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Telehealth Flexibilities Get Another Shot Through a Temporary Extension Under the Omnibus Spending Bill

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March 28, 2022

On March 15, 2022, President Biden signed the Consolidated Appropriations Act, 2022, an omnibus bill which includes, among other spending measures, a five-month extension of regulatory flexibilities that have allowed for expanded coverage of telehealth in response to the COVID-19 pandemic. Authority for many of these flexibilities originated from the Coronavirus Preparedness and Response Supplemental Appropriations Act and the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), which allowed the Centers for Medicare & Medicaid Services (CMS) to waive the statutory restrictions on coverage for telehealth services. The duration of these flexibilities was tied to the United States Department of Health and Human Services (HHS) Secretary's declaration of a public health emergency (PHE) pursuant to Sec. 319 of the Public Health Service (PHS) in March 2020, which empowered CMS to issue waivers to Medicare program requirements to support health care providers and patients during the pandemic. The popular telehealth flexibilities offered due to the COVID-19 pandemic allow Medicare coverage for telehealth visits, regardless of where the patient lives relative to the health care provider. Additionally, the expanded coverage allows for the following for an additional 151 days:

- Geographic and originating site restrictions will continue to be lifted allowing telehealth services to be covered even if beneficiaries are in urban areas or in their homes. Eligible telehealth practitioners will continue to include qualified occupational therapists, physical therapists, speech-language pathologists, and audiologists.
- Federally qualified health centers and rural health clinics may serve as originating or distant sites for the delivery of telehealth services.
- Providers will not be required to meet in-person visit requirements to deliver mental health services via video or audio-only visits. This applies to all sites of care, including Federally Qualified Health Centers and Rural Health Clinics (except in the case of hospice patients).
- Coverage of telehealth services delivered via audio-only format will continue for specific service codes identified by Medicare as being eligible for delivery via audio only.
- Practitioners will be able to use telehealth to conduct face-to-face encounters prior to recertification of eligibility for hospice care.

Prior to the initial implementation of these telehealth flexibilities, Medicare coverage was limited by the statutory requirements set forth in Section 1834(m) of the Social Security Act. These requirements limited Medicare coverage of telehealth services to certain services, furnished to patients in clinical sites in rural areas, by a specified list of providers.

Despite the popularity of expanded telehealth coverage among the public, these flexibilities offered under the omnibus bill are set to expire 151 days after the end of July (the anticipated end of the PHE). Even as COVID-19 restrictions lift, the use of telemedicine is not expected to dissipate anytime soon. In response to popular

support, various bipartisan bills (most notably, the Telehealth Extension and Evaluation Act) have been introduced to make Medicare telehealth flexibilities permanent.

While questions exist regarding the extent to which expanded coverage of telehealth services will be available under Medicare, there is little doubt that telehealth flexibility has proven its value and effectiveness during the pandemic by allowing at-risk individuals to safely access the care they need under extraordinary circumstances. In fact, in March 2022, the Office of Inspector General for the United States Department of Health and Human Services (HHS-OIG) [released a report](#) analyzing data to determine the total number of services used via telehealth and in-person during the PHE versus previous years, finding telehealth was critical for providing services to Medicare beneficiaries during the first year of the pandemic. The report concluded that beneficiaries' use of telehealth during the PHE demonstrated the long-term potential of telehealth to increase access to health care for beneficiaries, particularly for behavioral health services.

Reports such as this one will be crucial to determining the future of telehealth. As such, more detailed study is forthcoming, as the omnibus bill includes a [proposal](#) for the Medicare Payment Advisory Commission (MedPAC) to conduct a deeper study regarding Medicare telehealth utilization, program expenditures on telehealth services, telehealth payment policies and the impacts of telehealth's expansion during the pandemic on the access to and quality of care. MedPAC will be required to conduct a study on the expansions of Medicare telehealth services in response to the COVID-19 PHE, including extensions made through the omnibus bill, and to deliver a report to Congress no later than June 15, 2023. The study will include an analysis of utilization and payment trends and will evaluate the impact of Medicare's telehealth policy on access and quality. Additionally, CMS also will be displaying quarterly data on Medicare claims for telehealth services on its website beginning in July 2022.

It is clear that telehealth adoption increased substantially over the course of the pandemic. Providers will be faced with challenges if pre-pandemic telehealth restrictions are eventually reinstated. The legislative extension of certain telehealth flexibilities allows temporary relief at the end of the PHE. Ultimately, the data collected during the pandemic and this additional extension of flexibilities, along with the examples of the many models and arrangements that have proven effective, should help lawmakers support permanent provisions to expand telehealth coverage where it has proven most beneficial. Having a stable and sustainable telehealth regulatory framework is critical for providers who find the constantly evolving regulations challenging to navigate while they focus on providing long-term continuity of care.

Although the Omnibus bill only extends the PHE flexibilities for 151 days, lawmakers are focused on expanding coverage for Medicare telehealth services. Such bills include the Telehealth Extension Act of 2021 (H.R. 6202) and the Telehealth Extension and Evaluation Act (S. 3593). The robust legislative activity is a positive sign that permanent change for Medicare telehealth reimbursement may be on the horizon.

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