

## Coppersmith Briefs

# NEW AND IMPROVED: Updated State and Federal Telemedicine Laws in the Era of COVID-19

Marki Stewart and Scott Bennett, Coppersmith Brockelman PLC

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As physicians turn to telemedicine services to minimize the spread of COVID-19, state and federal officials have taken swift action to temporarily lessen regulatory burdens for telemedicine encounters. Below is a summary of various Arizona state and federal actions taken in light of COVID-19 related to telemedicine, including links to the original sources.

### Arizona – COVID-19 Telemedicine Legal Updates

Policy	Effects	Notes
<a href="#">ARIZONA GOVERNOR EXECUTIVE ORDER 2020-15 EXPANSION OF TELEMEDICINE</a>	<p><b>Who may provide telehealth services</b></p> <p>Telehealth services may be provided by any Arizona licensed healthcare provider, including physicians, physician assistants, advanced practice nurses, optometrists, psychologists, dentists, occupational therapists, physical therapists, pharmacists, behavioral health providers, chiropractors, athletic trainers, hearing aid dispensers, audiologists, and speech-language pathologists.</p> <p><b>Requirements for commercial health plans</b></p> <p>Commercial health plans are required to provide coverage for all healthcare services provided through telemedicine if the healthcare service would be covered through an in-person visit.</p>	<p>This applies only to insurance plans regulated by the Arizona Department of Insurance; it does not apply to employer-funded (or self-insured) plans.</p> <p>Supersedes A.R.S. § 20-841.09, which formerly required insurance plans to cover only certain enumerated types of health care services delivered via telemedicine.</p>

	<p>Insurers may establish reasonable requirements and parameters for telehealth services, but they may not be more restrictive or less favorable to providers, insured, enrollees, or members than the requirements in-person services.</p> <p>Insurers must reimburse healthcare providers at the same level of payment for a telemedicine visit as they would for an in-person visit.</p> <p>Insurers must allow all electronic means of delivering telehealth, including telephone and video calls.</p> <p>Insurers shall allow a patient’s home to be an approved location to receive telemedicine services.</p> <p><b>Requirements for AHCCCS</b></p> <p>AHCCCS shall require all Medicaid plans in the State of Arizona to cover all healthcare services that are covered benefits to be accessible by telemedicine to AHCCCS member. AHCCCS shall prohibit Medicaid plans from discounting rates for services provided via telemedicine as compared to contracted rates for in-person services.</p> <p><b>Provisions that apply to state regulatory boards</b></p> <p>No Arizona regulatory board shall enforce any statute, rule, or regulation requiring a medical professional to conduct an in-person examination of a patient before issuing a prescription.</p>	
<p><a href="#">ARIZONA GOVERNOR EXECUTIVE ORDER 2020-07</a></p>	<p>Requires all insurers regulated by the State to cover telemedicine visits at a lower out-of-pocket cost for consumers, compared to what they would pay for the same service in-office.</p>	<p>Applies only to insurance plans regulated by the Arizona Department of Insurance; does not apply</p>

		to employer-funded (or self-insured) plans.
<p><b><u>ARIZONA GOVERNOR EXECUTIVE ORDER 2020-29 INCREASED TELEMEDICINE ACCESS FOR WORKERS' COMPENSATION</u></b></p>	<p>Beginning April 14, 2020 and through the end of the public health emergency, all workers' compensation insurance plans, self-insurance plans, and the Industrial Commission's Special Fund are required to do the following:</p> <p>(a) Provide coverage for all healthcare services that can be provided through telemedicine if the healthcare service would be covered were it provided in person.</p> <p>(b) Allow all electronic means of delivering telehealth, including telephone and video calls.</p> <p>(c) Allow a patient's home to be an approved location to receive telemedicine services.</p> <p>Any requirements and parameters for telehealth services may not be more restrictive, or less favorable to providers or injured workers, than are required for in-person services.</p> <p>Telehealth services may be provided by any Arizona licensed healthcare provider type, including physicians, physician assistants, advanced practice nurses, optometrists, psychologists, dentists, occupational therapists, physical therapists, pharmacists, chiropractors, and dentists, among others.</p> <p>No Arizona regulatory board shall enforce any statute, rule, or regulation that would require a medical professional who is licensed by that board and who is authorized to write prescriptions to conduct an in-person examination of an injured worker prior to issuing a prescription.</p> <p>Workers' compensation insurance plans, self-insurance plans, and the Special Fund may not require an injured worker to submit to an in-person medical examination or in-person treatment, and may not suspend rights to</p>	<p>Imposes many of the same requirements of Executive Order 2020-15 (which applied to insurance plans regulated by the Arizona Department of Insurance) on workers' compensation insurance plans, self-insurance plans, and the Special Fund.</p>

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	workers' compensation benefits or otherwise take any adverse action against an injured worker who refuses to submit to in-person examination or treatment.	
<a href="#"><b>STATE OF ARIZONA DECLARATION OF EMERGENCY</b></a>	Allows ADHS to waive licensing requirements to provide healthcare officials with assistance in delivering services during times of heightened demand. <a href="#">More info</a>	See the Arizona Medical Board's response below, creating an emergency temporary licensure process during the state of emergency.
<a href="#"><b>AHCCCS FREQUENTLY ASKED QUESTIONS (FAQs) REGARDING CORONAVIRUS</b></a>	AHCCCS greatly expanded <a href="#">codes available</a> via telephone over the course of the emergency.	AHCCCS guidance for telemedicine delivery and billing in light of COVID-19 available here: <a href="https://azahcccs.gov/AHCCCS/AboutUs/covid19FAQ.html#telehealth">https://azahcccs.gov/AHCCCS/AboutUs/covid19FAQ.html#telehealth</a>
<a href="#"><b>ARIZONA MEDICAL BOARD, TEMPORARY EMERGENCY LICENSURE FOR PHYSICIANS DURING THE COVID-19 STATE OF EMERGENCY</b></a> (Providing for expedited temporary licensure for physicians licensed in other states and physicians with inactive licenses)	<p>MDs licensed in another state are eligible to apply for temporary licensure in the State of Arizona, using the emergency temporary licensure application, available <a href="#">here</a>.</p> <p>The Board will convert an inactive license to a temporary active license using the temporary emergency license application if:</p> <ol style="list-style-type: none"> <li>1. The physician has been on an inactive status for 4 years or less; and</li> <li>2. The physician submits an attestation that she/he has the physical and mental capability to safely practice medicine.</li> </ol> <p>Retired MDs who no longer hold any state license are eligible for the Board's temporary emergency license, if the physician has been out of practice for four years or less.</p>	<p>The Arizona Medical Board has <b>not</b> waived licensure requirements for physicians licensed in other states who provide telemedicine services to Arizona residents. Therefore, a physician with an out-of-state license must secure an emergency temporary license through the Arizona Medical Board before providing telemedicine services to Arizona patients.</p> <p>The Arizona Regulatory Board of Physician Assistants has adopted</p>

	<p>Medical school graduates of an approved school of medicine who have completed 12 months of post-graduate training within the last 6 months, or during the State of Emergency, are eligible for a temporary emergency license.</p> <p>The AMB is extending the time-frame to renew medical licenses with expiration dates between March 1, 2020 and September 1, 2020. Those licenses are extended by six months from their renewal dates.</p>	<p>the same emergency temporary licensure process for Physician Assistants licensed in other states, available <a href="#">here</a>.</p>
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## Federal – COVID-19 Telemedicine Legal Updates

Policy	Effects	Notes
<p><b><a href="#">CORONAVIRUS PREPAREDNESS AND RESPONSE SUPPLEMENTAL APPROPRIATION S ACT, 2020 (HR6074)</a></b> (New Medicare rules for telemedicine encounters during the COVID-19 nationwide public health emergency)</p>	<p>Beneficiaries can receive telehealth services in all settings, rural or urban, including a physician’s office, hospital, nursing home or rural health clinic, as well as from their homes.</p> <p>Telehealth services include common office visits, mental health counseling, and preventive health screenings.</p> <p>Telehealth services are paid under the Physician Fee Schedule at the same amount as in-person services.</p> <p>Doctors, nurse practitioners, clinical psychologists, and licensed clinical social workers are able to offer telehealth to Medicare beneficiaries.</p> <p><a href="#">Fact Sheet</a> <a href="#">FAQs</a></p>	<p>Clinicians can bill immediately for dates of service.</p> <p>Medicare coinsurance and deductible still apply for these services.</p> <p>HHS Office of Inspector General (OIG) is providing flexibility for healthcare providers to reduce or waive cost-sharing for telehealth visits paid by federal healthcare programs.</p> <p>HHS will not conduct audits to ensure that a prior relationship existed between the physician and patient for claims submitted during this public health emergency.</p>

**THE  
CORONAVIRUS  
AID, RELIEF,  
AND ECONOMIC  
SECURITY ACT  
(CARES ACT)  
(HR 784)**

(Additional Medicare telehealth rules and various other federal telehealth actions)

Requires Medicare to pay for telehealth services furnished by Federally Qualified Health Centers (FQHC) and Rural Health Clinics (RHC) to Medicare patients, regardless of the patient’s location; payment rates must be similar to national average payment rates for comparable telehealth services.

Temporarily waives the requirement for periodic in-person visits between home dialysis Medicare patients and physicians.

Allows hospice physicians or nurse practitioners to use telehealth to fulfil face-to-face requirements for Medicare hospice recertification.

The Secretary of Health and Human Services must consider ways to encourage the use of telemedicine for remote patient monitoring and home health services.

Authorizes the Veterans Administration to expand telehealth services, temporarily waives the in-person home visit requirement, and ensures that telehealth is available for homeless veterans.

Provides additional grants to Telehealth Resource Centers and boosts support for expanded broadband services.

Required further action by the Secretary of Health and Human Services, which was subsequently taken on March 30, 2020. See below, “CMS Flexibilities to Fight COVID-19”

**CMS:  
FLEXIBILITIES  
TO FIGHT  
COVID-19** (Further  
telehealth regulation  
rollbacks issued by  
CMS for Medicare  
patients)

Clinicians can now provide more services to beneficiaries via telehealth, including emergency department visits, initial hospital care and hospital discharge day management, initial nursing facility visits, critical care services, custodial care services, home visits, intensive care services, psychological and neuropsychological testing, therapy services, radiation treatment management services, and social worker services.

Clinicians can now provide virtual check-in services and remote patient monitoring services to both new and established patients (previously limited to only established patients).

Licensed clinical social workers, clinical psychologists, physical therapists, occupational therapists, and speech language pathologists can provide e-visits.

A broad range of clinicians can now provide certain services by telephone to their patients.

Removes prior limitations on the number of times certain services can be provided via telehealth, including subsequent inpatient visits, skilled nursing facility visits, and critical care consult codes.

Waives a number of requirements for in-person visits for End Stage Renal Disease and nursing home visits, among others.

For services requiring direct supervision by the physician or other practitioner, that physician

A complete, updated list of all Medicare telehealth services and their codes can be found [here](#).

	<p>supervision can be provided virtually using real-time audio-video technology.</p> <p>Temporarily waives Medicare and Medicaid’s requirements that physicians and non-physician practitioners be licensed in the state where they are providing services. (State requirements still apply.) CMS waives the Medicare requirement that a physician or non-physician practitioner must be licensed in the State in which s/he is practicing for individuals for whom the following four conditions are met: 1) must be enrolled as such in the Medicare program, 2) must possess a valid license to practice in the State which relates to his or her Medicare enrollment, 3) is furnishing services – whether in person or via telehealth – in a State in which the emergency is occurring in order to contribute to relief efforts in his or her professional capacity, and 4) is not affirmatively excluded from practice in the State or any other State that is part of the 1135 emergency area.</p>	
<p><b>DHHS NOTIFICATION OF ENFORCEMENT DISCRETION</b> (Waiver of certain HIPAA rules for telehealth remote communications during the COVID-19 nationwide public health emergency)</p>	<p>OCR will not impose penalties for noncompliance with the HIPAA regulatory requirements during the COVID-19 nationwide public health emergency.</p> <p>This exercise of discretion applies to telehealth provided for any reason, regardless of whether the telehealth service is related to the diagnosis and treatment of health conditions related to COVID-19.</p>	<p>A covered health care provider can use any non-public facing remote communication product to communicate with patients.</p> <p>Providers are encouraged to notify patients that these third-party applications potentially introduce privacy risks, and should enable all available encryption and privacy modes when using such applications.</p>



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		Vendors that provide HIPAA-compliant video communication products: Skype for Business/Microsoft Teams; Updox; VSee; Zoom for Healthcare; Doxy.me; Google G Suite Hangouts Meet; Cisco Webex Meetings/Webex Teams; Amazon Chime; GoToMeeting.
<b>DEA's RESPONSE TO COVID-19</b> (New rules for prescribing controlled substances via telemedicine)	DEA-registered practitioners may begin issuing prescriptions for schedule II through V controlled substances to patients for whom they have not conducted an in-person medical evaluation if all of these conditions are met: <ul style="list-style-type: none"> <li>• The prescription is issued for a legitimate medical purpose by a practitioner acting in the usual course of his/her professional practice</li> <li>• Telemedicine communication is conducted using an audio-visual, real-time, two-way interactive communication system.</li> <li>• The practitioner is acting in accordance with applicable Federal and State law.</li> </ul> Practitioners may issue the prescription using any of the methods of prescribing currently available adhering to DEA regulations, including issuing a prescription electronically or by calling in a prescription to the pharmacy.	This is a waiver of the federal Ryan Haight Act's requirement that practitioners must conduct an in-person evaluation of patients before writing a prescription for a controlled substance.
<b>DEA GUIDANCE FOR OPIOID TREATMENT PROGRAM PRACTITIONERS</b> (Permits qualified opioid treatment practitioners to	Beginning March 31, 2020, practitioners registered with the DEA as an opioid treatment program (OTP) and have met the Substance Abuse and Mental Health Services Administration (SAMHSA) qualifications to dispense buprenorphine for maintenance or detoxification treatment for opioid use disorder (DATA-waived practitioners) may prescribe	Waives the DEA's rule requiring a real-time audio-video, two-way interactive communication system for qualified providers prescribing buprenorphine for opioid use disorder.

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<p>prescribe buprenorphine after a telephone consultation)</p>	<p>buprenorphine following a telephone call with the patient if the provider determines that an adequate evaluation of the patient can be accomplished via the use of a telephone. The DEA stated that, for the duration of the public health emergency, “OTPs should feel free to dispense, and DATA-waived practitioners should feel free to prescribe, buprenorphine to new patients with OUD for maintenance treatment or detoxification treatment following an evaluation via telephone voice calls, without first performing an in-person or telemedicine evaluation.”</p>	
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## COVID-19 Telemedicine Resources

Organization	Document
<b>FEDERATION OF STATE MEDICAL BOARDS</b>	<a href="#">Updated Spreadsheet of States No Longer Requiring Licensure of Physicians</a>
<b>CENTER FOR CONNECTED HEALTH POLICY</b>	<a href="#">Telehealth Coverage Policies in the Time of COVID-19</a>
<b>CENTER FOR CONNECTED HEALTH POLICY</b>	<a href="#">COVID-19-Related State Actions</a>
<b>SOUTHWEST TELEHEALTH RESOURCE CENTER</b>	<a href="#">Various resources</a>
<b>CMS</b>	<a href="#">General Provider Telehealth and Telemedicine Toolkit</a> Good resource for physicians wanting to establish a telemedicine practice

The logo for Coppersmith Brockelman Lawyers is centered at the top of the page. It features the name 'COPPERSMITH' above 'BROCKELMAN' in a large, white, sans-serif font. A thin white horizontal line separates the two names. Below 'BROCKELMAN', the word 'LAWYERS' is written in a smaller, white, sans-serif font. The background of the logo is a dark blue image of a city skyline.

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Marki Stewart has a special focus and interest in telemedicine, including licensing, reimbursement, credentialing, and security issues. She has represented various health care providers before regulatory boards and bodies, including the Arizona Medical Board, health insurance disciplinary committees, and the Office for Civil Rights. She has also conducted hearings before government agencies.

Scott Bennett advises health care providers and businesses on the use of current and emerging technologies, data privacy and security, and compliance issues. Scott is the chair of the digital health affinity group of the American Health Law Association, and is a Certified Information Privacy Professional through the International Association of Privacy Professionals (CIPP/US).

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