# TELEMEDICINE UPDATE

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More than any other event of recent times, the Coronavirus Disease 2019 (COVID-19) pandemic has awakened the healthcare system and patients nationwide to the use of telemedicine. Mississippi and the nation currently remain under the Public Health Emergency (PHE) for COVID-19 as declared by the Secretary of Health and Human Services (HHS) under Section 319 of the Public Health Service Act (42 U.S.C. Section 247d). In a recent communiqué to state governors, the Secretary of HHS stated that the current PHE was renewed effective January 21, 2021, and will be in effect for ninety (90) days. Further, HHS has determined that the PHE will likely remain in place for the entirety of 2021, and when a decision is made whether to terminate the declaration or let it expire, HHS has agreed to provide states with a 60-day notice prior to termination. In similar fashion, on December 22, 2020, the Centers for Medicare & Medicaid Services (CMS) released a state health official letter outlining how the states are expected to unwind emergency authorities and resume normal eligibility, but again advising that the PHE will likely remain in place throughout 2021.

Not unexpectedly, the medical industry's reaction to the PHE has served to solidify telemedicine as an integral part of health care. In response to a March 14, 2020 Emergency Declaration by Governor Tate Reeves, the Mississippi State Board of Medical Licensure issued a series of proclamations permitting out-of-state physicians to provide telemedicine services to Mississippi citizens without the necessity of securing permanent licensure. The only requirement was the establishment of an existing doctor-patient relationship, and even this was waived for certain specialties (pulmonologists, nephrologists, etc.) as determined by State Health Officer Thomas Dobbs, M.D. As a result, the Medical Board experienced a tremendous increase in the number of out-of-state physicians providing telemedicine. On October 26, 2020, with authorization from the State Health officer, the Medical Board terminated the previous proclamations, thus requiring the out-of-state physicians who wish to continue providing telemedicine to Mississippi patients to submit and go through the normal application process. Many have done so. The net effect was a substantial increase in the number of physicians providing telemedicine, both in-state and out-of-state.

The growth of telemedicine has been fueled to some extent by the actions taken by state and federal agencies to address the PHE. Some of the most notable changes to telemedicine on the federal level brought about by federal legislation and policy changes, including the Coronavirus Aid, Relief, and Economic Security (CARES) Act, are [continued on next page]:

1. Medicare pays physicians for telehealth services (both audio-video and audio-only) at the same rate as in-office visits.
2. Physicians can provide telehealth services to all patients, not just those in rural areas. Prior to this waiver, Medicare could only pay for telehealth on a limited basis, that is, when the person receiving the service was in a designated rural area.
3. Telehealth rules were relaxed so physicians could provide audio-only evaluations to both new and established patients.
4. CMS temporarily suspended physician supervision requirements for Certified Registered Nurse Anesthetists (CRNAs), subject to state law.
5. Expanded access to telehealth, virtual check-ins, e-visits, and telephone calls for practitioners such as licensed clinical social workers, clinical psychologists, physical therapists, occupational therapists, speech-language pathologists.
6. DEA allows physicians to prescribe controlled substances based on telehealth visits (subject to state laws). Further, DEA has relaxed the requirements for the issuance of oral prescriptions for schedule II controlled substances.
7. HHS Office of Civil Rights (the agency responsible for enforcing HIPAA) relaxed its rules so that physicians could use common audio-video programs – such as FaceTime, Skype, and Zoom – to provide telehealth services and will not impose penalties for good faith noncompliance with the relaxed HIPAA rules regarding telehealth.
8. List of covered telehealth services were expanded to include:
    - Emergency visits
    - Initial nursing facility and discharge visits
    - Home visits
    - Therapy services
9. CARES Act extends telehealth coverage to Rural Health Centers (RHCs) and Federally Qualified Health Centers (FQHCs).
10. CARES Act eliminates the requirement that nephrologists conduct required periodic home visits for dialysis patients in person.
11. CARES Act allows qualified providers to use telehealth to fulfill hospice recertification requirements for face-to-face visits.
12. CARES Act allows a veteran's enrollment or re-enrollment in a Veteran Directed Care Program to be conducted via telehealth.

We note that the above is only a small list of the telehealth waivers and relaxations and as we progress through the PHE, other changes are sure to come. As one commentator has noted, the recent insurgence of telemedicine has reached Washington. The title of a recent article in mHealthIntelligence says it all: "Washington is Awash in New and Reintroduced Telehealth Bills." At least three (3) additional bills had been filed over the past two weeks (as of January 29, 2021) seeking to expand connected health access and coverage either during or beyond the coronavirus pandemic. Therefore, as we gradually close the emergency status of the coronavirus pandemic, and the smoke begins to clear, it will be interesting to observe the metamorphosis of telemedicine.