

**Department of Health Care Services
Proposed Trailer Bill Legislation**

Medi-Cal Telehealth Proposal

FACT SHEET

The Department of Health Care Services (DHCS) proposes to make changes within the Medi-Cal program with respect to Medi-Cal covered benefits and services provided, when clinically appropriate, via telehealth, telephonic/audio-only, remote patient monitoring, and other virtual communication modalities. These changes would apply beyond the COVID-19 Public Health Emergency (PHE) across various delivery systems and programs, including but not limited to medical/physical health, behavioral health, federal waivers (e.g. 1915(c)), Local Education Agency Billing Option Program, and Targeted Case Management (TCM).

Specifically, this proposal would make statutory changes to align with its DHCS Telehealth Recommendations Post-PHE public document (public document). The recommendations document provides for an expanded overview and justification of the changes being proposed in this trailer bill proposal. This trailer bill would implement the telehealth proposals requiring statutory changes in the following areas:

1. Federally Qualified Health Centers (FQHCs) and Rural Health Clinics (RHCs);
2. Asynchronous (i.e. store and forward) and synchronous telehealth, telephonic/audio-only, remote patient monitoring services, and other virtual communications;
3. State Plan Drug Medi-Cal; and
4. Managed care network adequacy standards.

Background: In response to the COVID-19 PHE, DHCS issued [guidance](#), which has been updated on an ongoing basis, to implement broad flexibilities relative to telehealth, telephonic/audio-only, and other virtual communication modalities. This has enabled Medi-Cal's delivery systems and programs to adjust to meet the health needs of our beneficiaries.

Providing telehealth flexibilities during the public health emergency proved to be critically important at a time when in-person care brought risk of exposure. Post-PHE, DHCS is recommending broad changes to allow additional Medi-Cal covered benefits and services to be provided via telehealth modalities across all delivery systems, when clinically appropriate. These changes are detailed in the DHCS Telehealth Recommendations Post-PHE document.

Justification for the Change: DHCS seeks to provide increased access to services via telehealth, telephonic/audio-only, remote patient monitoring, and other virtual communication modalities as a means to promote adequate, culturally responsive, patient-centered equitable access to services, while also maintaining a standard of care and stewardship of public resources.

DHCS has identified specific telehealth policies that require statutory changes. The recommendations document provides for an expanded overview and justification of the changes being proposed in this trailer bill proposal, including: 1) FQHCs and RHCs, 2) asynchronous telehealth, synchronous telehealth, telephonic/audio-only, and remote patient

monitoring services; 3) State Plan Drug Medi-Cal; and 4) managed care network adequacy standards.

Federally Qualified Health Centers and Rural Health Clinics

FQHCs and RHCs are reimbursed for services provided in accordance with the Welfare and Institutions (W&I) Code Section 14132.100 definition of a visit, which includes the requirement of a face-to-face encounter between the clinic patient and billable clinic providers including a physician, physician assistant, nurse practitioner, certified nurse-midwife, clinical psychologist, licensed clinical social worker, or a visiting nurse. Prior to the COVID-19 PHE, FQHCs and RHCs billable providers were allowed to provide Medi-Cal covered benefits or services via synchronous telehealth (audio-visual, two-way communication) to “established” patients. The services rendered via telehealth must be FQHC or RHC covered services. For purposes of asynchronous telehealth services, FQHCs/RHCs were limited to providing teledermatology, teleophthalmology and teledentistry services. The COVID-19 PHE flexibilities allowed FQHCs and RHCs to “establish” patients via synchronous telehealth as well as waive the site limitation for patients receiving telehealth services in their home from FQHCs and RHCs.

Proposed Changes Post PHE

- Expand the definition of a visit to allow specified FQHC and RHC providers to establish a patient located within its federal designated service area through synchronous telehealth (proposed W&I Code Section 14132.100(g)(4)(A)). DHCS will make permanent the removal of the site limitation.
- Require DHCS to seek any federal approvals it deems necessary implement these changes; implement only if and to the extent federal approvals are obtained; federal financial participation (FFP) is available and is not otherwise jeopardized (proposed W&I Code Section 141321.100(g)(4)(B)).
- Require these changes be effective July 1, 2021, or the effective date(s) reflected in the applicable federal approvals obtained, whichever is later (proposed W&I Code Section 141321.100(g)(4)(C)).
- Authorize DHCS to implement, interpret, and make specific these changes by means of all-county letters, provider manuals, provider bulletins, and similar instructions, without taking any further regulatory action (proposed W&I Code Section 141321.100(g)(4)(D)).

Asynchronous Telehealth, Synchronous Telehealth, Telephonic/Audio-Only, Remote Patient Monitoring, and Other Virtual Communication Modalities

DHCS’ pre-COVID-19 PHE telehealth policy aligns with state and federal laws and regulations.

DHCS is recommending broad changes to continue to allow various additional Medi-Cal covered benefits and services to be provided via telehealth modalities across all delivery systems, when clinically appropriate. While the recommended changes will not incorporate all of the flexibilities allowed for during the COVID-19 PHE, DHCS’ approach promotes access to quality health care services, inclusive of behavioral health and substance use disorder

services, and helps to advance equity in availability of modalities across delivery systems while maintaining beneficiary choice, preserving provider flexibility, and protecting the integrity (from both a fiscal and quality perspective) of the program.

Proposed Statutory Changes Post PHE

The below changes outline proposed statutory changes post-PHE, relative to our overarching telehealth policy changes. For additional information on proposed policy changes, please refer to the separate, “public document.”

- Establish that in-person, face-to-face contact between a health care provider and a patient is not required under the Medi-Cal program for those covered health services and provider types designated by DHCS, when providing synchronous telehealth, telephonic/audio-only, remote patient monitoring or other permissible virtual communication modalities subject to federal approval (proposed W&I Code Section 14132.725(b)(1)).
- Requires DHCS to reimburse applicable services provided via synchronous telehealth at the same amounts that would otherwise apply to in-person, face-to-face delivered services (W&I Code Section 14132.725(b)(3)(C)).
- Make applicable health care services delivered through telehealth modalities subject to billing, reimbursement and utilization management policies developed by DHCS. DHCS would be authorized to make separate fee schedules for applicable health care services delivered through asynchronous telehealth, telephonic/audio-only, remote patient monitoring and other permissible virtual communication, subject to federal approval (W&I Code Section 14132.725(a) and proposed (b)(3)(B)).
- Require DHCS to designate and periodically update the covered health care services and provider types, which are appropriately delivered through synchronous telehealth, telephonic/audio-only, remote patient monitoring, other permissible virtual communication, or the asynchronous telehealth process (proposed W&I Code Section 14132.725(b)(2)).
- Make these changes effective July 1, 2021, or the effective date(s) reflective of when federal approval was obtained, whichever is later (proposed W&I Code Section 14132.725(b)(4)).
- Would authorize applicable health care services provided through synchronous telehealth to an enrollee of a Medi-Cal managed care plan, as defined, to be reimbursed by the Medi-Cal managed care plan to be equivalent to in-person, face-to-face interaction unless plan and network provider, as defined, mutually agree to another reimbursement (W&I Code Section 14132.725 proposed (c)).
- Clarify that applicable health care services provided through asynchronous telehealth, synchronous telehealth, telephonic/audio-only, remote patient monitoring, or other permissible virtual communication modalities shall comply with HIPAA requirements, the Medicaid State Plan, and any other applicable state and federal statutes and regulations (W&I Code Section 14132.725 proposed (d)).
- Require DHCS to seek any federal approvals it deems necessary to implement these changes and implement only to the extent that any necessary federal approvals are obtained, FFP is available and not otherwise jeopardized (proposed W&I Code Section 14132.725(f)).

State Plan Drug Medi-Cal Services

Assembly Bill (AB) 2861 (Salas, Chapter 500, Statutes of 2018) allows providers to administer SUD individual counseling services to beneficiaries via telehealth; however, it can only be implemented after a Medicaid State Plan Amendment (SPA) is approved by the Centers for Medicare and Medicaid Services (CMS) to allow federal reimbursement for SUD individual counseling services via telehealth.

On September 20, 2020, DHCS submitted SPA 20-0006 to CMS for approval with an effective date of July 1, 2020. Once approved, the SPA will allow federal reimbursement for SUD individual services provided via telehealth. SPA 20-0006 will also specify that telehealth is defined as specified in B&P Code Section 2290.5, which will require providers to obtain consent from all participants of telehealth group counseling sessions, and take necessary security precautions in compliance with HIPAA (Code of Federal Regulations (CFR), Title 45, Parts 160 and 164), and 42 CFR Part 2. DMC-ODS currently reimburses for telehealth services.

Proposed Changes Post PHE

- Expand reimbursable synchronous telehealth services to State Plan Drug Medi-Cal certified providers from solely individual counseling to all medically necessary Drug Medi-Cal reimbursable services, including through telephonic/audio-only (W&I Code Section 14132.731(a)).
- Require Drug Medi-Cal services provided through telehealth or telephonic/audio-only be subject to billing, reimbursement and utilization management policies developed by DHCS; and authorize DHCS to establish separate fee schedules for Drug Medi-Cal reimbursable services, subject to federal approval (proposed W&I Code Section 14132.731(b)).
- Require Drug Medi-Cal reimbursable services through telehealth and telephonic/audio-only be provided in compliance with the privacy and security requirements, pursuant to state and federal law (proposed W&I Code Section 14132.731(c)).
- Extend the date from July 1, 2022 to July 1, 2024, by which DHCS is required to adopt regulations (proposed W&I Code Section 14132.731(e)).

Network Adequacy in the Managed Care Delivery Systems

Existing law establishes network adequacy requirements, including time and distance standards, for Medi-Cal managed care plans (MCPs), which include MCPs, County Mental Health Plans (MHPs), Dental Managed Care plans, and DMC-ODS providers, to the extent otherwise applicable. Existing law also establishes the requirements and process by which alternative access standards are submitted.

Proposed Changes Post PHE

- Expand the use of synchronous telehealth to meet network adequacy standards for Medi-Cal managed care plans by moving former Section 14197(e)(4) to proposed Section 14197(e) to make it a separate subdivision outside of alternative access standard (AAS) requests. This change is intended to expand access to synchronous telehealth services that are limited to means of meeting AAS requests under current

14197(e)(4).

- Clarify that a Medi-Cal managed care plan with a previously approved request does not need to re-submit the AAS request annually unless the Medi-Cal managed care plan's current approved AAS requires modifications. Require Medi-Cal managed care plans to submit a complete AAS submission every three years and at any time the Medi-Cal managed care plan is unable to meet time or distance standards (proposed W&I Code Section 14197(f)(2)(B)).
- Require a Medi-Cal managed care plan to close out any corrective action plan deficiencies in a timely manner to verify member access is adequate (proposed W&I Code Section 14197(f)(2)(C)).
- Require Medi-Cal managed care plans to continually work on improving network adequacy and access for Medi-Cal members (proposed W&I Code Section 14197(f)(2)(C)).
- Extend the sunset date from January 1, 2022, to January 1, 2026 (proposed W&I Code Section 14197(l)).

Summary of Arguments in Support:

- Allows expanded access to telehealth modalities for certain health care services and settings, which will address some of the most challenging problems of our current health care system: access to care, cost-effective delivery, and distribution of limited providers.
- Provides beneficiaries with more alternatives in accessing covered benefits and services, especially those who may have a need to routinely see multiple providers given complex medical conditions.
- Provides clinicians with various options for the provision of covered benefits and services provided to enrolled beneficiaries who may not always have a means to access care in the traditional manner.
- Supports the health care safety net and builds an infrastructure that can be ready to meet the needs of enrolled beneficiaries during and post PHE.
- Increases access to telehealth in Medi-Cal to verify patients have access to physicians and other clinicians.
- Helps DHCS to further its mission, vision, core values, and strategic plan to preserve and improve the overall health and well-being of Californians.
- Allows Medi-Cal managed care plans to continue contracting efforts to build robust provider networks and meet time or distance standards, and allows beneficiaries to continue receiving covered services through providers within the Medi-Cal managed care plans' provider networks.

Estimate Issue # and Title: PC 239: Remote Patient Monitoring