

Health Information Compliance Alert

Telehealth: Legislation Extends Telehealth Waivers Beyond PHE - With Limits

Omnibus bill gives providers hope, but the extension is not permanent.

If you've been following the telehealth expansion debates, you know that many industry insiders have advocated for COVID-related flexibilities to be made permanent. Recent legislation does offer providers an olive branch beyond the end of the public health emergency (PHE); however, the telehealth waiver extensions aren't permanent ... yet.

Update: On March 15, President **Biden** signed the long-awaited and much debated Consolidated Appropriations Act of 2022. This omnibus bill "consolidates" an amalgam of policies across the federal government, putting them into one piece of massive legislation, and "appropriates" funding for various programs and initiatives. For the 2022 fiscal year (FY), Congress allocated \$1.5 trillion in discretionary spending with \$108.3 billion earmarked for the Department of Health and Human Services (HHS), the legislation indicates.

Additionally, sandwiched in the 2,700+ page behemoth are a few Medicare-centered updates on the telehealth expansion.



Consider These Takeaways

In March 2020, the Centers for Medicare & Medicaid Services (CMS) issued a plethora of 1135 waivers and coverage flexibilities for telehealth services to address COVID-19, lifting previous location and technology restrictions. These changes offered Medicare coverage to beneficiaries for specific telehealth services, and the omnibus bill provides an update.

The omnibus bill "extend[s] the current telehealth accommodations for 151 days after the end of the federal public health emergency, which is currently set to expire in April but will likely be extended until July," explains partner attorney **Eric Fader** with law firm Rivkin Radler LLP in online legal analysis.

Under the legislation, more providers will also be able to offer telehealth services to beneficiaries. "Prior to the PHE, Medicare covered telehealth services only if offered by physicians, physician assistants, nurse practitioners, clinical nurse specialists, nurse-midwives, clinical psychologists, clinical social workers, registered dietitians or certified registered nurse anesthetists," note attorneys **Anne Brendel, Andrew Hess, Roger Cohen,** and **Matt Wetzel** with law firm Goodwin Proctor LLP in online legal analysis. "Under the Omnibus Bill, qualifying practitioners now include occupational therapists, physical therapists, speech-language pathologists and audiologists," they say.

"The bill also delays the requirement that Medicare beneficiaries who obtain behavioral health care via telehealth have an in-person visit within six months of the virtual visit," Fader adds.

Caveat: The omnibus bill doesn't make the Medicare telehealth expansion permanent as many had hoped, but merely extends it for about five months past the final COVID-19 PHE's end. Plus, Congress asks the Medicare Payment Advisory Commission (MedPAC) in the legislation to compile a report on the expansion in reference to the PHE - with a June 15, 2023 due date.



Industry Organization Weighs In



Though the feds have only temporarily removed pre-COVID restrictions on telehealth services, the American Medical Association (AMA) is hopeful that the provisions outlined in the Omnibus bill are a step in the right direction.

"Congress has taken a crucial step in starting a revolution in patient access. The AMA aims to continue being a partner in moving it forward," says AMA President **Gerald E. Harmon, MD**, in a release on the legislation. "The dramatic increase in adoption of telehealth that occurred in 2020 has allowed medical care that combines in-person and virtual services to become the new standard of care. This new legislation guarantees that patients with Medicare will continue to benefit from this important innovation in health care delivery."

Resource: Read the text of the CAA, 2022, at www.congress.gov/bill/117th-congress/house-bill/2471/text.