

Medicine in a Digital World

ENSURING PERMANENT ACCESS TO TELEHEALTH CARE IN LOUISIANA



Vittorio Nastasi
Reason Foundation

Eric Peterson
Pelican Center for Technology and Innovation

1 Introduction



The COVID-19 pandemic has changed many paradigms of daily life. While the necessary adjustments have been disruptive, they also present an opportunity for innovation. One lesson from the health care sector during the pandemic is that overly-restrictive regulations can limit much needed innovation in our health care system. Early in the crisis, many governors acted quickly to loosen these regulations—most notably, licensing requirements for health care providers and restrictions on the use of telehealth services.¹

In Louisiana, emergency orders issued by Governor John Bel Edwards and various state

agencies have promoted the use of telehealth during the pandemic, especially by out-of-state health care professionals.² **Specifically, the state has temporarily allowed professionals licensed in other states to provide care in Louisiana—including care provided via telehealth—without obtaining a Louisiana license.** The Louisiana State Board of Medical Examiners is issuing temporary permits to out-of-state professionals in addition to an existing telehealth registration process that does not require full state licensure.³ So far, the board has issued 2,209 temporary permits.⁴

Moreover, the Louisiana Department of Insurance issued Emergency Rule 37 requiring public and private insurance providers to cover telehealth services under certain conditions.⁵ Specifically, it:

- Expands access to telemedicine services so Louisiana residents can continue receiving necessary care without a visit to a hospital or clinic, including permitting telemedicine visits conducted through the patient’s phone or personal device.
- Requires insurers to cover mental health services via telemedicine to the extent they would be covered in person, except for treatments that are not appropriate for remote delivery.
- Broadens telehealth availability by waiving restrictions requiring patients to only conduct telemedicine visits with providers in the insurer’s existing telemedicine network.
- Requires insurers to evaluate their out-of-network cost sharing to ensure patients are not unreasonably charged extra cost sharing amounts under their insurance policy if in-network access becomes limited during the event.⁶

Emergency actions like these have helped ensure that patients continue to have access to care throughout the pandemic. A combination of voluntary actions and mandatory stay-at-home orders caused in-person outpatient visits to decline dramatically beginning in March 2020. However, increased use of telehealth helped offset part of this decline.

A recent analysis of outpatient visits between February and October of 2020 illustrates these trends.⁷ In early April, in-person visits were down nearly 70 percent compared to the pre-pandemic baseline (FIGURE 1).

Figure 1: Percent Change in Outpatient Visits

Across the United States

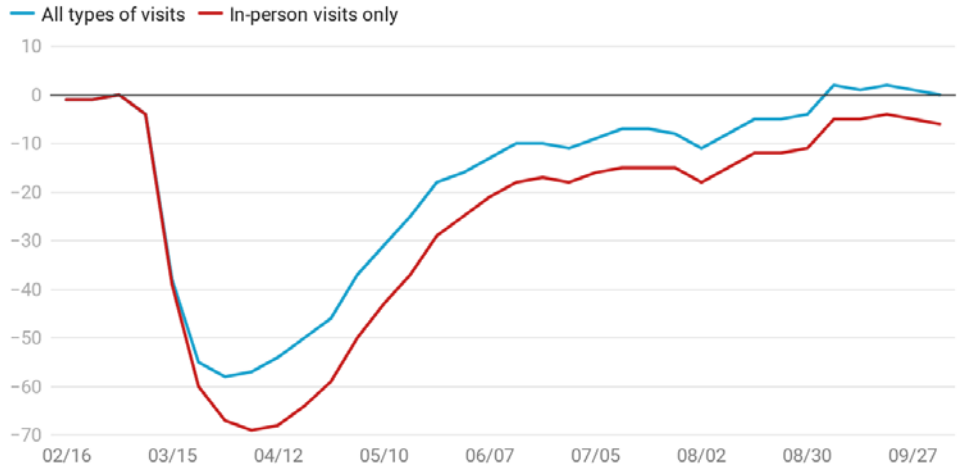


Chart: Reason Foundation and Pelican Institute • Source: The Commonwealth Fund • Created with Datawrapper

Figure 2: Number of Telehealth Visits as a Percent of Total Visits

Compared to March 1st through the 7th of 2020.

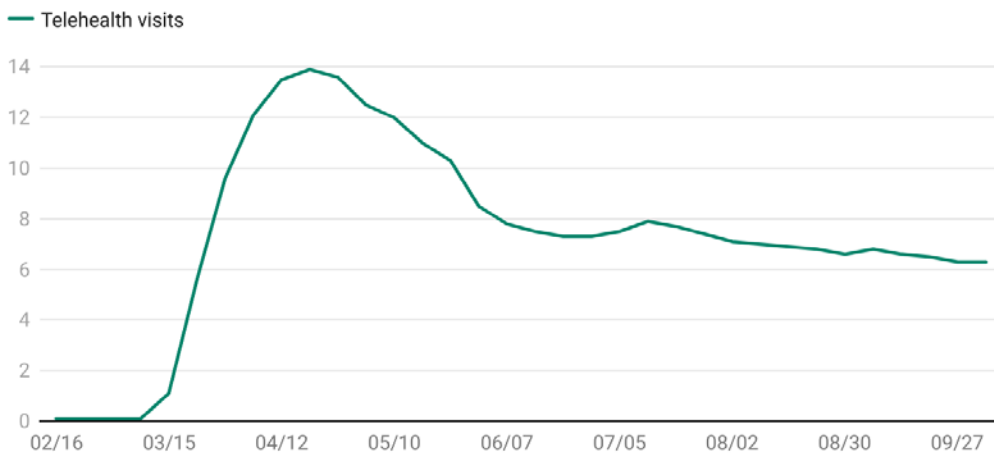


Chart: Reason Foundation and Pelican Institute • Source: The Commonwealth Fund • Created with Datawrapper

Meanwhile, total visits were down by about 60 percent, with the gap representing an increase in the use of telehealth. At their peak, telehealth visits accounted for roughly 14 percent of baseline total visits (FIGURE 2). Telehealth visits have since declined, but remain well above pre-pandemic levels.

State-level data are more limited, but tell a similar story. Total weekly outpatient visits in Louisiana fell by about 22.6 percent between May 20 and June 16. Over the same period, telehealth visits accounted for approximately 16 percent of total outpatient visits in Louisiana.⁸

Consumer polling suggests that increased use of telehealth may persist after the pandemic subsides. As a group of Gallop researchers recently wrote for the American Journal of Managed Care:

A 2019 Gallup survey of more than 30,000 Americans revealed that just 14% had used telemedicine in the past year, and only 17% anticipated using it in 2020. But a March 2020 survey showed that 34% of Americans now say they have used telemedicine, and nearly half (46%) say they are likely to use it in the future...⁹

However, several reforms are necessary to unleash the full potential of telehealth in Louisiana. The remainder of this policy brief discusses Louisiana's telehealth laws and opportunities for improvement. Section 2 explains what telehealth is and the various ways in which it can be delivered. Section 3 describes the current state of Louisiana's telehealth laws, Section 4 explains the benefits of telehealth, and Section 5 offers recommendations for reform.



2 What is Telehealth?

The terms telehealth and telemedicine broadly refer to the delivery of health care services and information via telecommunications or digital communications technologies. The terms are often used interchangeably, but Louisiana state law distinguishes between them. Laws pertaining to telemedicine govern the practice of physicians. Meanwhile Louisiana's telehealth laws apply only to non-physician health professionals such as nurse practitioners. For simplicity, this policy brief uses the term telehealth to refer to both concepts, except when referring to Louisiana state law.

Broadly, there are three “modes” of telehealth used to deliver care: live (synchronous) audio-video conferencing, asynchronous store-and-forward and remote patient monitoring (RPM). State laws vary in terms of which modes are allowed, which providers are authorized to engage in each mode and the conditions under which each mode is reimbursed through Medicaid. Louisiana's differing definitions of telehealth and telemedicine complicate the rules around each mode.



SYNCHRONOUS AUDIO-VIDEO CONFERENCING

Synchronous audio-video conferencing is a live, two-way interaction between a patient and a provider using audiovisual telecommunications technology.¹⁰ A basic example would be platforms like Skype or Zoom. This mode of telehealth can be particularly valuable in rural areas because it allows patients to connect with specialists who are not available in their area. Louisiana allows both physicians and non-physician providers to interact with patients through synchronous audio-video interactions.¹¹ State law also allows audio-only interactions if, after reviewing the patient's medical records, the provider determines that they are able to meet the same standard of care as would be achieved in person.



ASYNCHRONOUS STORE-AND-FORWARD

Asynchronous telehealth refers to telehealth that is not live but involves the transmission of data for later viewing. Louisiana's definition of telehealth, which only applies to non-physicians, includes asynchronous store-and-forward which refers to “the transmission of a patient's medical information” from the patient's location to “the provider at the distant site without the patient being present.”¹² This could include pre-recorded video or images (such as X-rays, MRIs or photos of skin conditions). Meanwhile the state's definition of telemedicine, which applies to physicians, includes the “transfer of medical data,” but only through the use of two-way video and audio transmissions¹³ This does not include asynchronous store-and-forward.



REMOTE PATIENT MONITORING (RPM)

Remote Patient Monitoring allows providers to remotely track and assess patients' health data. This includes data such as weight, blood pressure, pulse, pulse oximetry and other condition-specific data, such as blood glucose.¹⁴ Often this is completed with wearable devices or other at-home technology. RPM could also include medication adherence monitoring. This mode is commonly used to “coordinate primary, acute, behavioral, and long-term social service needs for high need, high cost patients,” with the goal of allowing them “to remain at home or in other nontraditional clinical settings and to improve the quality and cost of their care, including prevention of more costly care.”¹⁵

The Current State of Louisiana's Telehealth Laws

While the terms “telehealth” and “telemedicine” are often used interchangeably, Louisiana state law distinguishes between the two. Laws pertaining to telemedicine govern the practice of “health care provider[s,]” but primarily refer to physicians.¹⁶ Meanwhile Louisiana’s telehealth laws apply only to non-physician health professionals such as nurse practitioners.

Louisiana has made substantial changes to its telehealth and telemedicine laws in recent years. Regarding interstate licensing issues, reforms in 2008 and 2014 are the most significant. In 2008, lawmakers passed legislation that allowed out-of-state physicians

to practice telemedicine without obtaining full Louisiana licensure.¹⁷ The legislation directed the Louisiana State Board of Medical Examiners to issue special “telemedicine licenses” to physicians licensed in other states. Similarly, reforms in 2014 allowed Louisiana’s licensing boards, such as the Louisiana State Board of Nursing, to establish rules that would allow out-of-state non-physician health professionals to provide telehealth services to patients in Louisiana.¹⁸ However, few of the relevant boards have issued such rules to date, meaning the law has had little practical effect. APPENDIX A includes a table summarizing the current state of telehealth rules and licensing requirements.

3.1. WHO CAN PRACTICE TELEMEDICINE/TELEHEALTH?

Louisiana’s Telehealth Access Act explicitly mentions physician assistants, dentists, registered nurses, advanced practice registered nurses, licensed dietitians and nutritionists, licensed practical nurses, certified nurse assistants, licensed midwives, pharmacists, speech-language pathologists, audiologists, optometrists, podiatrists, chiropractors, physical therapists, occupational therapists, certified or licensed athletic trainers, psychologists, medical psychologists, social workers, licensed professional counselors, licensed perfusionists, licensed respiratory therapists, licensed radiologic technologists and licensed clinical laboratory scientists.¹⁹

The act states that the respective agencies and licensing boards “may promulgate...any rules necessary to provide for, promote, and regulate the use of telehealth in the delivery of health care services within the scope of practice regulated by the licensing entity.”²⁰ However, any such rules must, at a minimum, provide for the following:

1. The confidentiality of health care information and patients’ rights to the patients’ medical information related to telehealth interactions as required by law.
2. “Licensing or registration of out-of-state health care providers” who seek to provide telehealth services to patients located in Louisiana. The rules must ensure that providers are licensed in good standing by another state.
3. Any reasonable fees required for licensure or registration.
4. Exemption of consultations of a provider licensed in Louisiana with an out-of-state peer professional from licensure or registration requirements.²¹

The language of the act depends on additional rulemaking by the appropriate boards to provide clarity. **By using the word “may” when delegating rulemaking authority to the state’s boards and agencies, the act merely gives rulemaking authorities the option, rather than the mandate, to issue further rules.**

Consequently, only seven of the twenty-five provider types mentioned in the act have any rules governing the practice of telehealth. In general, non-physician providers may practice telehealth in the absence of rules so long as they are acting within their scope of practice as

otherwise determined by law. Scope of practice refers to the range of services a health care professional is permitted to provide.

The Louisiana State Board of Nursing has not issued any official rules regarding telehealth, but has provided some guidance. An article in a 2015 issue of *The Examiner*, a publication of the Board, stated that “there is no specific prohibition to APRNs licensed in Louisiana with prescriptive authority providing this service within our state and to people residing in Louisiana.”²² The article further notes that:

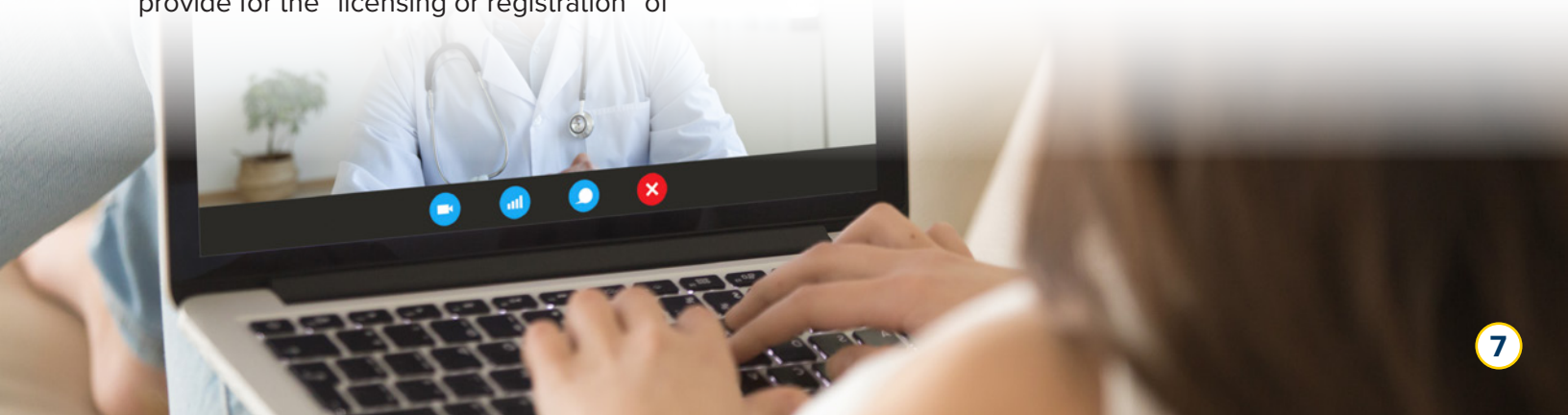
In general, telehealth patient encounters must meet or exceed all of the standards of a face to face visit. If a problem or concern would otherwise require a physical examination, then an electronic encounter or telephone assessment would fall short of this requirement unless advanced technology is utilized to assist with the examination and a licensed provider is physically present with the patient.

APRNs must ensure that they and the collaborating physician(s) are “telecompetent” and understand all of the complex aspects of telehealth services including but not limited to requirements relative to HIPPA, informed consent, documentation, development of policies and procedures, security and integrity of data, appropriate technology, standards of care, reimbursement, malpractice and liability issues, ethical considerations, and more.²³

Nonetheless, the lack of rulemaking means that there is little guidance on telehealth for most providers, including nurses. This creates an uncertain environment for those seeking to provide services in the state and unnecessarily limits patients’ access to care.

There is further ambiguity regarding licensing requirements for out-of-state telehealth providers. The act requires that any rules must provide for the “licensing or registration” of

out-of-state providers. In effect, this means boards may still require a full Louisiana license for out-of-state providers to practice telehealth in Louisiana. In fact, the only non-physician providers with an out-of-state registration process are Speech-Language Pathologists and Audiologists. All other categories of non-physician providers must have full Louisiana licensure to practice telehealth, defeating the potential of the act.



Meanwhile, the State Board of Medical Examiners has established an application process and clear rules for the practice of telemedicine by out-of-state physicians. State law clearly states that:

The board shall issue a telemedicine license to allow the practice of medicine across state lines to an applicant who holds a full and unrestricted license to practice medicine in another state or territory of the United States.²⁴

The Board of Medicine has also established clear rules allowing physicians to issue prescriptions through telemedicine with some restrictions. **Specifically, physicians may not “authorize or order the prescription, dispensation or administration of any controlled substance” unless:**

- a. the physician has had at least one in-person visit with the patient within the past year;**
- b. the prescription is issued for a legitimate medical purpose;**
- c. the prescription is in conformity with the same standard of care applicable to an in-person visit; and**
- d. the prescription is permitted by and in conformity with all applicable state and federal laws and regulations.²⁵**

However, the requirement for an in-person visit does not apply when a patient is “being treated at a health care facility that is required to be licensed pursuant to the laws of this state and which holds a current registration with the U.S. Drug Enforcement Administration.”²⁶

Unless the boards decide to act, which they have thus far foregone, additional legislative action is required to ensure that the other relevant agencies and boards issue appropriate rules for non-physician providers to promote the adoption of telehealth in Louisiana.



3.3 TELEPHARMACY

Louisiana allows prescription dispensation through telepharmacy dispensing sites and automated medication systems. These forms of telepharmacy are particularly beneficial in rural areas where access to pharmacy services is often limited.

Telepharmacy dispensing sites are licensed pharmacies staffed by pharmacy technicians who are overseen by a central pharmacy through telecommunications technology. Telepharmacy systems may include the use of audio and video, still image capture and store-and-forward technologies.

3.2. HOW DO MEDICAID AND PRIVATE INSURANCE PAY FOR TELEMEDICINE/ TELEHEALTH?

Medicaid reimbursement policies for telemedicine services are outlined in the Medicaid Services Manual issued by the Louisiana Department of Health's Bureau of Health Services Financing. The manual defines telemedicine/telehealth as the use of a "telecommunications" system "to render health care services when a physician or other licensed practitioner and a beneficiary are not in the same location."²⁷

At a minimum the 'telecommunication system' must include "audio and video equipment permitting two-way, real-time interactive communication between the beneficiary....and the physician or other licensed practitioner at the distant site."²⁸ **Louisiana Medicaid does not reimburse for store-and-forward or audio-only communication because they are not included in this definition.**²⁹

The manual further stipulates that reimbursement rates for telemedicine/telehealth services are the same as services provided in person.³⁰ However, "Louisiana Medicaid only reimburses the distant site provider for services provided via telemedicine/telehealth."³¹ In other words, Louisiana Medicaid does not reimburse providers who are physically present with the patient while using telemedicine/telehealth services to connect with a provider at another location. There are some circumstances in which a provider would need to be physically present with a patient to assist with a telehealth visit. For example, when medical equipment is required or when a patient's primary care provider is consulting with a specialist in another area. Recent legislation requires private insurance providers to post information on their website regarding "how to receive covered telemedicine medical services, telehealth health

care services, and remote patient monitoring services."³² Insurers are also required to cover certain telemedicine services if in-person coverage is included in their policies. However, private insurance providers may issue some contractual restrictions on these services, such as network participation, prior authorization and medical necessity requirements.

Louisiana does not generally require payment parity between telehealth/telemedicine services and in-person services. The only exception is for a physician in the same location as the patient who facilitates a telemedicine visit. In that circumstance, the facilitating physician must be reimbursed at least 75 percent of the standard rate for the same care provided in face-to-face settings.³³ Otherwise, telehealth/telemedicine coverage through private insurance providers is determined by the market.

A central pharmacy may only supervise a maximum of two telepharmacy dispensing sites. Moreover, telepharmacy dispensing sites may store and dispense controlled substances with a Louisiana Controlled Dangerous Substance license and federal registration with the U.S. Drug Enforcement Administration. Telepharmacy dispensing sites are only permitted to operate in areas where there are "no other pharmacies licensed by the board within 15 miles (driving distance) of the location of the telepharmacy dispensing site."³⁴ This restriction allows the use of telepharmacy dispensing sites where they are needed most, but may unnecessarily limit access to pharmacy services in some areas.

Automated medication systems are essentially vending machines that dispense prescription drugs. The machines allow pharmacists to interact with patients and remotely dispense medications via video or audio link. The Louisiana Board of Pharmacy is in the process of promulgating new rules that would expand the use of automated medication systems.³⁵ If allowed to operate at their full potential, automated medication systems could provide patients with convenient, 24-hour access to pharmaceutical services though there would be additional rules to access certain controlled substances.

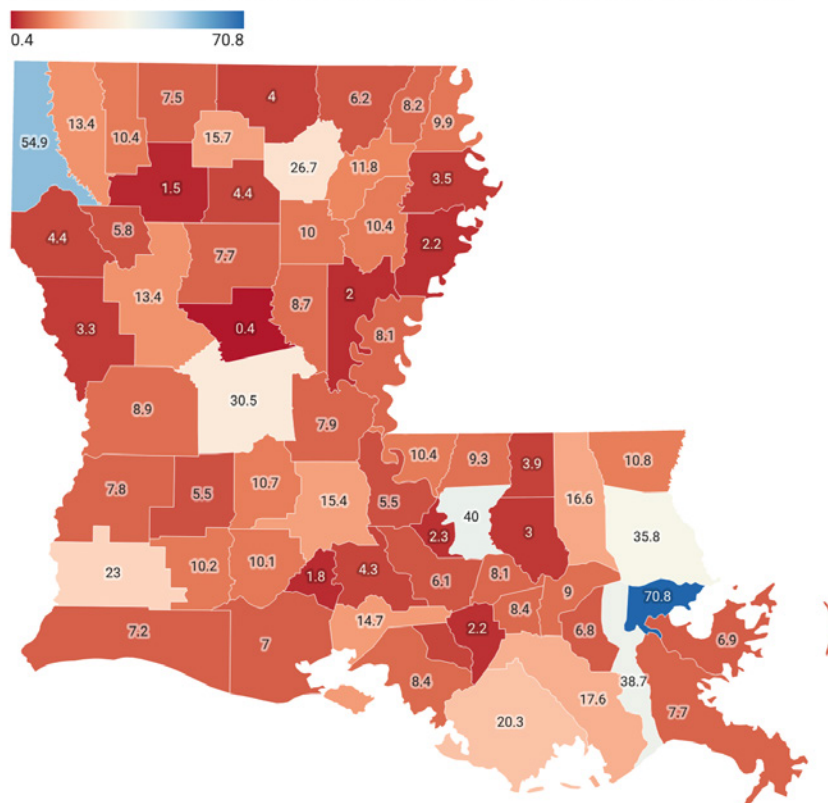
The Benefits of Telehealth in Louisiana

While the people of Louisiana were able to benefit immensely from telehealth, the emergency orders that increased access to telehealth are only temporary. Permanent reform is still necessary to help address the long-standing problems with access to quality care, especially in rural areas. Expanding access is particularly important in Louisiana as several areas of the state have a shortage of physicians.

Louisiana has 155 designated primary care Health Professional Shortage Areas (HPSAs).³⁶ Primary care HPSAs are geographic areas, populations and facilities in which the need for care exceeds the supply of primary care providers. HPSAs are designated by the U.S. Department of Health and Human Services' Health Resources and Services Administration.

An important factor in designating HPSAs is the physician-to-population ratio. In Louisiana, there is an average of about 26 physicians per 10,000 residents, but that ratio varies widely across the state's 64 parishes (FIGURE 2).³⁷ **While Orleans Parish has over 27,000 active physicians, nine other parishes have just five or fewer active physicians** (Grant, Tensas, Bienville, Catahoula, Madison, St. Helena, Assumption, Cameron and Red River). In general, rural areas tend to have fewer physicians per capita than urban areas, but Louisiana's numbers are especially low. Embracing telehealth would allow patients in rural areas to connect with health care providers without traveling long distances.

Figure 3: Active Licensed Physicians Per 10,000 Residents



Map: Reason Foundation & Pelican Institute • Source: LA Board of Medical Examiner and US Census Bureau • Created with Datawrapper



Beyond just expanding access, telehealth also has the potential to reduce costs. Areas for cost-savings include:

- **Travel.** Telehealth enables patients who would normally need to travel long distances for care to reach providers from the comfort and privacy of their own homes. This could result in a reduction in travel costs for patients—especially those in rural areas and who require specialized care.
- **Lost Income.** Patients may have to take time off of work for health care visits. By reducing wait and travel times, telehealth enables patients to reduce the amount of income lost to time off.
- **Diversion from High-Cost Settings.** Because telehealth services are available 24/7, some patients in need of timely care could substitute emergency room visits with telehealth. Moreover, research indicates that using telehealth can reduce the length of hospital stays and the need for follow-up visits.
- **Direct Pricing Differences.** In general, per-visit costs are lower for telehealth than for in person care. If patients are able to substitute telehealth for in-person care, they may save money on a per-visit basis, in addition to the long-term savings of increased access to quality care.

Some evidence suggests that the convenience of telehealth could increase utilization of health care services, offsetting potential savings.³⁸ However, increased utilization is expected, and may be desirable, as access to care expands. Routine care for frequently undertreated conditions can improve outcomes and avoid

higher-cost emergency visits and hospital stays. So while the research on system-wide cost-savings from telehealth is mixed, there are clearly benefits for patients in the form of increased access and in some cases, cost savings.

5

Conclusion and Recommendations for Reform

Telehealth has enabled Louisianians to connect with health care professionals and receive necessary care throughout the COVID-19 pandemic. However, without further legislative action, the newly-expanded access to telehealth services will only last as long as the emergency orders that enabled it. Several key reforms would permanently expand access to telehealth in Louisiana. Require State Licensing Boards to Create Rules For Out of State Physicians

Lawmakers could strengthen Louisiana’s telehealth laws by using the terms “shall” or “must” in place of “may” when delegating rulemaking authority to state licensing boards. Lawmakers could also specify a deadline by which the relevant boards and agencies must issue their initial rules. Presently, the relevant boards have not acted upon their telehealth rulemaking authority. As a result, there is little guidance for health care professionals seeking to practice telehealth in Louisiana.





REQUIRE REGULATORY AUTHORITIES TO CREATE OUT OF STATE REGISTRATION

Lawmakers should consider requiring regulatory authorities to create an out-of-state registration process rather than merely providing the option. This would make it less burdensome for out-of-state providers to offer telehealth services to patients in Louisiana. The requirements for out-of-state registration should be simple, concise and—to the greatest extent possible—specified in statute rather than delegated to licensing boards. Ideally, providers should only be required to demonstrate that they are licensed in another state and have acquired appropriate liability coverage to practice telehealth in Louisiana. This would help expand access to care without lowering quality standards because licensing requirements for health care providers are similar from state to state.



ELIMINATE THE DISTINCTION BETWEEN TELEHEALTH AND TELEMEDICINE

The distinction between telehealth and telemedicine in Louisiana is unnecessary and overly complicated. Lawmakers could improve Louisiana’s laws by combining telehealth and telemedicine under a single term as other states—including Florida—have done. Scope of practice laws and standards of practice provide enough distinction between the roles of physicians and non-physician health care providers. Simply requiring that providers adhere to the same standards as they would for in-person services is enough to ensure quality and safety for patients.

Allow for Greater Use of Asynchronous Store-and-Forward Technology If lawmakers are looking for more incremental reforms, they should at minimum create parity among the types of care that can be provided via telemedicine and telehealth. Allowing telemedicine to be provided using asynchronous store-and-forward technology would be a small but meaningful step to increasing access to virtual health care services. Furthermore, Louisiana Medicaid should reimburse providers for all of the modes of telehealth/telemedicine allowed under state law.



EXPAND THE USE OF TELEPHARMACY

Louisiana should embrace the potential of telepharmacy services. Restrictions on the location of telepharmacy dispensing sites and automated medication systems should be loosened to the greatest extent practicable. Allowing widespread use of these technologies would ensure that patients have convenient, 24-hour access to pharmacy services.

As technological innovation continues to drive progress in health care, it is important that our laws keep pace. The COVID-19 pandemic highlighted many of the shortcomings in Louisiana’s telehealth laws, requiring the state to adopt temporary measures that increased flexibility for health care providers and their patients. Permanent reform is necessary to unlock the full potential of telehealth in Louisiana. The policy recommendations provided here will go a long way toward ensuring patients across the state have access to the care they need.

APPENDIX A:

CURRENT STATE OF TELEHEALTH RULES AND LICENSING REQUIREMENTS FOR HEALTH CARE PROVIDERS COVERED BY THE LOUISIANA TELEHEALTH ACCESS ACT

Heath Provider Type	Promulgated Telehealth Rules	Out-of-State Registration Process
Physician Assistants	No	No
Dentists	No	No
Registered Nurses	No	No*
Advanced Practice Registered Nurses	No	No
Licensed Dietitian or Nutritionists	Yes	No
Licensed Practical Nurses	No	No*
Certified Nurse’s Assistants	No	No
Licensed Midwives	No	No
Pharmacists	Yes	No
Speech-Language Pathologists	Yes	Yes
Audiologists	Yes	Yes
Optometrists	No	No
Podiatrists	No	No
Chiropractors	No	No
Physical Therapists	Yes	No
Occupational Therapists	No	No
Certified or Licensed Athletic Trainers	No	No
Psychologists	Yes	No
Medical Psychologists	No	No
Social Workers	No	No
Licensed Professional Counselors	Yes	No
Licensed Perfusionists	No	No
Licensed Respiratory Therapists	No	No
Licensed Radiologic Technologists	No	No
Licensed Clinical Laboratory Scientists	No	No

*Profession included in a multi-state licensure compact that allows providers located in other compact member states to more-easily obtain Louisiana licensure.

About the Authors



Vittorio Nastasii is a policy analyst at Reason Foundation where he works on health care regulation, occupational licensing, and environmental policy. Vittorio graduated from Florida State University with bachelor's degrees in economics and Political Science. Vittorio is based in Tallahassee, Florida.



Eric Peterson is the Director of the Pelican Center for Technology and Innovation in New Orleans. He is a graduate of Tulane University.

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504-500-0506
info@pelicaninstitute.org
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