

# Telehealth Provisions in the Consolidated Appropriations Act, 2021 (HR 133)



CCHP FACT SHEET | January 2021

## INTRODUCTION

The U.S. House and Senate overwhelmingly passed the Consolidated Appropriations Act, 2021 on December 21, 2020, combining roughly \$900 billion in stimulus relief to industries and individuals negatively impacted by the COVID-19 pandemic with \$1.4 trillion set aside for government spending for fiscal year 2021.<sup>1</sup> The bill was passed amidst growing pressure for lawmakers to provide additional relief as a follow-up to the Coronavirus Aid, Relief, and Economic Security Act (CARES) passed in March 2020. Included in the bill were several major health care-related provisions designed to reduce burden on patients, providers, and health care systems, some of which will extend beyond the public health emergency (PHE). Chief among these provisions were an additional \$3 billion in new funding for the Provider Relief Fund (PRF), \$30 billion in funding for the purchase and distribution of COVID-19 vaccines, \$22 billion to states for COVID-19 testing and contact tracing efforts, and patient protections against surprise medical billing.

The bill also included several provisions aimed at increasing access to telehealth services, building on lessons learned from Medicare telehealth flexibilities implemented shortly after the PHE declaration. The majority of the telehealth-related provisions in the bill are aimed at tackling the pervasive gap in broadband and internet access across the U.S., with a focus on expanding access in rural and minority communities. A narrower subset of the bill's provisions focuses on Medicare rules and funding. Lawmakers passed on cementing many of the telehealth temporary flexibilities that are set to expire once the PHE is rescinded. This fact sheet summarizes the key telehealth-related provisions included in the Consolidated Appropriations Act.

## TELEHEALTH-RELATED MEDICARE PROVISIONS

### Health Care Delivery in Rural Settings

The pandemic has had a disproportionate impact on rural hospitals and health care systems. The Consolidated Appropriations Act extended or created several flexibilities for rural hospitals. By far the most significant Medicare rural health provision was the creation of a new eligible site designation for Critical Access Hospitals (CAH) or other rural facilities with fewer than 50 beds. The new payment designation, Rural Emergency Hospital (REH), will assist rural facilities in responding to the community's immediate care needs by offering new emergency or outpatient services. This designation could help rural facilities move away from reliance on inpatient care and diversify their services, including telehealth. On the telehealth front, REHs were added as an eligible originating site, allowing patients to be located there when receiving telehealth delivered services.<sup>2</sup> It is important to note that Medicare's existing restrictions around provider types and allowable services would still apply to an REH. An REH would also need to meet the criteria for Health Resources & Services Administration's (HRSA) "rural" classification to bill Medicare as an originating site.<sup>2</sup>

<sup>1</sup> H.R.133 - Consolidated Appropriations Act, 2021. In. P.L. No: 116-260. 116th U.S. Congress, ed2020

<sup>2</sup> Center for Connected Health Policy. Billing for Telehealth Encounters: An Introductory Guide on Fee-for-Service. [https://www.cchpca.org/sites/default/files/2020-01/Billing%20Guide%20for%20Telehealth20Encounters\\_FINAL.pdf](https://www.cchpca.org/sites/default/files/2020-01/Billing%20Guide%20for%20Telehealth20Encounters_FINAL.pdf). Published 2020. Accessed January 8, 2021.

The bill spelled out a series of other Medicare-related changes for rural hospitals and healthcare facilities, including:

- additional Medicare-funded medical residency slots and funding opportunities under the Medicare Graduate Medical Education Rural Training Track;
- increases in payments for rural health clinics (RHCs) and permitting RHCs and Federally Qualified Health Centers (FQHCs) to bill for hospice services starting in 2022;
- a 5-year extension of the Rural Community Hospital Demonstration;
- \$330 million in new funding streams under Centers for Medicare & Medicaid Services' (CMS) Medicare Rural Hospital Flexibility Program;
- \$20.9 million for the Small Rural Hospital Improvement Grant Program, which may be used directly for quality improvement purposes and the adoption of health technology; and
- at least \$1 million for the implementation of telehealth technology or services.

### Mental Health Services Delivered through Telehealth

Under the new law, eligible telehealth individuals under Medicare will be able to utilize telehealth for purposes of diagnosis, treatment or evaluation of mental health disorders without the geographic restrictions. This new rule will become permanent after the PHE. This new law also permits beneficiaries to receive telehealth services from their home for purposes of mental health diagnosis, treatment or evaluation (in addition to substance use disorder treatment, which was previously allowed). The new law will apply to most tele-mental health services, including counseling, psychotherapy, and psychiatric evaluations.

There are important stipulations regarding the scope of eligible tele-mental health services. Specifically, eligible patients must have an existing in-person relationship with a provider, as defined by 1 in-person visit with the provider within a 6-month period prior to the telehealth encounter and subsequent periods as determined by the Secretary. However, as written, the bill's language appears to require the in-person visit regardless of where the patient is located (e.g., home, clinic, doctor's office) if that location is newly-eligible under the provision (e.g., a doctor's office in an urban area). This in-person requirement would not apply to any location that is eligible under the previous rules (e.g., eligible originating sites in rural areas).

## TELEHEALTH-RELATED BROADBAND PROVISIONS

### Broadband Access and Infrastructure

The CARES Act established the Federal Communications Commission (FCC) COVID-19 Telehealth Program with an initial injection of \$200 million in funding to assist providers in ramping up telehealth service delivery.<sup>3</sup> The Appropriations Act also included additional funding for FCC broadband access initiatives targeted at low-income consumers. The bill expands the scope of the FCC's COVID-19 efforts by:

- providing nearly \$250 million in additional funding for the COVID-19 Telehealth Program to disburse directly to providers;
- requiring the FCC to ensure that program funds are distributed more equitably across the country, with at least 1 award recipient chosen from each state and the District of Columbia (D.C.); and
- establishing a temporary broadband benefit program at the FCC, with an initial \$3.2 billion in funding to ensure that low-income consumers can access internet services at home.

### Tribal Broadband & Telehealth

The Appropriations Act substantially increased the amount of funding for telehealth and broadband efforts in tribal communities. The CARES Act set aside roughly \$140 million in grants for these purposes, with \$15 million funneled through the Health Resources & Services Administration (HRSA) and another \$125 million through the Department of Agriculture's rural development grant programs.<sup>4</sup> The Appropriations Act builds on those efforts by:

- establishing a program at the National Telecommunications and Information Administration (NTIA) to support improvements in broadband and telehealth infrastructure in rural tribal communities; and
- providing \$1 billion in funding for the development of the NTIA program to be disbursed through competitive grants and cooperative agreements with tribes and tribal organizations.

### Other Broadband Efforts

The pandemic exposed and exacerbated the digital divide in the U.S., or the gap in access to digital information and technologies.<sup>5,6</sup> The Appropriations Act included significant funding for other federal broadband access initiatives targeted at communities disproportionately impacted by COVID-19 and the digital divide. Those efforts included:

<sup>3</sup> Federal Communications Commission. COVID-19 Telehealth Program. <https://www.fcc.gov/covid-19-telehealth-program>. Published 2021. Updated 2021/01/05/. Accessed January 6, 2020.

<sup>4</sup> Congressional Research Service. The CARES Act: Implications for Tribes. <https://crsreports.congress.gov/product/pdf/IF/IF11500>. Published 2020. Accessed January 6, 2021.

<sup>5</sup> Stelitano L, Doan S, Woo A, Diliberti M, Kaufman JH, Henry D. The Digital Divide and COVID-19: Teachers' Perceptions of Inequities in Students' Internet Access and Participation in Remote Learning. RAND Corporation: 2020.

<sup>6</sup> Ramsetty A, Adams C. Impact of the digital divide in the age of COVID-19. *Journal of the American Medical Informatics Association*. 2020;27(7):1147-1148.

- establishing a new broadband deployment program at the NTIA for rural and “unserved” areas, with \$300 million in initial funding;
- establishing the Office of Minority Broadband at the NTIA, with \$285 million in funding to support broadband infrastructure at Historically Black Colleges and Universities (HBCUs), minority-serving institutions, and minority-owned small businesses; and
- appropriating \$65 million to fund the Broadband DATA Act, which is intended to assess broadband connectivity and technology availability in underserved areas through “broadband mapping” audits.

## OTHER TELEHEALTH-RELATED PROVISIONS

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### No Surprises Act

With respect to private payers, the Appropriations Act included the No Surprises Act, a previously stand-alone bill introduced earlier in 2020 that was attached as a rider. Beginning in January 2022, private payers will be prohibited from placing higher cost-share obligations on patients who seek nonemergency care from an out-of-network provider. Instead, patients will be required to pay for these services at the in-network rate. The Act’s definition of a telemedicine ‘visit’ includes telemedicine services.

### Virtual Visits in the Maternal, Infant and Early Childhood Home Visit Program

The pandemic caused severe disruptions in workflow and care delivery for patients and providers. The Appropriations Act included a small provision to permit virtual home visits in lieu of the in-person visit requirement under HRSA’s Maternal, Infant and Early Childhood Home Visit Program. This flexibility will allow for continuity of care with at-risk mothers and their babies.

## CONCLUSION

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While the total funding attached to the Appropriations Act is significantly lower than the amount attached to the CARES Act – due in part to the lower direct stimulus payment amounts – lawmakers made a series of strategic, targeted investments in broadband access. However, telehealth-related provisions and flexibilities were more limited in scope.

However, the bill does make substantial investments in improving broadband access, closing the digital divide for marginalized communities, and expanding telehealth capacity for providers. The bill authorized an infusion of new funding for the FCC COVID-19 Telehealth Program and additional requirements to make the award process more transparent after providers reported significant delays in receiving disbursements.<sup>7</sup>

7 Wicklund E. Congress Questions FCC on Details of COVID-19 Telehealth Program. <https://mhealthintelligence.com/news/congress-questions-fcc-on-details-of-covid-19-telehealth-program>. Published 2020. Updated 2020/06/15/. Accessed January 12, 2021.