

To: Medicaid Policy Unit, submitted via email to [AHS.MedicaidPolicy@vermont.gov](mailto:AHS.MedicaidPolicy@vermont.gov)  
From: Jessa Barnard, Vermont Medical Society,  
Date: December 14, 2022  
RE: Comments Regarding Health Care Administrative Rules Proposed Rule Filing #14, 3.101  
Telehealth

On behalf of the over 2,400 physician and physician assistant members of the Vermont Medical Society (VMS), we appreciate you considering the following comments on Proposed HCAR Filing #14, 3.101, Telehealth.

The Vermont Medical Society supports the proposed changes that define Telehealth to include Audio-Only, that relabel Telemonitoring as Remote Patient Monitoring; and list Audio-Only as a covered service.

VMS has further comments regarding the following sections of the proposal:

1) 3.101.2 (a) Covered Services – Telemedicine

VMS notes the removal of the phrase “Be reimbursed at the same rate as the service being provided in a face-to-face setting.” While we appreciate that rates of payment are typically not addressed in the HCAR description of covered services, and that telemedicine is currently required to be paid at parity by state statute, we do suggest that DVHA have written policy on the coverage rate for telemedicine and other telehealth services, especially for audio-only services. VMS wonders where the payment rate for audio-only services will be documented if and when DVHA does not continue to reimburse audio-only at parity after the end of the federal Public Health Emergency. Previous conversations with DVHA staff indicated this would be addressed in the Telehealth Rule.

2) 3.101.2 (c) Remote Patient Monitoring

The proposed policy limits Remote Patient Monitoring to congestive heart failure, hypertension, or diabetes diagnoses. However, there is evidence supporting the provision of remote patient monitoring for additional conditions. For example, AHRQ lists chronic obstructive pulmonary disease as another indication.<sup>1</sup> Medicare does not limit remote patient monitor to specific diagnoses and covers services for a range of acute care and chronic conditions. HHS lists examples on its website of use cases including: high blood pressure; diabetes; weight loss or gain; heart conditions; chronic obstructive pulmonary disease; sleep apnea and asthma.<sup>2</sup>

<sup>1</sup> <https://effectivehealthcare.ahrq.gov/products/telehealth-expansion/white-paper>

<sup>2</sup> <https://telehealth.hhs.gov/providers/preparing-patients-for-telehealth/telehealth-and-remote-patient-monitoring/>

VMS requests that the limit of diagnoses in section 3.101.2 (c) be removed so that, as with all of the other modalities listed (telemedicine, store and forward and audio-only), the rule states that coverage will be provided in instances when remote patient monitoring is clinically appropriate and medically necessary.

### 3) 3.101.7 Non-Covered Services

Section 3.101.7 states that “Services delivered via facsimile, text communication, or electronic mail messages are not considered telehealth and are not covered.” However, store and forward messages may be transmitted via secure electronic mail messages, and store and forward services are covered under the Rule. VMS suggests that this section state “electronic mail messages other than those meeting the definition of Store and Forward, are not considered telehealth and are not covered.”

Thank you for considering our feedback. Should you have any further questions, I can be reached at [jbarnard@vtmd.org](mailto:jbarnard@vtmd.org) or 802-917-1460.



**State of Vermont**  
**Agency of Human Services**  
280 State Drive  
Waterbury, VT 05671-1000  
[www.humanservices.vermont.gov](http://www.humanservices.vermont.gov)

*Jenney Samuelson, Secretary*  
*Todd Daloz, Deputy Secretary*

[phone] 802-241-0440  
[fax] 802-241-0450

**Date:** February 28, 2023

**Re:** Response to Public Comments for proposed Health Care Administrative Rule (HCAR) 3.101 Telehealth.

---

A summary of comments received on the proposed HCAR Rule 3.101 Telehealth, and the Agency of Human Services responses to those comments is included below. Comments were received from the Vermont Medical Society. No other comments were received.

**Comment:**

The Vermont Medical Society supports the proposed changes that define Telehealth to include Audio-Only, that relabel Telemonitoring as Remote Patient Monitoring; and list Audio-Only as a covered service.

**State Response:**

The Agency appreciates the comments in support of these changes to the rule.

**Comment:**

VMS notes the removal of the phrase "Be reimbursed at the same rate as the service being provided in a face-to-face setting." While we appreciate that rates of payment are typically not addressed in the HCAR description of covered services, and that telemedicine is currently required to be paid at parity by state statute, we do suggest that DVHA have written policy on the coverage rate for telemedicine and other telehealth services, especially for audio-only services. VMS wonders where the payment rate for audio-only services will be documented if and when DVHA does not continue to reimburse audio-only at parity after the end of the federal Public Health Emergency. Previous conversations with DVHA staff indicated this would be addressed in the Telehealth Rule.

**State Response:**

This comment is outside of the scope of the rule. The rates of payment are not specified by rule. Vermont Medicaid reimbursement rates are posted on the Department of Vermont Health Access website. Any changes to reimbursement methodology that may occur after the end of the Public Health Emergency will be posted for public comment via the Global Commitment Register prior to the effective date.

**Comment:**

VMS requests that the limit of diagnoses in section 3.101.2 (c) be removed so that, as with all of the other modalities listed (telemedicine, store and forward and audio-only), the rule states that coverage will be provided in instances when remote patient monitoring is clinically appropriate and medically necessary.

**State Response:**

The proposed rule adds two additional diagnoses for remote patient monitoring that have been clinically documented to be effective in treating patients with diabetes and hypertension. The additional diagnoses are being added in response to evidence that supports remote patient monitoring for services other than for a diagnosis of congestive heart failure. It is also at the recommendation of the Medicaid Clinical Utilization Review Board (CURB). The CURB's duties and responsibilities include identifying and recommending opportunities to improve quality, efficiencies, and adherence to relevant evidence-based clinical practice guidelines in the Department's medical programs.<sup>1</sup>

The proposed rule changes are in accordance with Vermont Statute outlining Medicaid coverage for home telemonitoring services where the Agency may expand coverage to include additional conditions or risk factors identified using evidence-based best practices if the expanded coverage will remain budget-neutral or as funds become available.<sup>2</sup>

The agency is not amending the proposed rule in response to the comment.

**Comment:**

Section 3.101.7 states that "Services delivered via facsimile, text communication, or electronic mail messages are not considered telehealth and are not covered." However, store and forward messages may be transmitted via secure electronic mail messages, and store and forward services are covered under the Rule. VMS suggests that this section state "electronic mail messages other than those meeting the definition of Store and Forward, are not considered telehealth and are not covered."

**State Response:**

Section 3.101.7 specifies that services may not be delivered via facsimile, text, or electronic mail. This prohibits the delivery of medical services by these means and does not prohibit the transmission of data as a component of store and forward telehealth, or when used for other business purposes.

The agency is not amending the proposed rule in response to the comment.

---

<sup>1</sup> 33 V.S.A. § 2031

<sup>2</sup> 33 V.S.A. § 1901g