

# PUBLICATION

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## While the Public Health Emergency (PHE) is Projected to End May 11, Medicare Telehealth Coverage Expansions Were Extended Through End of 2024

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**President Biden recently announced that his administration plans to end the COVID-19 PHE on May 11, 2023. This provides more clarity about the long-anticipated end date for certain telehealth waivers and enforcement discretion specifically tied to the PHE.**

Some of the waivers and flexibilities that will end when the PHE terminates include the Centers for Medicare and Medicaid Services (CMS) waiver of licensure as a condition of payment, Department of Health and Human Services (HHS) Office of Inspector General (OIG) enforcement discretion permitting the reduction or waiver of cost-sharing associated with covered telehealth services, and HHS Office for Civil Rights (OCR) enforcement discretion related to noncompliance with regulatory requirements under the HIPAA rules in connection with good faith provision of telehealth during the PHE.

While certain waivers and flexibilities that have made it easier to structure telehealth arrangements are set to terminate when the PHE ends, several Medicare coverage expansions related to telehealth services have been extended beyond that date. On December 29, 2022, Biden signed the [Consolidated Appropriations Act, 2023](#) (CAA 2023), an omnibus spending bill that, among other things, extended certain legislative provisions that have allowed for expanded Medicare telehealth coverage until December 31, 2024. The extension, while temporary, provides health care providers with greater certainty regarding future Medicare telehealth coverage and reimbursement through the end of 2024 even if the PHE ends in May 2023. This suggests that Congress believes that expanded telehealth coverage may be necessary beyond the COVID-19 PHE, and data is being collected to determine whether these coverage expansions may be permanently extended in the future.

### Overview of Medicare Telehealth Waivers

Under Section 1834(m) of the Social Security Act, Medicare coverage of telehealth services historically has been limited to services furnished to patients in rural clinical sites by a specified list of providers with limited exceptions. However, to make it easier to provide needed telehealth services during the COVID-19 pandemic, Congress lifted longstanding statutory restrictions on Medicare coverage through legislation (the 2020 Coronavirus Preparedness Response Supplemental Appropriations Act and the Coronavirus Aid, Relief, and Economic Security Act (CARES Act)). These legislative provisions, coupled with the authority to issue waivers under the HHS Secretary's declaration of a PHE, resulted in a significant expansion of Medicare coverage of telehealth services during the PHE.

Under these authorities, CMS temporarily expanded telehealth coverage, including:

- Expansion of Originating Sites: allows Medicare beneficiaries to receive telehealth services from any geographic location, including their homes.
- Expansion of Eligible Practitioners: allows physical therapists, occupational therapists, speech therapists, and audiologists to provide telehealth services to Medicare beneficiaries.
- Telehealth Services Furnished by Federally Qualified Health Centers (FQHCs) and Rural Health Clinics (RHCs): allows FQHCs and RHCs to continue to be reimbursed by Medicare for providing telehealth services.

- Delay of Periodic In-Person Visit Requirement for Mental Health Services: delays implementation of the requirement for mental health practitioners to see patients in person within six months before providing mental health services via telehealth and every 12 months thereafter until January 1, 2025.
- Audio-Only Services: allows Medicare coverage of audio-only services when appropriate.

In March 2022, as part of the [Consolidated Appropriations Act, 2022](#), Congress extended these coverage expansions for 151 days after expiration of the PHE. The CAA 2023 further extends these flexibilities until December 31, 2024 and requires the HHS Secretary to submit a report to Congress on use of telehealth services by April 2026.

### **Takeaways**

These extensions through 2024 provide greater certainty for health care providers with respect to Medicare telehealth reimbursement. They also signal that Congress no longer views these flexibilities as being specifically tied to the COVID-19 PHE. The extension of the timeframe that expanded Medicare coverage is available and the required report on the use of telehealth services suggest that Congress will take permanent expansions of Medicare coverage of telehealth services under consideration.

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