Telehealth Gains Traction in Congress

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The CMS waivers of numerous telehealth regulatory requirements (click here) during the COVID-19 public health emergency (PHE) may be one of the only actions during COVID that is generally universally supported. The support is so strong among patients and providers, and companies facilitating telehealth delivery, that almost 400 telehealth bills have been introduced in Congress, many of them bipartisan, to ensure that telehealth expansion continues.

Every expectation is that Congress will "pass something" on telehealth prior to the end of the PHE. The PHE is extended in 90-day periods, currently lasting through mid-April. Speculation abounds over when the PHE will end but the chatter is increasing that with the Omicron numbers decreasing, the PHE *could* end as early as this summer, possibly before.

Numerous stakeholder groups have aligned to lobby Congress to extend the existing telehealth waivers through December 31, 2024, which many people expected would be a full two-year period post-PHE. Click here to review the full request.

There is a significant push from both Members of Congress and stakeholders to add an extension of the telehealth waivers in the FY22 spending bill. Click here for a bipartisan letter to Congressional leadership urging an extension of the waivers. Congress is expected to pass a continuing resolution this week to fund the government through March 11, at which time it hopes to pass a FY22 spending bill still under development. (The current continuing resolution expires February 18.)

Another possible vehicle for extending the telehealth waivers would be a targeted COVID-19 funding package to help with the costs associated with Omicron.

Based on what we are hearing now, an extension of the waivers for a year, or maybe two, post PHE seems most likely. We are also hearing that the cost of these waivers for one year is approximately $5 billion. No one is yet seriously discussing offsets to finance this expansion.

We continue to talk with Congressional offices on the path forward on telehealth and encourage you to reach out to your delegations to offer your views. As we gather additional intelligence, we will develop another sign-on letter that we will circulate for review and comment.

Summarized below are various approaches Congress could take and the telehealth bills that we believe have the most traction should Congress choose to do more than extend the waivers.

Options for Congress

- Extend the waivers for two years post PHE and consider permanent changes later – this is arguably the quick and easy fix that would likely be supported by all stakeholders. The downside is that it would likely receive a high score from the Congressional Budget Office that would require an offset. A one-year period may be the fallback. This approach is likely to be tacked onto the FY22 spending package, a COVID supplemental package or a year end bill.
- Permanently eliminate the originating and geographic site restrictions for all telehealth services - must be done by statute - and extend all the other waivers for a limited period. This approach, expanding access beyond rural areas and including the patient's home, would give stakeholders the greatest amount of certainty that telehealth expansion is viable for the long term.
- Pass one or more of the approximately 400 telehealth bills pending in Congress that deal with discrete aspects of telehealth delivery. The downside is that as Congress starts to develop a larger package, divisions arise as various groups fight for their unique requests.

Key Telehealth Bills

The following bills are particularly important because of their sponsors, the committee jurisdiction or number of bi-partisan cosponsors:

HR 6202, the Telehealth Expansion Act (click here), introduced by Rep. Doggett (D-TX), Chair of the House Ways and Means Health Subcommittee. Both the Ways and Means Committee and the Energy and Commerce Committee have jurisdiction over the bill. Chairman Doggett intends to mark-up the bill in subcommittee soon. A nearly identical Senate bill, the Telehealth Extension and Evaluation Act, was introduced on February 7 by Senators Cortez Masto (D-NV) and Young (R-IN). Click here. In brief, the bills include:

- A 2-year extension of telehealth services following the PHE
- removes geographic requirements;
- expands originating site to include the home, with additional originating sites to be determined by HHS; no originating site facility fee for new sites;
- FQHCs/RHCs – payable as a FQHC or RHC service under PPS; costs associated with delivery of telehealth services by a FQHC/RHC serving as a distant site shall be considered allocable costs;
- Payment for outpatient CAH services consisting of behavioral therapy services furnished by a CAH; certain in person restrictions apply;
- Some limits on payment for high-cost durable medical equipment and laboratory tests without an in-person visit; audit of providers; and
- Requirement to submit NPI number for separately billable telehealth services.

HR 6200, CURES Act 2.0, (click here) introduced by Rep. DeGette (D-CO)/Rep. Upton (R-MI) with 74 cosponsors.

This large bill to build upon the initial 21st Century Cures Act contains some telehealth provisions. It has been viewed as the vehicle to move telehealth provisions through the Energy and Commerce Committee which is one of the committees with jurisdiction over this bill. In brief, the telehealth provisions would:

- permanently remove geographic and originating site restrictions;
- give HHS the authority to expand the type of health care providers who can offer telehealth services to any provider who is eligible to bill for professional services; and
- give HHS the authority to retain the additional services and sub-regulatory modification process established during the PHE.

S. 1512, the CONNECT Act (click here), introduced by Sen. Schatz (D-HI) has 61 cosponsors. **HR 2903**, the House companion introduced by Rep. Thompson (D-CA), has 120 cosponsors. In brief, the bill:

- removes geographic restrictions and expands originating site restrictions to include the home and other places;
- allows RHCs and FQHCs to serve as distant site providers to be reimbursed under their PPS rate;
- allows CMS to waive certain restrictions on the type of technology used, the limits on the types of practitioners, the type of services covered and gives CMS the authority to set policies and fee schedule for items under waivers;
- requires CMS to report on the effects of expanded telehealth services during the COVID-19 PHE, including utilization, quality, and outcomes of services; and
- allows CMMI to test APMs relating to expanded telehealth services

We will keep you posted on new developments and welcome your input on top priorities.

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