

Coppersmith Briefs

New Legislation Makes Telehealth More Accessible in Arizona

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June 24, 2021

On May 7, 2021, the Governor signed [House Bill 2454](#) into law, a sweeping telehealth bill intended to expand access to telehealth in Arizona. This comprehensive bill amends 18 statutes and adds four new statutes, including provisions that address permissible telehealth modalities, reimbursement for telehealth services, and how providers licensed in other states may provide services to Arizona patients via telehealth, among other wide-ranging changes.

At the outset, this bill represents a change in terminology, replacing all former references in the Arizona Revised Statutes to “telemedicine” with “telehealth.” Whereas “telemedicine” was restrictively defined to include only interactive audio, video or data communications, “telehealth” is now more expansively defined as “the interactive use of audio, video or other electronic media, including asynchronous store-and-forward technologies and remote patient monitoring technologies, for the practice of health care” and includes the use of an audio-only telephone “if an audio-visual telehealth encounter is not reasonably available due to the patient’s functional status, the patient’s lack of technology or telecommunications infrastructure limits, as determined by the health care provider.” Note, however, that telehealth does not include the use of a fax machine, instant message, voice mail, or email.

The bill also amends the definition of “health care providers” to include additional types of professionals who can practice telehealth, including chiropractors, dispensing opticians, optometrists, physical therapists, occupational therapists, respiratory care givers, acupuncturists, athletic trainers, massage therapists, nursing care institution administrators and assisted living facility managers, midwives, hearing aid dispensers, audiologists, and speech language pathologists, as well as health care institutions licensed by ADHS.

The bill includes comprehensive requirements for health care provider regulatory boards, including a mandate that such boards adopt a new registration for out-of-state providers who wish to provide telehealth services to Arizona patients. This means that a telehealth provider licensed in another state need not obtain full licensure in Arizona prior to treating Arizona patients via telehealth; rather, they need only complete a simple registration with the appropriate regulatory board. Registrations are permitted for qualified providers licensed in other states without disciplinary history. However, out-of-state providers who are registered to provide telehealth services to Arizona patients must abide by all Arizona laws and regulations, must consent to jurisdiction in

Arizona for any disciplinary action or legal proceeding, and may not provide in-person services to any Arizona patient.

The bill also prohibits health care provider regulatory boards from enforcing any statute that would require a licensee to provide an in-person examination of the patient before issuing a prescription, except as required by federal law. The bill then revises the definitions of “unprofessional conduct” for various types of providers, permitting those providers to conduct a physical or mental health examination via telehealth prior to prescribing medications or devices.

In addition, the bill imposes a new requirement that the health care provider make a good faith determination that telehealth is clinically appropriate in any given situation. The provider is required to determine whether a health care service should be provided through telehealth instead of in person, considering whether the nature of the services necessitates physical interventions and close observation, as well as the circumstances of the patient.

The health care provider must also determine the telehealth communication medium that allows the provider to most effectively assess, diagnose, and treat the patient. Factors that the provider may consider include the patient’s lack of access to technology or limits in telecommunications infrastructure.

Significantly, the bill establishes a telehealth advisory committee on telehealth best practices, consisting of representatives from a variety of health care professions and agencies. The committee is charged with reviewing national standards and peer review literature for telehealth best practices, and conducting public meetings regarding the efficacy of various communications media. The committee is required to adopt telehealth best practice guidelines, as well as recommendations regarding health care services that may be appropriately provided through an audio-only telehealth format. Health care providers must then abide by those best practice guidelines and recommendations when providing care to Arizona patients.

Finally, the bill includes comprehensive terms regarding reimbursement for telehealth services provided in Arizona. Insurers may apply only the same limits or exclusions on a health care service provided through telehealth that are applicable to an in-person encounter for the same health care service, except for procedures or services which are not appropriate to be provided through telehealth. Insurers must reimburse providers at the same level of payment for equivalent in-person services provided through telehealth using an audio-visual format, and must reimburse providers at the same level of payment for equivalent in-person behavioral health and substance use disorder services if provided through an audio-only format. Insurers must also cover services provided through an audio-only telephone encounter if that service is covered by Medicare or AHCCCS when provided through audio-only telephone; however, beginning in 2022, insurers must cover audio-only services if the telehealth advisory committee recommends that the service may appropriately be provided through an audio-only encounter.



In short, HB 2454 represents a significant effort to make telehealth more accessible in Arizona, which is welcomed by telehealth providers and patients alike, particularly in the wake of COVID-19. Although there are still more barriers to the expansion of telehealth, this bill goes a long way toward making telehealth more available, convenient, and affordable for Arizona patients.

[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.

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