most likely.

### Savings in the long run:

When you think about what telehealth does well—that is, preventing worse health down the road—it drives savings in the long run. As policy-makers grapple with costs, we should look at the long-term savings that stronger healthcare access will create. It's really important to look at this through an equity lens. Also, there's the angle of telehealth around freeing up capacity—not having to build or utilize more facilities. But we will always need to lay hands on patients: No one should assume telehealth will replace everything...but it offers a great dual success of increasing access of care without increasing costs.

### Crossing state lines:

"Our bodies don't change when driving across state lines, so why the difference in practices?" This couldn't be a more important issue for our ATA members who have strong opinions on licensure. For the short term, immediate, successful solutions entail working through state capitals, because medicine is licensed and managed through state law. But: Moving toward federal licensure will entail a lot of challenges.

Security Act to make permanent certain telehealth flexibilities under the Medicare program vis-à-vis the COVID-19 PHE.

- The **Protecting Access to Post-COVID-19 Telehealth Act of 2021** (H.R. 366) aims to amend title XI of the Social Security Act to authorize the Secretary of Health and Human Services to waive or modify the application of Medicare requirements concerning telehealth services during any emergency period.

"At the end of the day, we might get an extension versus permanent change, which would afford them more time to study...but we need to make sure that Medicare beneficiaries don't lose access to services while Congress studies the options further," Zebley cautioned. "We'd

suggest a two-year extension at the least. And while an extension is preferable to a telehealth cliff, I tend to think that Congress acts best when its back is up against the wall....and they're not there yet."

## ENVISIONING POSSIBILITIES

Other areas of interest on the Hill include a likely major investment in broadband expansion and opportunities for virtual infrastructure inclusion—that is, coordinating efforts with Congressional allies. Plus, the following additional telehealth bills are in play, offering even more options for clarification and expansion of coverage.

- Representative Doggett's **telehealth flexibilities extension bill** allows RHCs and FQHCs to serve as the distant site (i.e., the healthcare practitioner location) and the beneficiary's home as the originating site for all services. Additionally, it aims for all types of practitioners to furnish telehealth services, as determined by CMS
- Representative Balderson's introduction of the **RPM bill** is bipartisan legislation that would allow patients and healthcare providers to continue the use of eased restrictions for remote patient monitoring services to reduce long-term costs, improve outcomes and increase options
- The **HEAT Act [Home Health Emergency Access to Telehealth Act (S. 1309)]** would authorize payment for home health services furnished via visual- or audio telecommunication systems during emergency periods
- The **TREATS Act [Telehealth Response for E-prescribing Addiction Therapy Services Act (S. 340)]** would amend title XVIII of the Social Security Act to increase the use of telehealth for substance use disorder treatment, mental health services and ancillary purposes
- The **Expanded Telehealth Access for PT, OT and ST Act (H.R. 2168)** also would amend title XVIII of the Social Security Act to expand the scope of practitioners eligible for telehealth service payment under the Medicare program

"There have been over 35 telehealth bills introduced to this Congress," Zebley detailed. "The first iteration of the bill from Representative Doggett offered a one-year extension, but didn't include everything we'd hoped for. It's important because it's the first bill of its kind, but we're hoping to take it further."

## ATA'S TAKE ON SI MEMBER CONCERNS

### HIPAA waivers:

During the pandemic, enforcement action was waived. The bills don't cover this, so we'll have to ease back into HIPAA compliance. I think there's a general acceptance that folks know their data is secure when speaking with a provider—remember, it's on the provider, not the patient. We think HIPAA compliance should be back in force, but also that we should have a transition or grace period. I don't expect for Congress to waive HIPAA compliance permanently.

### Best guesses going forward:

We're doing everything we can to push back in-person requirements, and we hope we won't see them included in other services. If so, that presents a weird picture to Congress—that there are some services with in-person requirements and some without. I'm optimistic it will be untenable to apply this only to telemental health services. We expect payment parity to continue a while longer, and to see states grapple individually over licensure issues. We don't see that there's a one-size-fits-all federal solution, but I think having the thread of it would be helpful to spur states to pursue.

### Asynchronous visits:

We'd like to see them covered but challenges remain. Right now, with few exceptions, asynchronous is called **direct-to-consumer patient model**—the folks who pay out of pocket but there's huge satisfaction there. As it stands now, there tends to be very little coverage or reimbursement for asynchronous care...but it's extremely convenient, and we've removed a lot of restrictions at the state level.

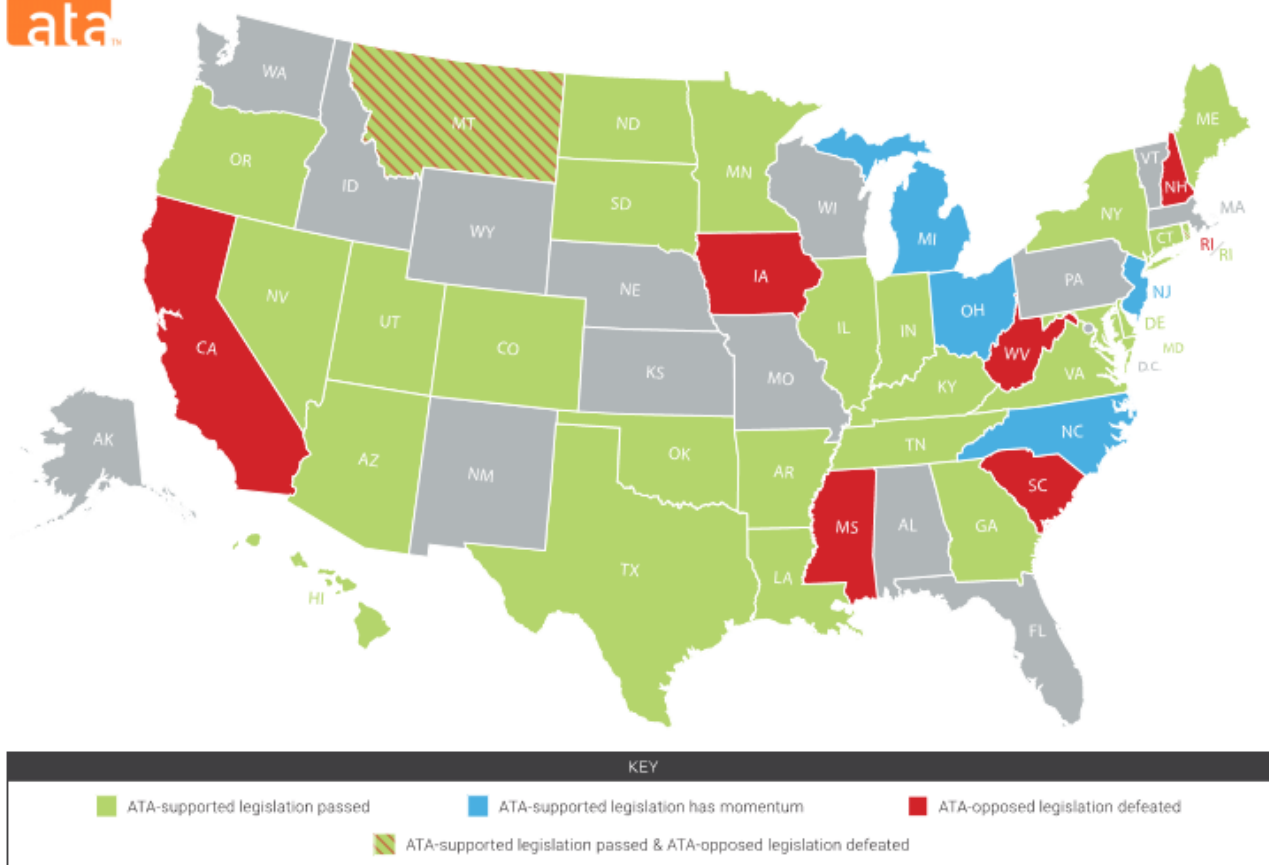
## STATING THE ISSUES

Outside of Washington DC, ATA is prioritizing policies for individual states, with the following goals.

1. Updating and revising telehealth practice standards (definitions, permissible technologies, recordkeeping, eligible providers)
2. Fighting for licensure portability and flexibilities (including compacts and reciprocity akin to what existed under waiver authorities)
3. Detailing fair payment and reimbursement (i.e., including audio-only)
4. Employing modality-neutral language
5. Establishing patient-provider relationships via telehealth



## 2021 ATA THIRD QUARTER REPORT



With more than 1,000 telehealth bills filed in all 50 states, the ATA has commented on 90-plus bills since January 2021 and has testified multiple times—in-person, in writing or virtually—in a dozen states and for the Uniform Law Commission's Committee on Telehealth. Further, ATA's Q3/21 report suggests big wins in over 30 states (see map, above), wherein ATA-supported legislation passed or gained momentum, and/or ATA-opposed legislation was defeated.



“We’re trying to ensure telehealth is held to the same standards—not higher or lower—and to show our support of licensure portability and practicing across state lines where possible,” Zebley shared. “We don’t think policy-makers should be the only ones deciding what should be done. We’re trying to make sure there’s fair payment and parity, and we want audio-only, asynchronous help (e.g., chat-based, web portal, etc.) and remote monitoring included, as well as eliminating the in-person mandate, because it’s clear new relationships absolutely can be established via telehealth between providers and patients.”

## PRIORITIZING THE FUTURE

Indeed, Zebley has witnessed practically the whole of Congress reporting positively around telehealth. “This ‘experiment’ for the past 18 months has been incredibly successful, and it’s obvious people can receive great care,” he said. “But even with all the activity—all the bills, discussions and news stories—they’re not yet making things permanent at the Federal level. So how can we move forward?”

Since the ATA and the telehealth community at large have made tremendous strides in state capitals this year, next steps entail more federal communications on the following key points.

- By passing permanent policies into law, state legislatures and governors are ensuring telehealth flexibilities do not go away post-pandemic; this is particularly relevant for Congressional offices representing states that have acted
- No state law replicates the telemental health in-person requirement

One way to drive momentum is to join the ATA to advance shared policy priorities. Another way to drive momentum is via the first annual Telehealth Awareness Week (TAW), scheduled for September 19 through 25, 2021. Highlighting and reinforcing the central role that telehealth now plays in the delivery of healthcare services, it’s also a platform for ATA members and partners to support, raise awareness and educate patient communities and consumers, government officials, and clinicians using real stories from real people. Reinforcing the message that telehealth *is* health, TAW founding partners include Ascension, Avera, Intermountain and other care providers, alongside retail giants Best Buy, Walmart and Philips, among others. [Visit ATA’s TAW web page for details.](#)

“There are tools in place already—layers of protection and accountability for patients—through state licensure boards and regulatory agencies,” Zebley explained. “We don’t have to recreate the wheel through federal action and guardrails to make telehealth permanent. We already know how widespread the benefits can be.”

## ABOUT THE SPONSORS

**The Scottsdale Institute (SI)** is a not-for-profit membership organization of over 60 prominent, advanced, not-for-profit health systems and academic medical centers whose mission is to improve healthcare quality, efficiency and personal experience through IT-enabled transformation. Our North Star is thought leadership guided by SI’s Three Pillars of Collaboration, Education and Networking. We convene intimate, informal and collegial forums for senior healthcare executives, including but not limited to CEOs, CMOs, CIOs, CMIOs and CNIOs, to share knowledge, best practices and lessons learned. Our goal: Gather the right people to discuss the right topics at the right moment.

**For more information, visit [scottsdaleinstitute.org](https://scottsdaleinstitute.org)**



### **American Telemedicine Association:**

As the only organization completely focused on advancing telehealth, the American Telemedicine Association is committed to ensuring that everyone has access to safe, affordable, and appropriate care when and where they need it, enabling the system to do more good for more people. The ATA represents a broad and inclusive member network of leading health care delivery systems, academic institutions, technology solution providers and payers, as well as partner organizations and alliances, working to advance industry adoption of telehealth, promote responsible policy, advocate for government and market normalization, and provide education and resources to help integrate virtual care into emerging value-based delivery models.

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