

Tennessee General Assembly Significantly Expands Telehealth Flexibility and Payment Parity

Yesterday (August 13), while in special session ordered by Gov. Bill Lee, the Tennessee General Assembly overwhelmingly passed an amended version of [HB8002](#), which significantly enhances telehealth flexibility and payment parity for health care providers and patients in Tennessee. However, some important changes will be temporary. This legislation has been referred to the governor for his action and has not yet been signed into law.

Most importantly, this legislation will implement temporary payment parity for telehealth. Tennessee's existing telehealth parity law already requires some coverage parity and also addresses payment parity to a very limited extent.

For example, with limited exceptions, health insurers subject to Tennessee law must:

- Provide coverage for otherwise covered health care services when those same services are delivered through telehealth (notably, the concept of "telehealth" is restrictive and does not necessarily include services provided to patients in their homes via telehealth) and cover those telehealth services in a manner consistent with coverage of the same in-person services
- Reimburse telehealth services they do cover without distinction or consideration of geographic location, designation, or classification
- Not exclude a service from coverage solely because it is provided via telehealth

However, existing law does not generally require that telehealth services be reimbursed in a manner consistent with the same in-person services. HB8002 changes that by requiring insurers to reimburse for telehealth services in a manner consistent with what an applicable health insurance policy or contract provides for in-person encounters for the same service. This is a major development for health care providers serving patients via telehealth. As of right now, this new requirement will only remain in effect until April 1, 2022. It remains to be seen whether the General Assembly will take further action to extend the reimbursement parity requirement beyond that date.

HB8002 also makes a number of other changes to Tennessee law concerning telehealth, including the following:

- Generally speaking, telehealth coverage requirements only apply with respect to health care services that are medically necessary, as defined in the legislation.
- For health care service encounters deemed "telehealth" encounters for purposes of Tennessee law, insurers will be required to pay the originating site that hosts the patient during the telehealth encounter (such as a physician office or hospital) an originating site fee in accordance with Centers for Medicare and Medicaid Services rules.
- Telehealth encounter requirements have been significantly loosened in the context of "provider-based telemedicine," which is a new concept introduced by this legislation. Specifically, this context allows for treatment of the patient when "[t]he patient is located at a location the patient deems appropriate to receive the health care service that is equipped to engage in the [prescribed] telecommunication." This appears to contemplate treatment of patients in their own homes and is a great deal more flexible than the standard telehealth definition, which requires that the patient be located at a "qualified site" such as a physician office or hospital, unless the insurer chooses to allow another type of site. However, this greater flexibility is only available when certain requirements are met. For example, the provider must have seen the patient in person in the immediately preceding 16 months.
- For purposes of Tennessee's telehealth practice statute, the definition of "health care provider" has been clarified to include (i) licensed alcohol and drug abuse counselors and (ii) any provider licensed under Title 63 of the Tennessee Code (which is the title that addresses licensing of individual health care practitioners). Both

changes—and the latter change in particular—should facilitate the provision of telehealth services by a broad range of health care practitioners. However, the latter change in (ii), which appears to be focused on the current pandemic, expires on April 1, 2022. After that date, the reference to licensed providers will change such that licensing boards could potentially implement more restrictive standards for telehealth practice for some practitioners.

- HB8002 provides for potential coverage of remote patient monitoring services by insurers if the particular services are covered by Medicare.
- Telehealth, as defined under Tennessee law, will be subject to utilization review under Tennessee's Health Care Service Utilization Review Act.

If you have any questions about this major development in Tennessee health care law, please contact [Cal Marshall](#) or another member of our [Health Care section](#).

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