manatt

NAIC Health Innovations Working Group

Telehealth Regulatory Considerations During and Post-COVID

June 23, 2020

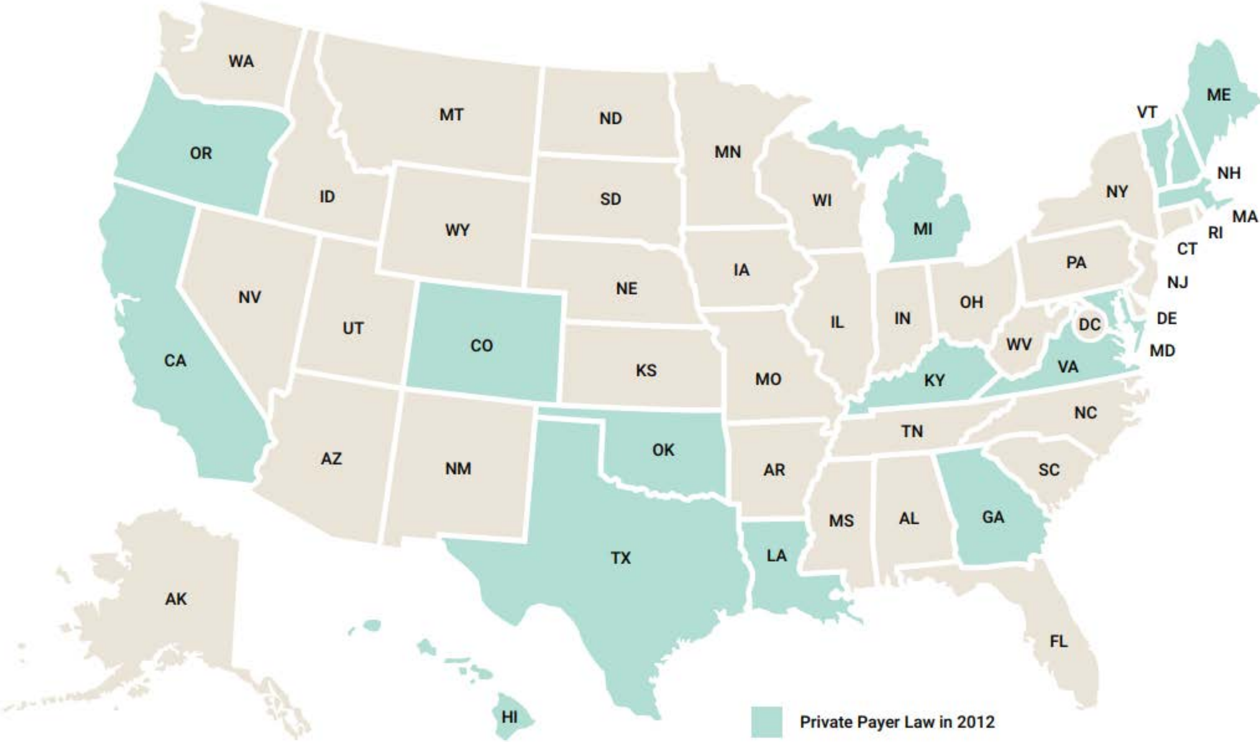
Agenda

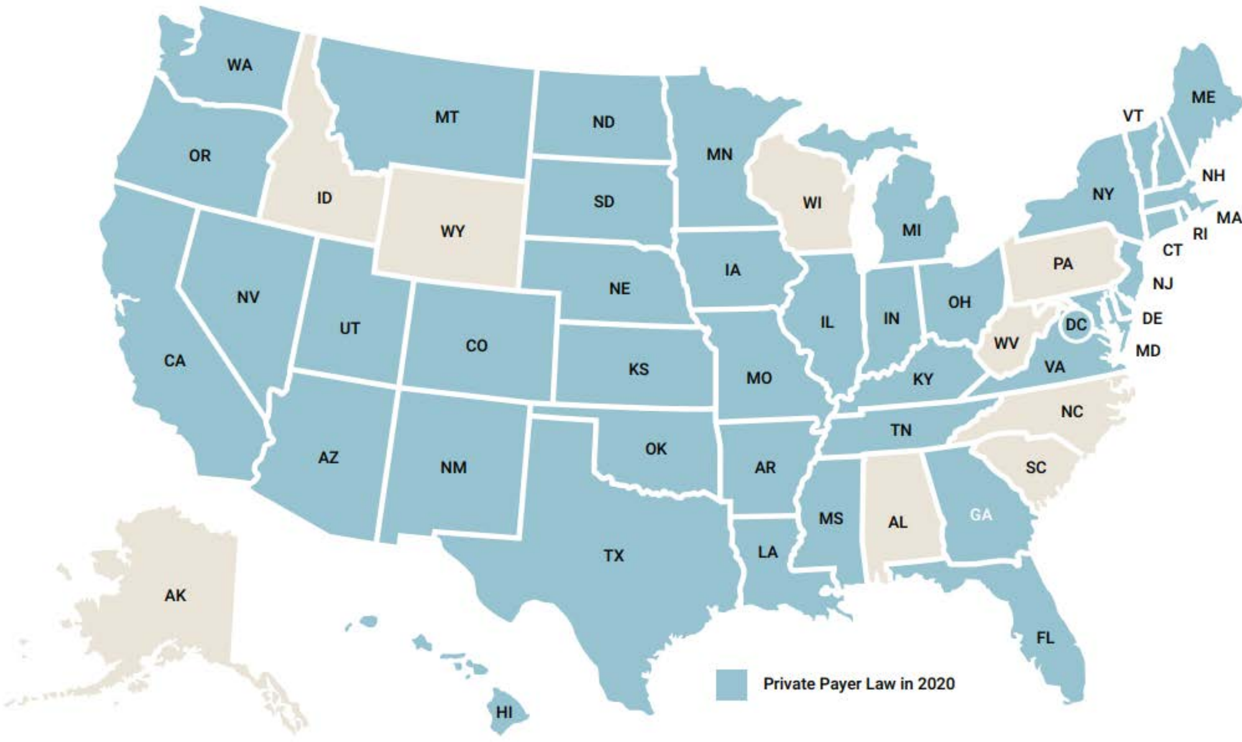
- **Pre-COVID telehealth coverage and reimbursement landscape**
- COVID-related telehealth coverage and relevant policy changes
- Telehealth utilization during COVID
- Telehealth equity challenges
- Telehealth policy design considerations
- State levers for telehealth regulation

Pre-COVID Coverage and Reimbursement Landscape

2012 – 16 States with Private Payor Telehealth Laws

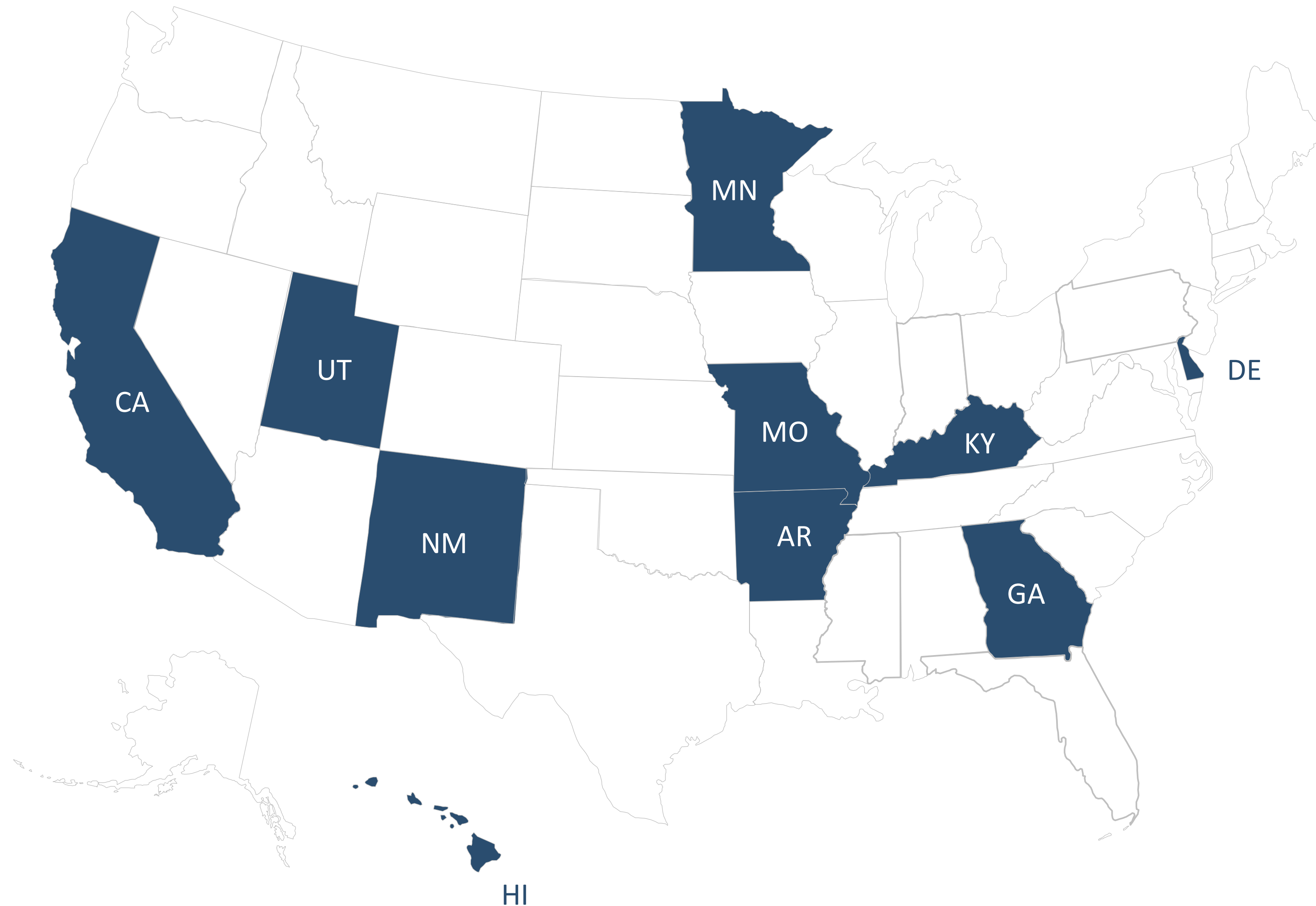
2020 – 42 States + DC with Private Payor Telehealth Laws





Source: Center for Connected Health Policy. State Telehealth Laws and Reimbursement Policies. Spring 2020.

Ten States with Payment Parity Law for Private Payors in 2020



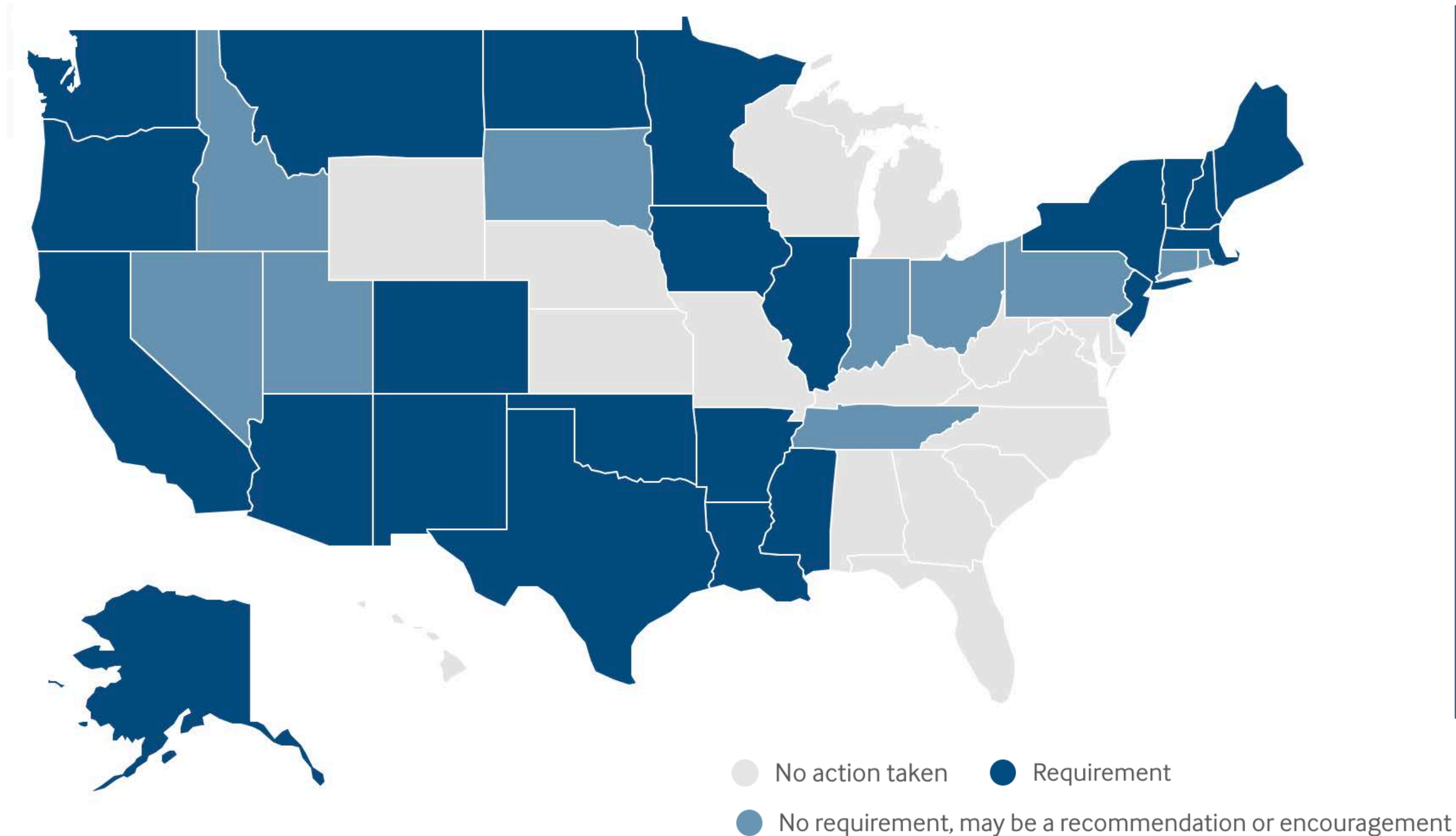
Source: Center for Connected Health Policy. State Telehealth Laws and Reimbursement Policies. Spring 2020. Manatt Analysis.

CONFIDENTIAL

Agenda

- Pre-COVID telehealth coverage and reimbursement landscape
- **COVID-related telehealth coverage and relevant policy changes**
- Telehealth utilization during COVID
- Telehealth equity challenges
- Telehealth policy design considerations
- State levers for telehealth regulation

COVID-Related Telehealth Coverage and Policy Changes in Commercial Market



More than two-thirds of states have taken some action to expand access to telehealth services during the COVID-19 pandemic.

Changes include:

- Telehealth coverage requirements
- Temporary payment parity
- Cost-sharing flexibilities
- Specifying covered modalities (e.g. audio)
- Expanding list of eligible providers
- Eliminating service limits

Source: Center on Health Insurance Reforms, Georgetown University

CONFIDENTIAL

Medicaid Telehealth Policy Changes During COVID

- 48 states + D.C. issued guidance related to the expansion of telehealth coverage during the COVID-19 pandemic
- 38 states + D.C., are covering audio-only telehealth services
- 32 states + D.C., are covering occupational therapy, physical therapy, and speech therapy services through telehealth
- 13 states are covering telehealth for early childhood intervention services
- 13 states are covering EPSDT well-child visits

Source: Manatt Health. Executive Summary: Tracking Telehealth Changes State-by-State in Response to COVID-19.

Medicare Telehealth Coverage Prior to COVID-19

Historically, Medicare coverage of telehealth has been limited, focusing on providing access to beneficiaries in rural areas.

Telehealth	Virtual Check-Ins
Services that normally would occur in-person but instead are conducted via an interactive audio and video telecommunications technology; paid at full rate.	One form of *communication-technology based services (CTBS)* -- Not services that would normally occur in person; brief communications paid at a lower rate.
▪ Typically was only available to beneficiaries in rural areas. ▪ In most cases, beneficiary could not be at home. ▪ Phones could not be used to deliver services. ▪ Practitioner generally could provide only E/M or mental health services.	▪ Could be offered to established patients only. ▪ As with telehealth, could only be offered by practitioners who could bill E/M codes.

Unlike telehealth, CTBS services (Virtual Check-Ins, RPM, etc.) are <u>not intended to replace in-person visits.</u> These services were created as a work-around statutory restrictions on telehealth in Medicare.

CONFIDENTIAL

COVID-19 Changes to Medicare Telehealth Landscape

CMS has rapidly expanded the coverage of telehealth and virtual check-ins within the Medicare program.

Telehealth

- No longer limited to rural areas.
- Beneficiaries can receive services at home.
- Phones can be used to provide services; audio-only calls now covered.
- Significant increase in covered services.
- Expanded list of practitioners that may provide services.

Virtual Check-Ins

- May be offered to new patients.
- Expanded list of practitioners who can bill for these services.

CONFIDENTIAL

Other Federal Actions

- Waiving enforcement of certain HIPAA regulations
- Allowing providers to reduce or waive cost-sharing in federal health care programs
- Allowing mid-year benefit changes in MA and cafeteria plans
- Enabling out-of-state service provision (subject to state rules)
- Allowing telehealth visits to count for risk adjustment purposes in MA

Source: OCR. CMS.

Connecting Back to Commercial Coverage

- Telehealth coverage and reimbursement in Medicare and Medicaid likely to be expanded permanently post-COVID from pre-COVID levels.
- Changes most likely to stay in Medicare and Medicaid:
  - Home as an originating site.
  - Broader range of telehealth-eligible services (e.g. physical therapy, complex BH services).
  - Expansion of which types of providers are able to deliver telehealth.
  - Broader range of types of modalities (e.g. remote patient monitoring).
- If Medicare and states expand coverage and reimbursement there is likely to be pressure on commercial payors to align with these changes.

Discussion

Discussion Topic

What are the most critical telehealth policy or regulatory issues surfacing in your state today?

CONFIDENTIAL

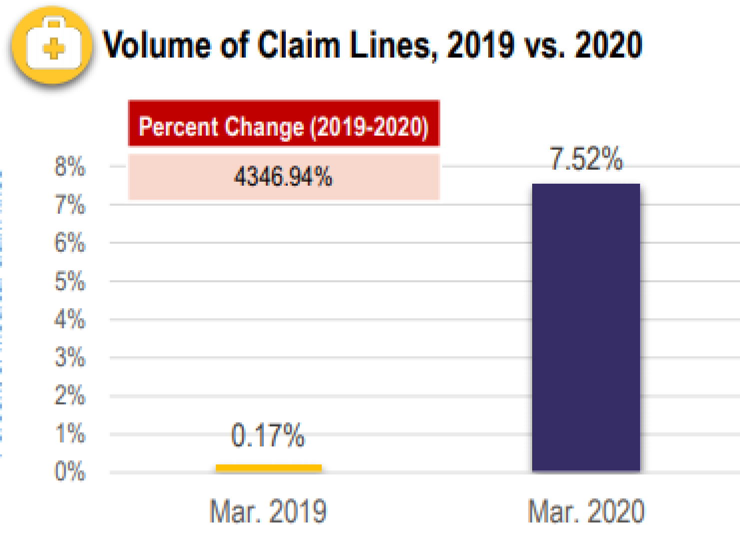
Agenda

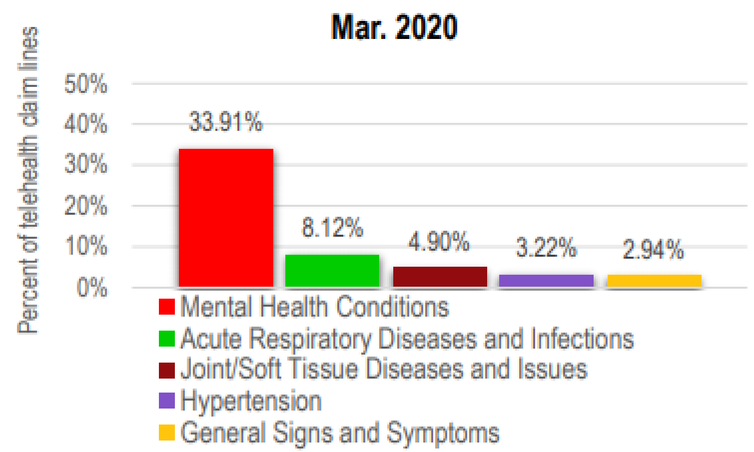
- Pre-COVID telehealth coverage and reimbursement landscape
- COVID-related telehealth coverage and relevant policy changes
- **Telehealth utilization during COVID**
- Telehealth equity challenges
- Telehealth policy design considerations
- State levers for telehealth regulation

CONFIDENTIAL

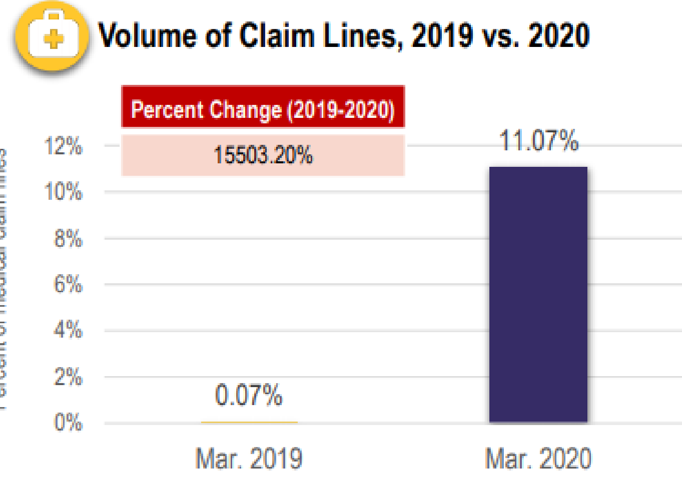
Regional Differences Reflect Geography and COVID-19 Prevalence

National

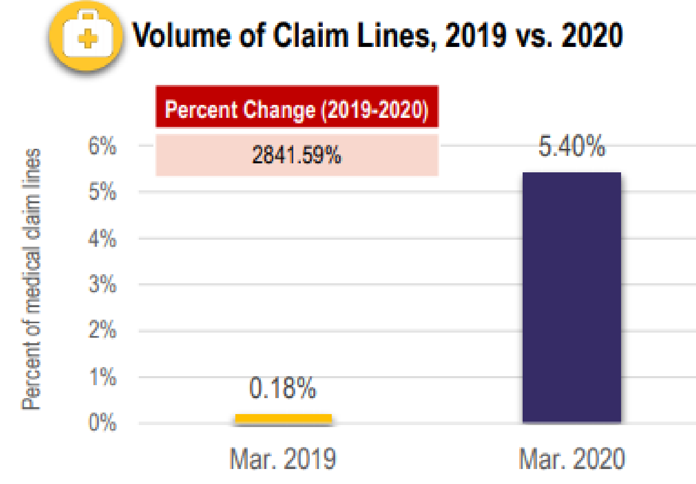




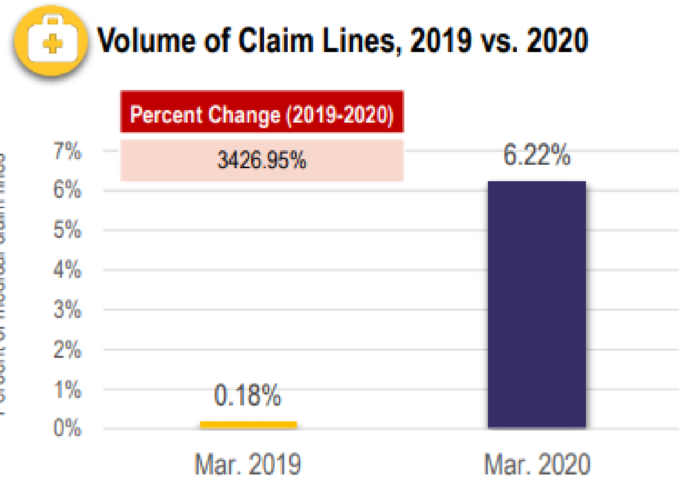
Northeast



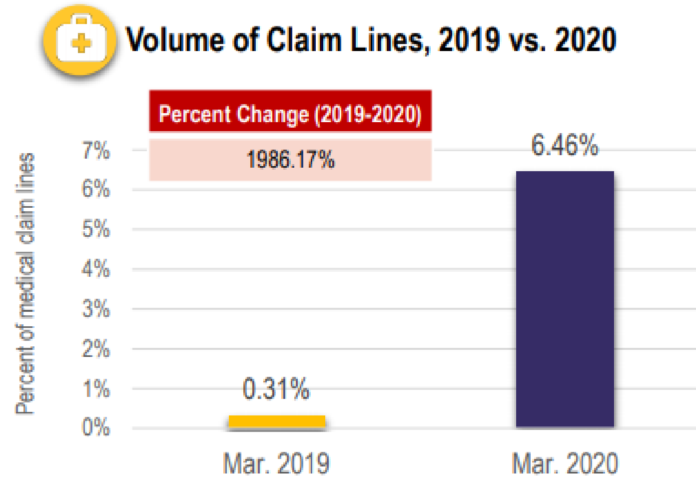
Midwest



South



West



Source: FAIR Health. Monthly Telehealth Regional Tracker. March 2020.

Note: Y-Axis Uses Different Scales.

National Telehealth Utilization Now 10-15% of Total

National telehealth outpatient utilization now stabilizing at about 10 – 15% of overall.

After the initial increase, as provider practices slowly open across the country this # will continue to decline.

Overall national outpatient utilization is significantly depressed so actual virtual utilization as % of total is much lower – probably closer to 5%.

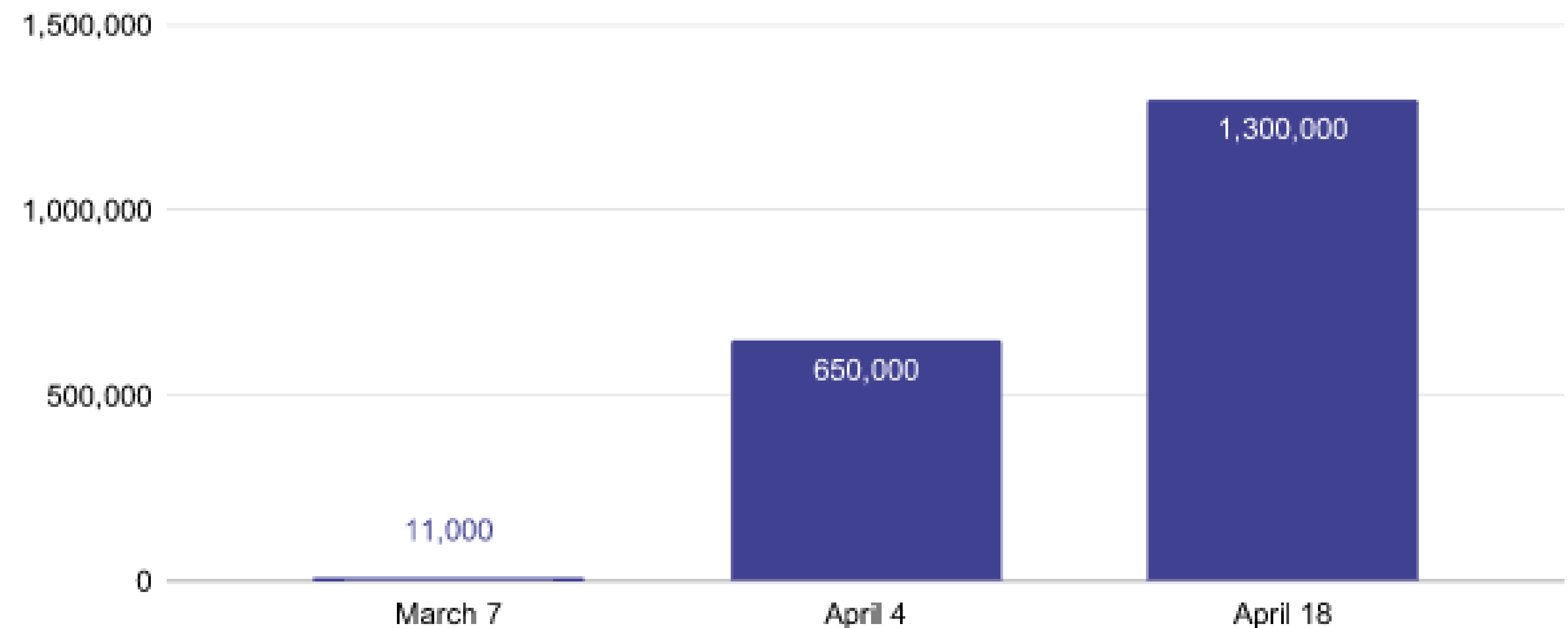
Source: The Commonwealth Fund. The Impact of the COVID-19 Pandemic on Outpatient Visits: A Rebound Emerges. May 19, 2020.

Telehealth Utilization Up Over 100X in Medicare

Telehealth volume in Medicare up over 100x from early March to mid-April.

Enabled by significant new regulatory flexibilities introduced in response to the COVID-19 pandemic.

Significant uncertainty as to what flexibilities will remain after the public health emergency ends.



Source: Rebecca Pifer/Healthcare Dive. Data from CMS.

Agenda

- Pre-COVID telehealth coverage and reimbursement landscape
- COVID-related telehealth coverage and relevant policy changes
- Telehealth utilization during COVID
- **Telehealth equity challenges**
- Telehealth policy design considerations
- State levers for telehealth regulation

Inequities in Access to Telehealth

There are significant inequities in access to telehealth for low-income Americans that are exacerbated for rural residents, racial/ethnic minorities, older adults, those with limited health literacy and those with limited English proficiency.

Awareness
Only 1 in 3 Americans had used telemedicine pre-COVID with lower rates in Medicaid

Broadband Access
Only 56% of low-income Americans have broadband at home

Technology Access
Only 71% of low-income Americans own a smartphone

Technology Literacy
Only 53% of low-income Americans have basic digital literacy

Language Barriers
25 million Americans speak little English and are disproportionately low-income

Sources: Pew; NEJM Addressing Equity in Telemedicine for Chronic Disease Management During the Covid-19 Pandemic; Telehealth Wasn't Designed for Non-English Speakers; Are State Telehealth Policies Associated With The Use Of Telehealth Services Among Underserved Populations?. Adapted from State Health Value Strategies – Rethinking Telehealth Policy After the First COVID-19 Surge.

CONFIDENTIAL

Agenda

- Pre-COVID telehealth coverage and reimbursement landscape
- COVID-related telehealth coverage and relevant policy changes
- Telehealth utilization during COVID
- Telehealth equity challenges
- **Telehealth policy design considerations**
- State levers for telehealth regulation

CONFIDENTIAL

Telehealth Policy Design Considerations (1/2)

Balancing access imperative and potential for quality improvement with concerns about cost and overutilization.

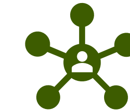
- Desire to use telehealth as a tool for improving access and maintaining continuity of care in high-COVID prevalence areas and for high risk beneficiaries
- Concerns about potential excess utilization given ease of access (especially for audio-only telehealth)

Decisions on which temporary changes to keep and timing of change vis-à-vis concerns about second wave.

- Analysis of which temporary policy changes should be sustained, changed or sunsetted
- Timing of policymaking
- Consideration of 'medium term' policy / 'toggling'

Addressing barriers to consumer uptake, access and equity.

- Promoting awareness
- Expanding broadband access
- Increasing smartphone access
- Improving technology literacy
- Addressing language barriers
- Providing private spaces



Connecting with value-based payment efforts.

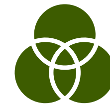
- Telehealth payment rate considerations in VBP arrangements
- Impact on outcomes not well understood – can be challenging to assess value
- Pre-COVID, CMS provided most telehealth flexibility in VBP programs (e.g. CJR, NextGen ACO, CPC+)

CONFIDENTIAL

Telehealth Policy Design Considerations (2/2)

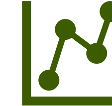
Facilitating telehealth uptake and access for safety-net providers.

- Resource constraints
- Broadband access
- Technology access and HIPAA-compliant tech
- Training and awareness



Coverage and reimbursement alignment with Medicare and Medicaid.

- Most Medicare changes require legislation to sustain after PHE ends
- Many states likely to expand coverage from pre-COVID baseline in Medicaid
- Some state legislatures actively considering new telehealth legislation



Measurement of quality, outcomes and cost.

- Developing systems to understand impact on outcomes, quality, and cost across different demographic groups and populations
- NCQA adjusted HEDIS measures to incorporate growth of telehealth

Role of telehealth in network adequacy and network-related requirements.

- Role of telehealth in assessing network adequacy
- CMS allowing telehealth to assist in meeting network adequacy requirements for MA in 2021 plan year with focus on access to specialists
- 'All-in-network provider' requirements for telehealth coverage

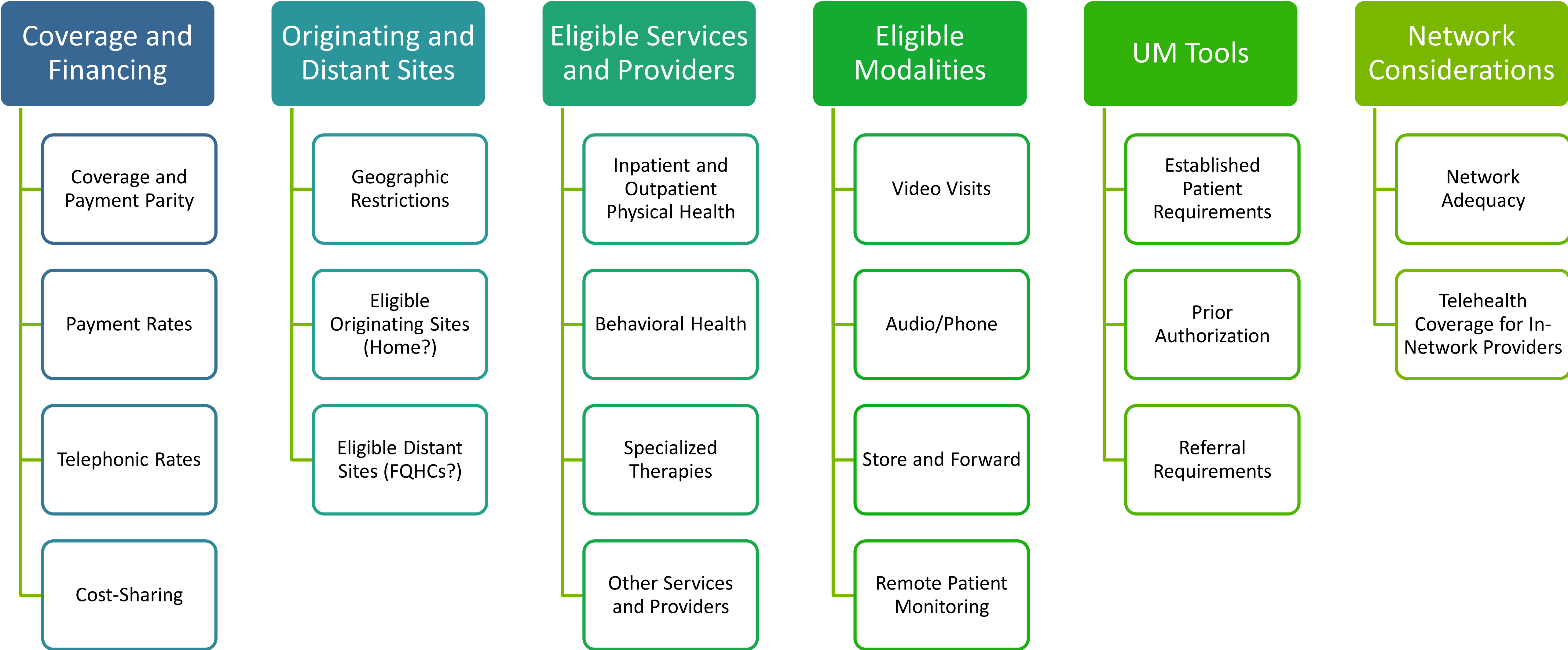
CONFIDENTIAL

Agenda

- Pre-COVID telehealth coverage and reimbursement landscape
- COVID-related telehealth coverage and relevant policy changes
- Telehealth utilization during COVID
- Telehealth equity challenges
- Telehealth policy design considerations
- **State levers for telehealth regulation**

CONFIDENTIAL

Primary Telehealth Policy Levers



Questions and Discussion

Discussion

CONFIDENTIAL