

# Health Information Compliance Alert

## Telehealth: CMS Forges Ahead With Telehealth Proposals

**Caveat: EHR data points to decreasing telehealth usage.**

As the feds push forward with more telehealth proposals and initiatives, evidence suggests that digital visits may be leveling off - even though the coronavirus continues to rage on. Read on for the latest news on three important telehealth updates.



### 1. Expect a Post-COVID Telehealth Expansion

The **Centers for Medicare & Medicaid Services** (CMS) published its calendar year (CY) 2021 Medicare Physician Fee Schedule (PFS) proposed rule in the Federal Register on August 17. And though not as dense as last year's behemoth, the hefty 2021 proposal is still chock full of surprises. Highlights include finalized updates on the much-anticipated evaluation and management (E/M) changes, a shocking 11 percent cut to the conversion factor, and several COVID-19- inspired policies, including scaled back rollouts of promised Quality Payment Program changes - and clarifications on the Medicare telehealth expansion.

**Then:** CMS published two interim final rules in March and May that streamlined telehealth and gave clinicians more care options with a plethora of 1135 waivers in place as part of the public health emergency (PHE).

"Most of these regulatory flexibilities are set to sunset upon the expiration or termination of the PHE," warns international law firm **Dentons** in online analysis.

**Now:** "The CY 2021 PFS proposed rule includes proposals to maintain an expanded list of Medicare-covered telehealth services and remote service flexibilities until the end of the CY in which the COVID-19 PHE ends, or in some cases beyond, and to clarify existing policies for remote services," the Dentons' attorneys note.

"Several types of services would be permanently approved for delivery via telehealth, including traditional home visits for evaluating and managing patient treatment and certain provider visits for patients with cognitive impairments," says New York-based attorney **Ada Kozicz** with **Rivkin Radler** in the Rivkin Rounds blog.

Kozicz adds, "CMS believes that this expansion will provide enough time for CMS and key stakeholders to consider whether such services should be permanently approved for delivery via telehealth."

A few of the telehealth-related proposed rule highlights include:

- Permanently adding some services from the Medicare telehealth list.
- Creating a temporary addition list through the PHE called "Category 3."
- Cutting frequency limits for skilled nursing facilities (SNFs).
- Permitting direct supervision using real-time, interactive audio, and video technology (excluding telephone that does not also include video) through Dec. 31, 2021.

**Reminder:** The CARES Act temporarily removed geographic and originating site barriers for Medicare telehealth services. "The proposed rule does not address these provisions because CMS is limited by statute and cannot permanently expand the list of telehealth providers. CMS notes that making these flexibilities permanent requires an act of Congress," explains **Miranda Franco**, senior policy advisor with **Holland & Knight LLP** in Washington D.C., in a blog post.

**Note:** Find the PFS at: [www.govinfo.gov/content/pkg/FR-2020-08-17/pdf/2020-17127.pdf](http://www.govinfo.gov/content/pkg/FR-2020-08-17/pdf/2020-17127.pdf).

## 2. Check Out Cross-Departmental Rural Telehealth Efforts

Rural areas have long suffered from healthcare inequities that challenge their communities. This perennial lack of technical resources has led to major health disparities and is now greatly impacting rural communities' abilities to sufficiently combat the spread of COVID-19, according to a recent **Department of Health and Human Services** (HHS) release.

**Now:** On September 1, HHS announced that it had joined forces with the **Federal Communications Commission** (FCC) and the **Department of Agriculture** (USDA) to address these longstanding issues. The three agencies "signed a Memorandum of Understanding to work together on the Rural Telehealth Initiative, a joint effort to collaborate and share information to address health disparities, resolve service provider challenges, and promote broadband services and technology to rural areas in America," an HHS brief notes.

"Better access to telehealth in rural America means better health for some of our most vulnerable and greater resilience at times of crisis like the COVID-19 pandemic," acknowledges HHS Secretary **Alex Azar** in a statement. "We look forward to working with our colleagues at the FCC and USDA to expand access through telehealth to quality, affordable care for the 57 million Americans living in rural areas."

The Memorandum offers a comprehensive breakdown by department of what the Rural Telehealth Initiative, or RTI for short, hopes to achieve. It also includes what the various auxiliary agencies bring to the program.

For example, the Rural Utilities Service (RUS), which falls under the umbrella of the USDA, "operates the Distance Learning and Telemedicine (DLT) program," the Memorandum states. The equipment grants that the DLT program offers will be particularly helpful as the RTI starts laying the framework and connecting with communities.

**Note:** Read the Memorandum at: [www.hhs.gov/sites/default/files/rural-telehealth-mou-hhs-usda-fcc.pdf](http://www.hhs.gov/sites/default/files/rural-telehealth-mou-hhs-usda-fcc.pdf).



## 3. Telehealth Usage May Be Slowing Down

When the feds rolled back telehealth regulations to accommodate the PHE, many struggling providers jumped on the bandwagon to assist patients and make ends meet; however, recent EHR data imparts another scenario: Telehealth visits are declining after originally skyrocketing in April 2020.

That's the word from the healthcare think tank **Epic Health Research Network**. In its study, Epic reveals that in the early days of the PHE telehealth accounted for 69 percent of healthcare visits, but that number has plummeted. EHR data signals that only about 21 percent of total visits utilize telehealth services right now, which is still significantly higher than pre-COVID-19, indicates Epic.

According to Epic, the telehealth decline is across the board and impacting all geographic locations in the U.S. Researchers don't give a reason for the decrease but suggest reimbursement changes as a possible motive.

**Note:** Review Epic's study at: [www.ehrn.org/telehealth-fad-or-the-future/](http://www.ehrn.org/telehealth-fad-or-the-future/).