

Memorandum

February 7, 2022



OVERVIEW OF RECENT TELEHEALTH DEVELOPMENTS

Federal attention on telehealth continues to mount. This is true especially as uncertainty builds around when the COVID-19 public health emergency (PHE) will end, which would mark the end of many telehealth flexibilities absent further congressional action (though the Administration may allow any flexibilities to persist for up to an additional 60 days following the end of the PHE).

The legislative vehicle to expand telehealth is unclear, as is the decision to make expansion temporary or permanent, though promptings from both lawmakers from both sides of the aisle and stakeholders continue to push Congress to act. Below, we round up the latest federal actions on telehealth suggesting how Congress may move next.

Lawmaker Actions

On January 28, Sens. Brian Schatz (D-HI) and Roger Wicker (R-MS) [led a bipartisan and bicameral group](#) of 45 legislators calling for the inclusion of telehealth expansion language in the forthcoming must-pass appropriations legislation. The letter – directed at Congressional leadership in both the House and Senate – highlighted the important role telehealth has played during the COVID-19 pandemic and specifically called for maintained coverage of broad telehealth flexibilities under Medicare beyond the end of the public health emergency (PHE).

Aligned with these cues, Sens. Cortez Masto (D-NV) and Casey (D-PA) [introduced](#) new legislation today that would temporarily extend the COVID-19 telehealth waivers for an additional two years and would thereby add another piece of legislation into the mix of bills that could advance telehealth reform. On the House side, Rep. Lloyd Doggett (D-TX) also notably [introduced legislation](#) in December 2021 that would temporarily extend certain telehealth waivers under Medicare to allow for additional time to study their effects (though would make other extensions permanent, including permanent waiver of the geographic and originating site restrictions).

In addition, the Senate Appropriations Committee [convened](#) last week to discuss the [broadband programs](#) the Department of Commerce is implementing pursuant to the Infrastructure Investment and Jobs Act ([P.L. 117-58](#)). Broadband expansion has been seen as an important component for increasing access to telehealth in a more equitable way, as these broadband programs aim to enhance broadband coverage for those in low-income and rural areas, who would then be better able to access care via telehealth platforms. During the hearing, members discussed Commerce's plans for overseeing its broadband deployment and digital equity programs, emphasizing the importance of ensuring individuals with low-incomes have access to broadband connectivity.

Stakeholder Pressure

Key stakeholder groups have also pressed Congress to act on telehealth expansion. Notably, over 300 signatories were included on a [recent letter to Congress](#) urging lawmakers to facilitate a pathway towards permanent expansion of the telehealth flexibilities made available during the PHE. Specifically, the letter recommended a continuation of all current telehealth waivers for a two-year period, during which time the Department of Health and Human Services (HHS) could study more closely the effects of broad telehealth coverage on quality, safety, and program integrity. The letter suggested at that point that Congress would be able to evaluate the available data and craft data-driven legislation to authorize telehealth expansion on a permanent basis. Notably, these recommendations align closely with those advanced by the Medicare Payment Advisory Commission (MedPAC) in its [March 2021 report to Congress](#).

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In a [separate letter to Congress](#), over 100 stakeholders pressed Congress to re-instate a pandemic-driven telehealth flexibility that ended on Dec. 31, 2021, which allowed high-deductible health plans with Health Savings Accounts (HDHP-HSAs) to receive telehealth benefits pre-deductible.

Beyond this, the American Telemedicine Association (ATA) [recently launched](#) an affiliated trade organization to formally advocate for telehealth expansion. Called ATA Action, the entity has already engaged in advocacy at the federal level to push Congress on telehealth legislation. For example, ATA Action was a signatory on the first letter to Congress cited above. ATA Action also submitted a standalone letter to the Department of Commerce's National Telecommunications and Information Administration (NTIA), requesting that they support individuals' abilities to purchase broadband-enabled devices; administer trainings and workshops that promote digital literacy; and using input from diverse stakeholders to tailor activities to localized needs.

Additional Developments

The Office of Health Policy at the Assistant Secretary for Planning and Evaluation (ASPE) recently released a [report \(WHG summary\)](#) on national survey trends in telehealth use in 2021, including disparities in utilization. The report found that the use of telehealth increased dramatically during the COVID-19 pandemic, but there were disparities in access to telehealth. ASPE found that overall, 23.1 percent of adults used telehealth, but telehealth utilization was much lower among uninsured individuals (9.4 percent), young adults ages 18 to 24 (17.6 percent), and individuals living in the Midwest (19 percent). Conversely, telehealth utilization was highest among individuals covered by Medicare or Medicaid, Black individuals, and individuals with annual incomes less than \$25,000.

Notably, the report aligns with an [issue brief](#) WHG developed on health equity and telehealth coverage under Medicare, which explored the relationship between access to care for minority beneficiaries, telehealth coverage, broadband affordability, cultural competence, and digital literacy.

Possible Next Steps

Congress and stakeholders largely seem activated on advancing telehealth reform. The questions that remain are two-fold:

- **Extent of reforms:** Assuming Congress ultimately acts on telehealth reform, questions remain on the extent to which it will do so. One possible route is that advanced by the over 300 stakeholders in their letter to Congress and MedPAC, which favors provisional expansion of the Medicare telehealth flexibilities in order to collect more data over a two-year period. A second route would be legislation that immediately expands Medicare telehealth authorities without a provisional, two-year data collection period. Such an approach is outlined in the current draft of [Cures 2.0](#), which could ride in a must-pass vehicle this year (some speculate it may ride specifically with [reauthorization of the Prescription Drug User Fee Act \(PDUFA\)](#)).
- **Timing:** Questions also remain around when such reforms would be advanced. As noted, the group of 45 legislators urged Congress to include telehealth expansion legislation in the upcoming must-pass legislation. However, the path to a bipartisan agreement on the spending package is not certain and is expected to exclude other policy priorities.

Another option is the inclusion of Cures 2.0 – which contains telehealth expansion language – with the forthcoming PDUFA reauthorization. Reauthorization for PDUFA is expected by the end of September when the current authorities end. The likelihood of telehealth riding in this package may depend,

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however, on how long the Administration intends to continue the PHE into the year. The latest PHE extension runs until April 16, 2022, well before PDUFA authorities expire. The Administration stated it will provide 60-days' notice of its intention to let the PHE formally expire, meaning we should know by February 15 whether the Administration intends to extend the PHE at least one more time.

If the Administration does extend the PHE once more, it would remain in effect until mid-July. Because HHS has discretion to allow PHE-driven waivers to remain in effect for up to 60-days' following the end of the PHE, this would allow HHS to preserve the telehealth flexibilities through mid-September. Notably, this would align closely with the deadline for PDUFA reauthorization, suggesting a viable pathway for telehealth expansion.