

Trending in Telehealth: February 27 – March 5, 2023

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Trending in Telehealth is a new series from the McDermott Digital Health team in which we highlight state legislative and regulatory developments that impact the healthcare providers, telehealth and digital health companies, pharmacists, and technology companies that deliver and facilitate the delivery of virtual care.

Trending in the past week:

- Interstate Compacts
- Medicaid Reimbursement
- Prescribing
- Health Practitioner Licensing
- Behavioral Health

A CLOSER LOOK

Finalized Legislation & Rulemaking: 10

- **Virginia** continues to have significant activity:
 - The state's legislature "enrolled" or agreed to the final version of the Counseling Compact ([HB 1433](#)). If signed by the governor, the bill will be effective on January 1, 2024.
 - Virginia legislators also finalized a separate bill ([SB 1119](#)) which modifies licensing exceptions for out of state practitioners utilizing telemedicine for patients within the state who are in the same specialty and who belong to the same group practice. The bill was sent to the governor for approval on March 2, 2023.

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- A third bill ([HB 1602](#)) approved by legislators among other things, amends the state Medicaid plan by specifying that a health care provider duly licensed in the Commonwealth who provides health care services exclusively through telehealth services will not be required to maintain a physical presence in the Commonwealth to be considered an eligible provider for enrollment.
 - **Colorado** legislators passed bill ([HB 1071](#)) requiring licensed psychologists to obtain a prescription certificate from the Colorado Medical Board to administer or prescribe psychotropic medication via telepsychology. The bill was sent to the governor for approval on March 1, 2023.
 - In **Tennessee**, the governor signed a bill ([SB 1](#)) prohibiting the use of telehealth services for the benefit of a minor with respect to a medical procedure related to discordance between a minor's sex and identity.
 - **Utah** legislators agreed to pass a bill ([SB 237](#)) that eases the supervision requirements for dental hygienists by authorizing the practice of dental hygiene in a public health setting without general supervision by a dentist, usually via teledentistry and electronic methods, and without a collaborative practice agreement with a dentist under certain conditions. The bill will be sent to the governor for approval.
 - **New York** has finalized a rule ([NY A 2200](#)) providing for patient prescription pricing transparency through "real-time benefit tools" (RTBTs) which are electronic prescription decision support tools that can integrate with a health care provider's electronic prescribing system. The rule parallels the Medicare Advantage and Part D Drug Pricing Final Rule published by the Centers for Medicare and Medicaid Services which require Part D plans to offer RTBTs to enrollees starting January 1, 2023 so that plan enrollees can access formulary, cost-sharing, and benefit information in real-time and potentially find lower-cost alternatives under their prescription drug plan.

Legislation & Rulemaking Activity in Proposal Phase: 17

Highlights:

- **Alaska** proposes to adopt regulation changes in Title 7 of the Alaska Administrative Code, to implement the requirements of House Bill Number 265 ([HB 265](#)). The proposed changes will continue many telehealth flexibilities implemented in response to the COVID-19 public health emergency, and improve Medicaid recipients' access to care.
- In **Utah**, a Senate bill ([SB 269](#)) has passed both chambers, which requires the Department of Health and Human Services to apply for a Medicaid waiver to provide certain virtual and electronic services, including telemedicine, video-consults, and in-home biometric monitoring for individuals with certain chronic conditions. A separate bill ([SB 285](#)) also aims to establish a Social Work Licensure Compact.
- **Washington** proposed a bill ([HB 1746](#)) that aims to establish a grant and loan program to promote the expanse of broadband services in underserved portions of the state. Priority will be given to applicants who, among other things, will facilitate the use of telehealth.
- **Idaho** proposed a bill ([H 61](#)) that would allow a mental or behavioral health provider who is

not licensed in Idaho to provide services via telehealth to an Idaho resident or person located in Idaho, if they meet certain qualifications.

Why it matters:

- **There continues to be elevated activity surrounding licensure compacts.** 2023 has seen an uptick in states adopting interstate compacts for a variety of professionals. These state efforts to ease the burdens of the licensing process demonstrate a desire to facilitate multi-jurisdictional practice without giving up their authority over professional licensure.
- **The states continue to focus on addressing barriers to telehealth.** As discussed above, Virginia and Utah are moving forward in the adoption of interstate compacts while other states, such as Idaho and Alaska, are permanently implementing waivers and flexibilities adopted during the COVID-19 pandemic. These efforts can be viewed as part of a larger trend to “modernize” regulatory regimes.
- **The states propose creative solutions to increase access to care in underserved and rural areas.** Washington’s bill to establish a grant and loan program to promote broadband services highlight how states have responded to the challenge of “broadband deserts” by implementing strategies to make broadband accessible and affordable to all communities.

Telehealth is an important development in care delivery, but the regulatory patchwork is complicated.

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