

United States Senate
WASHINGTON, DC 20510-2310

July 2, 2020

The Honorable Alex Azar
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue S.W.
Washington, DC 20201

The Honorable Seema Verma
Administrator
Centers for Medicare and Medicaid Services
U.S. Department of Health and Human Services
200 Independence Avenue S.W.
Washington, DC 20201

Dear Secretary Azar and Administrator Verma:

We write to commend you for the steps you have taken to remove barriers to the broad-based delivery of telehealth services during the COVID-19 pandemic. We appreciate your commitment to making these temporary telehealth flexibilities permanent—most recently with the proposed rule to permanently extend telehealth changes under the home health benefit—and ask you to provide Congress with a written plan and timeline for permanent administrative changes to Medicare rules governing the provision of telehealth.¹ We further request that you provide Congress with a list of telehealth changes that will require Congressional action.

Telehealth has been a lifeline to patients and providers during the COVID-19 pandemic. For patients, telehealth has provided continuity of care, allowing them to access care without exposing themselves or their providers to the risk of a COVID-19 infection. For providers, telehealth has maintained access to patients and provided an important source of financial stability, which is particularly important now as providers attempt to recover some of the financial losses associated with delaying non-emergency procedures and following stay at home orders.

However, telehealth would not have been as critical of a lifeline during the pandemic without action from Congress in collaboration with the Administration. Congress, through coronavirus relief packages, provided HHS with the authority to waive telehealth requirements for the length of the COVID-19 public health emergency.

¹ <https://www.cms.gov/newsroom/fact-sheets/cms-proposes-calendar-year-2021-payment-and-policy-changes-home-health-agencies-and-calendar-year>

Due to the combined effect of Congressional and administrative actions, health care providers and patients can now deliver and receive telehealth services in their own homes. Physicians can supervise staff remotely, more easily provide services across state lines, and see new patients—not just established patients—through a telehealth visit. Physical therapists, occupational therapists, and speech language pathologists can now provide telehealth services, and a longer list of mental health and addiction treatment services can be provided through telehealth. Patients and providers can use audio-only telephone telehealth to get care, and they don't face the same limits on the number of services they can receive via telehealth.

As you stated, it is hard to imagine rolling back these changes.² However, we are hearing from patients and providers who are concerned about when Medicare's temporary changes to telehealth rules will be rolled back and whether they will receive any advance notice. Patients are anxious about when private payers will change rates for telehealth services and if they will decide to rescind telehealth coverage all together.

We appreciate your recognition that, due to the COVID-19 pandemic, more patients and providers see the value of telehealth. We believe telehealth is an important tool that enhances patient care and can provide efficiency in health care delivery. While telehealth may not be able to replace all in-person care, we believe it should continue to be an option to meet individual care needs.

We therefore ask you to continue working with Congress to provide transparency and clarity for your plans for the future of telehealth. Specifically, we request that you:

1. Provide a written plan and timeline for making permanent the administrative changes—including the expansion of the definition of telecommunications systems—you have made to Medicare, Medicaid, and Children's Health Insurance Program (CHIP) rules governing the provision of telehealth under Section 1135 Waivers. This plan should include sufficient public notice and comment periods in order to ensure that these permanent changes are not at the expense of access for patients in rural or underserved communities, patient privacy, protections against fraud, waste, and abuse, or quality of patient care.
2. Provide a timeline for if and when you intend to end enforcement discretion by the Department of Health and Human Services Office for Civil Rights (OCR) for non-compliance with the Health Insurance Portability and Accountability Act (HIPAA) so that health care providers and patients have a reasonable expectation as to when the use of everyday technologies may be discontinued. In addition, perform an analysis of the non-HIPAA compliant platforms used during the pandemic and report to Congress their impact on providers, consumers, and patient data security.
3. Clarify whether you intend to extend existing in-office Medicare reimbursement parity to telehealth services provided by Federally Qualified Health Centers (FQHCs) and Rural Health Clinics (RHCs) for the duration of the pandemic or whether doing so would require Congressional action.

² <https://www.statnews.com/2020/06/09/seema-verma-telehealth-access-covid19/>

4. Detail the list of permanent telehealth changes to Medicare, Medicaid, and CHIP rules that you can act on within your own authority and those that require Congressional action.
5. Develop and issue guidance for private health plans to provide advance notice to their enrollees on future changes to coverage of telehealth services.

Lastly, we encourage the Administration to consider how permanent changes to telehealth policy can be part of broader movement, including a shift toward value-based care. We look forward to your response and urge you to continue working with Congress to expand access to telehealth during the duration of the COVID-19 pandemic and after we put the pandemic behind us.

Sincerely,

/s/ Tina Smith

Tina Smith
United States Senator

/s/ Bill Cassidy, M.D.

Bill Cassidy, M.D.
United States Senator

/s/ Michael F. Bennet

Michael F. Bennet
United States Senator

/s/ Marsha Blackburn

Marsha Blackburn
United States Senator

/s/ Patrick Leahy

Patrick Leahy
United States Senator

/s/ Cory Gardner

Cory Gardner
United States Senator

/s/ Angus S. King, Jr.

Angus S. King, Jr.
United States Senator

/s/ Lisa Murkowski

Lisa Murkowski
United States Senator

/s/ Robert P. Casey, Jr.

Robert P. Casey, Jr.
United States Senator

/s/ John Boozman

John Boozman
United States Senator

/s/ Jacky Rosen

Jacky Rosen
United States Senator

/s/ Bernard Sanders

Bernard Sanders
United States Senator

/s/ Amy Klobuchar

Amy Klobuchar
United States Senator

/s/ Richard Blumenthal

Richard Blumenthal
United States Senator

/s/ Elizabeth Warren

Elizabeth Warren
United States Senator

/s/ Dianne Feinstein

Dianne Feinstein
United States Senator

/s/ Benjamin L. Cardin

Benjamin L. Cardin
United States Senator

/s/ Tammy Baldwin

Tammy Baldwin
United States Senator

/s/ Cindy Hyde-Smith

Cindy Hyde-Smith
United States Senator

/s/ Shelley Moore Capito

Shelley Moore Capito
United States Senator

/s/ Ted Cruz

Ted Cruz
United States Senator

/s/ John Thune

John Thune
United States Senator

/s/ Todd Young

Todd Young
United States Senator

/s/ Steve Daines

Steve Daines
United States Senator

/s/ Kelly Loeffler

Kelly Loeffler
United States Senator

/s/ Marco Rubio

Marco Rubio
United States Senator

/s/ Chris Van Hollen

Chris Van Hollen
United States Senator

/s/ Kamala D. Harris

Kamala D. Harris
United States Senator

/s/ Cory A. Booker

Cory A. Booker
United States Senator

/s/ Jeffrey A. Merkley

Jeffrey A. Merkley
United States Senator

/s/ Edward J. Markey

Edward J. Markey
United States Senator

/s/ John Hoeven

John Hoeven
United States Senator

/s/ David A. Perdue

David A. Perdue
United States Senator

/s/ Mitt Romney

Mitt Romney
United States Senator

/s/ Lindsey O. Graham

Lindsey O. Graham
United States Senator

/s/ Joni K. Ernst

Joni K. Ernst
United States Senator

/s/ Dan Sullivan

Dan Sullivan
United States Senator

/s/ Pat Toomey

Pat Toomey
United States Senator