



Congress Should Pass the Tele-Mental Health Improvement Act, S. XXXX

introduced by Sens. Tina Smith (D-MN) and Lisa Murkowski (R-AK)

The Tele-Mental Health Improvement Act places coverage and reimbursement for mental health and substance use disorder services delivered via telehealth on the same footing as services provided in-person. This bill recognizes that providers should not be penalized for offering these essential services via telehealth to underserved patients during the COVID-19 public health emergency, ensuring that patients have adequate access to care.

Specifically, **S. XXXX** supports providers of mental health and substance use disorder services who offer their services via telehealth during and shortly after the COVID-19 pandemic by:

- Requiring self-insured health (ERISA) plans and health insurers to reimburse for mental health and substance use disorders services provided via telehealth (including those services furnished via audio-only communication) at the same rate as in-person services (if telehealth for those treatment services would otherwise be covered);
- Preventing plans from imposing more restrictive barriers to coverage (such as prior authorization requirements or requiring the patient have a preexisting relationship with the provider) for telehealth services that are more restrictive than in-person services;
- Setting clear enforcement protocols for compliance with the above two provisions; and
- Requiring the Department of Health and Human Services (HHS) to issue a report on the impact of the telehealth parity measures on the use of telehealth and in-person services.

Access to telehealth services is an especially critical tool to help remedy long-standing disparities in access to mental and behavioral health services, and serve as a lifeline to mental and behavioral health services for many individuals and communities such as older adults, individuals with disabilities, people in rural and frontier areas, lower-income families, and racial and ethnic minority communities.

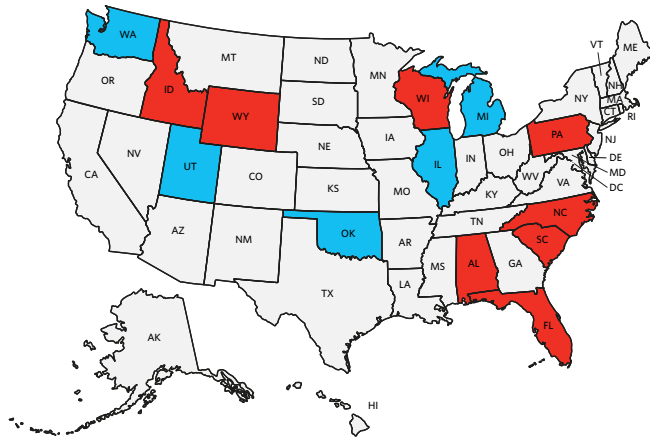
At the federal level, recent changes to Medicare coverage policies have proven successful in extending access to evidence-based mental and behavioral health services, saving lives and costs in the process. At the state level, recent insurer changes to coverage and reimbursement rules for telehealth services, including services furnished by audio-only communication, boosted access to mental and behavioral health care, particularly in underserved areas and communities. As states' Public Health Emergency (PHE) telehealth expansions are ending, and as many insurers have rolled back certain telehealth expansions, patients and providers are faced with a confusing and shifting array of different telehealth policies. These rollbacks have already started reducing critical mental health services during this time of greatly increased demand for mental health services.

- **While 43 states and the District of Columbia currently have laws addressing telehealth coverage by private insurers, those requirements do not extend to ERISA plans.** Most Americans have health care coverage through their employers and about 60% of employer-based coverage is ERISA plans. Thus, the fact that ERISA plans are not subject to any telehealth coverage/reimbursement mandates has left a wide gap among Americans without access to covered telehealth services. This creates barriers to care for a significant number of patients nationwide.

Unfortunately, providers face a confusing array of conflicting state rules on the extent to which plans can cover these services, under what conditions, and at what reimbursement rates. While the vast majority of states have laws

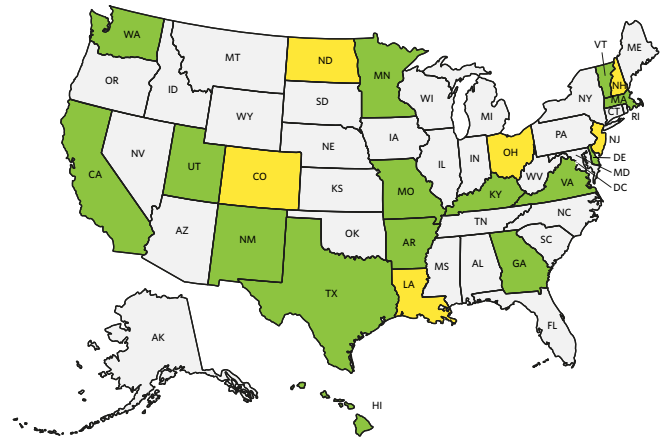
referencing private insurance coverage of telehealth services, states allow insurers to impose different conditions on coverage or restrict the providers that can offer telehealth services (See Fig. 1 below). Additionally, only 15 states currently require that insurers reimburse for telehealth services at parity with in-person services (See Fig. 2 below).

**FIGURE 1
STATES WITHOUT OR WITH LIMITED TELEHEALTH
COVERAGE PROVISIONS**



- No telehealth coverage law
- Limited telehealth coverage law

**FIGURE 2
STATES WITH TELEHEALTH REIMBURSEMENT PROVISIONS
AND FULL REIMBURSEMENT PARITY LAWS**



- Law addressing reimbursement for telehealth
- Reimbursement parity laws

Source: Foley & Lardner, LLP, *50-State Survey of Telehealth Commercial Insurance Laws* (Feb. 2021), available at: <https://www.foley.com/-/media/files/insights/publications/2021/02/21mc30431-50state-telemed-reportmaster-02082021.pdf>.