

Insights

Will Legislatures Put Telehealth on Hold in 2021?

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COVID-19 has undoubtedly elevated telehealth in the health care industry, and has all but assured its continuance long after the public health emergency ends. However, the exact form that telehealth may take along its pathway to becoming a permanent fixture in the health care delivery system is unclear, and is likely to take shape across the nation in 2021.

Telehealth, as we have known it during its immense growth in 2020, is primarily a creation of temporary emergency waivers of State and Federal laws and regulations. Hopefully, the public health emergency will diminish as vaccines continue to roll out in the coming months. As it does, it is expected that the emergency executive actions enabling the current broad access to telehealth will also subside or expire. This will leave federal and state governments, both in the executive and legislative branches, with the important task of shaping the role of telehealth on a more permanent basis going forward.

Indiana

Indiana's current telehealth flexibilities are supported by several temporary Executive Orders that are currently set to expire on January 24, 2021, but it is likely to be continued by the Governor until the conclusion of the public health emergency. Presently, Indiana lawmakers are considering legislation during the 2021 General Session that could make some of the temporary telehealth changes permanent. Specifically, SB 3 seeks to codify a more expansive list of licensed providers eligible to provide telehealth services and add additional flexibility to the technologies used to deliver telehealth services. The draft legislation also changes telehealth prescribing restrictions and removes certain Medicaid restrictions relating to the site of service. If passed in its current form, this bill would become effective in 2021 and would remain in place once Governor Holcomb's public health emergency declaration expires.

Centers for Medicare and Medicaid Services

The Centers for Medicare and Medicaid Services ("CMS") passed a final rule on December 1, 2020. The rule included several permanent changes to Medicare's telehealth reimbursement policies. Notably, CMS specified a limited group of telehealth services that will remain reimbursable through the end of the calendar year in which the Federal public emergency ends, presumably to prevent a gap in coverage to allow Congress the opportunity to legislate. In addition, CMS also permanently expanded a number of telehealth services to beneficiaries in rural areas, and under certain circumstances, the opportunity to provide services in the patients' homes. CMS committed to continuing to look at telehealth flexibilities and new opportunities through a commissioned study to improve access to care.

Private Insurance

Private insurers have also continued to cover telehealth services in accordance with temporary changes in



state laws. However, some of these policies may expire or change during 2021. Further, much of the legislative action on telehealth addresses licensure and regulatory hurdles to telehealth, rather than specific reimbursement issues.

Providers should be mindful of changing conditions with respect to telehealth during 2021, including but not limited to changes in underlying federal and state authority, licensure implications, regulatory requirements, and reimbursement issues which will vary by payor.

Please contact Brandon W. Shirley if you have questions about telehealth requirements affecting your business any member of the Krieg DeVault LLP Government Affairs team.