



## New executive order shows telehealth changes might “stick”

By Sarah E. Swank

On August 3, 2020, the president issued a new [executive order on improving rural health and telehealth access](#) opening a new chapter in telehealth expansion. Over the spring, hospitals cancelled elective procedures, and physician offices shut down across the country. Health care providers sought to care for patients who were often at home or in high-risk care environments for COVID-19, such as nursing homes. Telehealth appears to have often become the preferred mode of care. New claims data begins to come in to the Centers for Medicare & Medicaid Services (CMS) and other payors who now will have more data on telehealth across a broad range of providers and specialities on usage, patient satisfaction, quality, and cost-efficiency.

### How COVID-19 changed telehealth

Previously, some reimbursement did exist for rural health care providers using telemedicine under the Medicare fee-for-service, but for example, the location of the patients was limited. The broad expansion under Medicare did not happen until the [telehealth 1135 waivers](#) provided under the [public health care emergency](#) for the pandemic caused by the new coronavirus. Effective for services starting March 6, 2020, and for the duration of the COVID-19 public health emergency, Medicare pays for Medicare telehealth services furnished to beneficiaries in all areas of the country in all settings with health care providers paid the same as in-person visits. Many private payors followed suit, at least for now.

### Unique challenges for rural health

The executive order focuses on rural health care citing the unique challenges that rural health care faces, including the drivers of telehealth, such as the shortage of health care workers and the barriers to telehealth such as the inability to access technologies. In the executive order, it was acknowledged that rural health continues to face several challenges, including:

- Decreased access and increased travel times, which lead to an increased risk of mortality
- Impaired health outcomes in diseases such as cancer, heart disease, and chronic lower respiratory disease
- Health care worker shortage

- Closure of distressed rural hospitals
- Limited transportation opportunities
- Inability to access innovation and technology, including broadband issues

The executive order states that flexibilities will be needed for rural health care providers in order to increase access and improve quality and financial economics in rural health care.

### **Coming soon—a new payment model for rural health care transformation**

Within 30 days of the executive order, CMS will announce a new model to test innovative payment mechanisms for rural health care providers to provide access and quality care. The idea is to have flexibilities from existing Medicare rules through a financial payment model and movement to high-quality, value-based care. In addition, within 30 days of the date of the executive order, the secretary shall submit a report to the president, through the Assistant to the President for Domestic Policy and the Assistant to the President for Economic Policy, regarding existing and upcoming policy initiatives to:

- Increase rural access to health care by eliminating regulatory burdens that limit the availability of clinical professionals
- Prevent disease and mortality by developing rural specific efforts to drive improved health outcomes
- Reduce maternal mortality and morbidity
- Improve mental health in rural communities

More policy change could possibly come from the report, although certain burdens may need to be addressed at the state level or by Congress rather than federal agencies.

### **Broadband and communication infrastructure to support health care**

The executive order requires that Secretary of Agriculture, in coordination with the Federal Communications Commission (FCC) and other executive departments and agencies, to develop and implement a strategy to improve rural health care. This improvement will happen through improvements to the physical and communications health care infrastructure. FCC Chairman Pai is quoted on the FCC website as saying that “[t]echnologies that are available right now can dramatically improve the quality of health care for millions of Americans. Getting everybody connected and promoting adoption of current tools by both doctors and patients would be a game-changer.” During the pandemic, the FCC set out a series of COVID-19 [programs and support opportunities](#) around telehealth and rural health.

### **The pandemic changes may stick—flexibility beyond the public health emergency**

It appears that changes during the COVID-19 pandemic may stick. Claims data that came into CMS regarding spring visits show that nearly half of all Medicare fee-for-service primary care visits were provided through telehealth in April 2020. CMS data showed that even when offices began to open in May, telehealth visits continued. The executive order provides a review within 60 days of this order by the secretary for telehealth beyond the duration of the public health emergency by the:

- Additional telehealth services offered to Medicare beneficiaries

- Services, reporting, staffing, and supervision flexibilities offered to Medicare providers in rural areas.

This review will show us a preview of where telehealth may head into the future.

### **Are more changes to come—stay tuned**

In the next 30 to 60 days, we should see a flurry of activity as many federal agencies respond to the executive order. These agencies will focus on rural health care and could set telehealth on track to become a further established mode of care. New claims data will show patterns of usage over the late spring and summer, as people settled into using telehealth. Issues such as reimbursement for both governmental and commercial payors, site location limitations, licensure, security, and other barriers may not be addressed by these changes. Congress and state licensing boards, along with federal agencies, will need to jump in to further open the door to these telehealth changes to make them “stick.”

For more information on the content of this alert, please contact your Nixon Peabody attorney or:

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