

Congress Extends Telehealth Flexibilities: 7 Things You Need to Know

Article By:

Thomas B. Ferrante

Rachel B. Goodman

The [Consolidated Appropriations Act, 2022](#) (the Act), was passed by the U.S. House and Senate on March 9th and 10th, 2022, and signed into law by the President on March 15, 2022. The Act extends certain telehealth flexibilities for Medicare patients for 151 days after the official end of the federal public health emergency (PHE). Currently, the PHE will end in mid-April unless further extended.

Whether the PHE ends in April or at some later date, telehealth stakeholders will have a brief 5-month glide path for certain telehealth flexibilities instituted during the PHE. Legislation is essential because without Congressional action, CMS does not have the authority to allow most of the flexibilities to continue once the PHE ends. Thus, the newly adopted law will prevent a “telehealth cliff” in Medicare when the PHE expires, while also enabling Congress to review further data from CMS and other sources regarding the use of telehealth to enact permanent policy changes.

Here are the key takeaways on how the new legislation will affect the telehealth industry:

1. Medicare Will Pay for Telehealth Provided at Home

Perhaps the biggest change provided by the Act is the new definition of “originating site” to mean “any site in the United States at which the eligible telehealth individual is located at the time the service is furnished...including the home of an individual.” Before the PHE, the statute restricted Medicare coverage to services delivered to patients located at hospitals and other provider facilities (i.e., not the patient’s home). The PHE flexibilities waived the originating site requirement for telehealth services, allowing providers to receive Medicare payment for delivering telehealth services to patients at home. The new law continues this flexibility for 151 days past the end of the PHE.

2. Expands List of Telehealth Practitioners

Prior to COVID-19, only physicians, nurse practitioners, physician assistants, and other specified providers could deliver Medicare covered telehealth services. Under the new law, the list of telehealth practitioners will continue to be expanded to include qualified occupational therapists, physical

therapists, speech language pathologists, and audiologists for 151 days past the end of the PHE.

3. Payment for Audio-Only Telehealth Continues

Currently, Medicare covers audio-only telehealth under temporary waivers that will expire when the PHE ends. In the new legislation, Medicare coverage of audio-only telehealth services remains for 151 days after the PHE ends. Without this extension, once the PHE concludes, the emergency waiver authority ends, and so would have audio-only telehealth.

4. Delayed In-Person Requirement for Mental Health Services via Telehealth

In December 2020, Congress imposed [new conditions on telemental health coverage](#) under Medicare, creating an in-person exam requirement alongside coverage of telemental health services at a patient's home that was intended to go into effect when the PHE ends. The law included a [requirement for an in-person visit](#) within six months of the first telehealth service and subsequent in-person visits every 12 months thereafter. Now, this in-person requirement for mental health services furnished through telehealth is delayed until the 152nd day after the PHE sunsets.

5. Extension for FQHCs and RHCs

Prior to the pandemic, federally qualified health centers (FQHCs) and rural health clinics (RHCs) were limited to serving as an originating site (the location of the patient) for telehealth services. The proposed legislation would extend flexibilities put into place by the CARES Act, allowing FQHCs and RHCs to serve as distant sites (the location of the practitioner) for an additional 151 days after the expiration of the PHE.

6. Extension of First Dollar Coverage for Telehealth under HDHP/HSA Plans

During the COVID-19 PHE, Congress issued [temporary relief for telehealth and High Deductible Health Plans](#) (HDHP) and health savings accounts (HSA), allowing coverage for telehealth services without plan members incurring costs even before plan members' deductibles are met (i.e., first-dollar coverage). This relief initially expired on December 31, 2021. Now, under the new law, this flexibility is reinstated for the period of March 31, 2022 through December 31, 2022.

7. Study on COVID-19 Related Telehealth Changes under Medicare & Medicaid

The new Act directs the Medicare Payment Advisory Commission (MedPAC) to conduct a study on the expansion of telehealth services and to analyze: (i) the utilization of telehealth; (ii) Medicare program expenditures on telehealth services; (iii) Medicare payment policies for telehealth services and alternate approaches to such payment policies; (iv) implications of expanded Medicare coverage of telehealth services on beneficiary access to care and the quality of care; and (v) other areas determined by MedPAC.

Further, beginning July 1, 2022, the Department of Health and Human Services Secretary must

publicly post data on a quarterly basis with respect to telemedicine utilization and no later than June 15, 2023, the Office of Inspector General shall submit a report to Congress on program integrity risks associated with Medicare telehealth services with recommendations to prevent fraud, waste, and abuse.

What's next?

While the flexibilities contained in the Consolidated Appropriations Act of 2022 should help the industry avoid a “telehealth cliff,” like [other flexibilities](#), they are temporary. Thus, telehealth stakeholders must continue to wait for more permanent changes to open access and reimbursement for providing telehealth services to Medicare beneficiaries.

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