

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

**Medi-Cal Telehealth Policy**

**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, including video synchronous interaction, audio-only synchronous interaction, 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 [Post COVID-19 Public Health Emergency Telehealth Policy Recommendations](#). The document was informed by the Telehealth Advisory Workgroup convened pursuant to Section 380 of Assembly Bill 133 (Committee on Budget, Chapter 143, Statutes of 2021) (AB 133), for the purposes of informing the 2022-23 Governor's Budget and the development of post-PHE telehealth policies. The 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), including payment parity, patient consent, and establishment of new patients.
2. Baseline coverage of telehealth, including payment parity, patient consent, establishment of new patients, patient choice of telehealth modality and access to in-person care.
3. State Plan Drug Medi-Cal (DMC), including expanding services available via telehealth to include audio-only telehealth and telehealth for all clinically appropriate DMC services.
4. Managed care network adequacy standards, including allowing DHCS to authorize a managed care plan to use telehealth to meet 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, including video synchronous interaction, audio-only synchronous interaction, and 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 PHE 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](#).

As part of the Budget Act of 2021 and the health omnibus budget trailer bill, Section 380 of AB 133 (Chapter 143, Statutes of 2021) requires DHCS to seek any necessary federal approvals to extend the approved waiver or flexibility related to the delivery and reimbursement of services via telehealth in the Medi-Cal program through the duration of the PHE or December 31, 2022, whichever is later. In addition, the bill also authorized DHCS to establish the use of remote patient monitoring as an allowable telehealth modality for covered health care services and provider types it deems appropriate.

**Justification for the Change:** DHCS seeks to provide increased access to services via video synchronous interaction, audio-only synchronous interaction, and virtual communication modalities as a means to promote adequate, culturally responsive, patient-centered equitable access to services, while also maintaining the standard of care and stewardship of public resources. Note: The term “video synchronous interaction” is used to distinguish synchronous telehealth with a video component from “audio-only synchronous interaction” given that audio-only is also considered synchronous as defined in Business and Professions Code Section 2290.5.

DHCS has identified specific telehealth policies that require statutory changes.

### **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 visual synchronous interaction (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

- Allows a visit to include billable encounter using a video or audio-only synchronous interaction when services delivered through such an interaction meet the standard of care (proposed W&I Code Section 14132.100(g)(4)(A)(i) and (ii)).
- Allows specified FQHC and RHC providers to establish a patient (located within its federal designated service area if the provider is an FQHC) through video synchronous interaction (proposed W&I Code Section 14132.100(g)(4)(A)(i)).
- Prohibits establishment of a new patient relationship using an audio-only synchronous interaction and allows the department to provide for specific exceptions to this prohibition, which shall be developed in consultation with stakeholders (proposed W&I Code Section 14132.100(g)(4)(A)(iii)).
- Allows the establishment of patients via asynchronous store-and-forward when a

patient is physically present at an originating site that is a licensed or intermittent site of the FQHC or RHC at the time the service is performed, the individual who collects the patient records at the originating site is an employee of the FQHC or RHC, and the FQHC or RHC determines that the provider is able to meet the standard of care (proposed W&I Code Section 14132.100(g)(4)(A)(iv)). This change is a narrow exception to facilitate the Virtual Dental Home model of dental care.

- Requires, pursuant to an effective date designated by DHCS that is no sooner than January 1, 2024, a provider furnishing services through audio-only telehealth to also offer health care services via video synchronous interaction (proposed W&I Code Section 14132.100(g)(4)(B)(i)).
- Requires, pursuant to an effective date designated by DHCS that is no sooner than January 1, 2024, a provider furnishing services through telehealth to either offer the service in-person or to arrange for a referral and warm hand-off to in-person services (proposed W&I Code Section 14132.100(g)(4)(B)(ii)).
- Requires an FQHC or RHC to explain to a beneficiary, at least once before initially providing services to the beneficiary through telehealth, their rights to access services in-person, that use of telehealth is voluntary and that consent for the use of telehealth can be withdrawn at any time without affecting the right to future care or treatment, that Medi-Cal covers nonmedical transportation services to access in-person visits when other available resources have been reasonably exhausted, and potential limitations or risks related to receiving services through telehealth as compared to an in-person visit, to the extent any limitations or risks are identified by the provider. Requires DHCS to develop, in consultation with stakeholders, model language for this purpose (proposed W&I Code Section 14132.100(g)(4)(B)(iii)).
- Specifies provisions shall be implemented only if and to the extent federal approvals are obtained and federal financial participation (FFP) is available and is not otherwise jeopardized (proposed W&I Code Section 141321.100(g)(4)(C)).
- Requires these changes be effective January 1, 2023, or the effective date(s) reflected in the applicable federal approvals obtained, whichever is later (proposed W&I Code Section 14132.100(g)(4)(D)).
- Authorizes DHCS to implement, interpret, and make specific these changes by means of all-county letters, provider manuals, information notices, provider bulletins, and similar instructions, without taking any further regulatory action (proposed W&I Code Section 141321.100(g)(4)(E)).
- Specifies telehealth services are subject to the billing, reimbursement and utilization management policies developed by the department (proposed W&I Code Section 141321.100(g)(4)(F)).
- Clarifies applicable health care services provided through telehealth shall comply with Health Insurance Portability and Accountability Act (HIPAA) of 1996 Parts 160 and 164 requirements, the Medicaid State Plan, and any other applicable state and federal statutes and regulations (proposed W&I Code Section 141321.100(g)(4)(G)).

## **Baseline Coverage of Telehealth in Medi-Cal**

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. DHCS' approach preserves most of the flexibilities put in place during the PHE. These changes promote access to quality health care services, inclusive of behavioral health and substance use disorder services, and advance equity in availability of modalities across delivery systems while maintaining beneficiary choice, preserving provider flexibility, and protecting the integrity of the program from both a fiscal and quality perspective.

### Proposed Changes Post PHE

*Please note the changes below reflect where statutory changes are needed to implement DHCS's proposed telehealth policies. For additional information on proposed policy changes, including those that do not require statutory changes, please refer to the separate, "public document," as referenced above.*

- Establishes 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 visual synchronous interaction, audio-only synchronous interaction, asynchronous store-and-forward, remote patient monitoring, or other permissible virtual communication modalities subject to federal approval (proposed W&I Code Section 14132.725(b)).
- Requires DHCS to designate and periodically update the covered health care services and provider types that may be appropriately delivered through synchronous video telehealth, audio-only, remote patient monitoring, other permissible virtual communication, or the asynchronous telehealth process (proposed W&I Code Section 14132.725(b)(2)(A)).
- Makes applicable health care services delivered through telehealth modalities subject to billing, reimbursement, and utilization management policies developed by DHCS. Requires utilization management protocols adopted by DHCS to be consistent with and no more restrictive than those authorized for health care service plans (W&I Code Section 14132.725 (b)(2)(B)).
- Requires, pursuant to an effective date designated by DHCS that is no sooner than January 1, 2024, a provider furnishing services through audio-only telehealth to also offer health care services via video synchronous interaction (proposed W&I Code Section 14132.725(c)(1)).
- Requires, pursuant to an effective date designated by DHCS that is no sooner than January 1, 2024, a provider furnishing services through telehealth to either offer the service in-person or to arrange for a referral and warm hand-off to in-person services (proposed W&I Code Section 14132.725(c)(2)(A) and (B)).
- Requires DHCS to consider recommendations from consumer advocates on ways to maintain access to in-person services without unduly restricting access to telehealth services (proposed W&I Code Section 14132.725(c)(3)).
- Authorizes a health care provider to establish a new Medi-Cal patient relationship with a beneficiary via video synchronous interaction consistent with any requirements imposed by the department (proposed W&I Code Section 14132.725(c)(4)).
- Prohibits establishment of a new patient relationship using telehealth modalities other than visual synchronous interaction and allows the department to provide for specific

exceptions to this prohibition, which shall be developed in consultation with stakeholders (proposed W&I Code Section 14132.725(c)(5)).

- Permits DHCS to establish separate fee schedules for applicable health care services delivered via remote patient monitoring or other permissible virtual communication modalities (proposed W&I Code Section 14132.725(c)(6)).
- Requires DHCS to reimburse applicable services provided via synchronous telehealth (video or audio-only) at the same amounts that would otherwise apply to in-person, face-to-face services, for services that meet the standard of care and meet requirements of the service code being billed (W&I Code Section 14132.725 (f)(1)).
- Implements a similar payment parity requirement for managed care plan payments to providers, unless the plan and provider mutually agree to reimbursement in different amounts (proposed W&I Code Section 14132.725(f)(2)).
- Requires DHCS to develop a research and evaluation plan by January 1, 2023, and allows the department to contract for or amend an existing contract for this purpose, as specified (proposed W&I Code Section 14132.725(g)).
- Clarifies that applicable health care services provided through telehealth shall comply with HIPAA requirements, the Medicaid State Plan, and any other applicable state and federal statutes and regulations (proposed W&I Code Section 14132.725(h)).
- Specifies provisions shall be implemented only if and to the extent federal approvals are obtained and federal financial participation (FFP) is available and is not otherwise jeopardized (proposed W&I Code Section 14132.725(j)).
- Requires a provider to explain to a beneficiary, at least once before initially providing services to the beneficiary through telehealth, their rights to access services in-person, that use of telehealth is voluntary and that consent for the use of telehealth can be withdrawn at any time without affecting the right to future care or treatment, that Medi-Cal covers nonmedical transportation services to access in-person visits when other available resources have been reasonably exhausted, and potential limitations or risks related to receiving services through telehealth as compared to an in-person visit, to the extent any limitations or risks are identified by the provider. Requires DHCS to develop, in consultation with stakeholders, model language for this purpose (proposed W&I Code Section 14132.725(d)).
- Requires DHCS to develop, in consultation with stakeholders, a consumer-friendly notice that explains relevant beneficiary rights and requires the notice to be translated into threshold languages and provided in a format that is culturally and linguistically appropriate to beneficiaries in fee-for-service and managed care (proposed W&I Code Section 14132.725(e)(1) and (2)).

### **State Plan Drug Medi-Cal Services**

Assembly Bill (AB) 2861 (Salas, Chapter 500, Statutes of 2018) allows providers to administer Substance Use Disorder (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 December 20, 2021, CMS approved SPA 20-0006A with an effective date of July 1, 2020. SPA 20-0006A allows federal reimbursement for all medically necessary Drug Medi-Cal reimbursable services provided via video and audio-only synchronous interactions.

#### Proposed Changes Post PHE

- Expand reimbursable 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 video synchronous interaction or audio-only synchronous interaction (proposed W&I Code Section 14132.731(a)).
- Require Drug Medi-Cal services provided through video synchronous interaction or audio-only synchronous interaction be subject to billing, reimbursement and utilization management policies developed by DHCS (proposed W&I Code Section 14132.731(c)).
- Prohibit a Drug Medi-Cal certified provider from establishing a new patient relationship with a Medi-Cal beneficiary via audio-only synchronous interaction (proposed W&I Code Section 14132.731(b)).
- Require Drug Medi-Cal reimbursable services through video synchronous interaction and audio-only synchronous interaction be provided in compliance with the privacy and security requirements, pursuant to state and federal law (proposed W&I Code Section 14132.731(d)).
- 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(f)).

#### **Network Adequacy in the Managed Care Delivery Systems**

In order to increase access to health care services, address current provider shortages, and allow for cost-effective ways to deliver health care, DHCS is proposing to expand the use of telehealth to meet network adequacy standards for managed care plans. Existing law establishes network adequacy requirements, including time and distance standards, for Medi-Cal managed care plans (MCPs), which include County Mental Health Plans (MHPs), Dental Managed Care plans, and Drug Medi-Cal Organized Delivery System programs, to the extent otherwise applicable. Existing law also establishes the requirements and process by which alternative access standards (AAS) are submitted.

#### Proposed Changes Post PHE

- Authorize a Medi-Cal MCP, with DHCS' approval, to use clinically appropriate video synchronous interaction to meet network adequacy standards by moving existing Section 14197(e)(4) to proposed Section 14197(e) to make it a separate subdivision outside of 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).
- Allows DHCS to develop policies for granting credit in the determination of compliance with time or distance standards established pursuant to this section when Medi-Cal managed care plans contract with specified providers to use clinically appropriate video synchronous interaction (proposed W&I Code Section 14197(f)(1)).
- 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 at least 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)(3)(C)).

- 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)(3)(D)).
- 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)(3)(D)).
- Authorize a Medi-Cal managed care plan to use clinically appropriate video synchronous interaction, as part of an alternative access standard request (proposed W&I Code Section 14197(f)(6)).
- Extend the sunset date from January 1, 2023, to January 1, 2026 (proposed W&I Code Section 14197(l)).

### **Summary of Arguments in Support:**

- Allows flexibility to providers to deliver health care services via appropriate telehealth modalities, while including safeguards to ensure services meet the standard of care and the billing requirements of the service code.
- 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.
- Supports the health care safety net and builds a telehealth infrastructure that can be ready to meet the needs of enrolled beneficiaries during and post PHE.
- Ensures beneficiaries can access their choice of telehealth modalities and in-person care, while providing a phase-in period for providers to adopt the capability to offer visual telehealth and in-person care or linkage to in-person care.
- Clarifies and standardizes rules regarding establishment of new patients.
- 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.