

Publications

Health Care Alert: New Executive Order Requires Agency Action on Telehealth, Rural Health Care

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On Monday, August 3, 2020, President Trump issued an Executive Order directing various federal agencies to take steps advancing the adoption and availability of telehealth. Recognizing both the dramatic impact of recent regulatory flexibilities and the tremendous potential of telehealth to help address persistent access issues, particularly in rural areas, the Order sets forth guiding principles and criteria for the new initiatives and requires agency action in as little as 30 days.

In particular, the Order requires the Secretary of Health and Human Services (HHS) to announce within 30 days a new “model to test innovative payment mechanisms” under section 1115A of the Social Security Act. Generally, section 1115A authorizes the Center for Medicare and Medicaid Innovation (CMI) to test new payment and service delivery models that meet certain selection criteria, with a focus on models expected to reduce program costs while preserving or enhancing quality of care. According to the Order, this new model is intended to “ensure that rural healthcare providers are able to provide the necessary level and quality of care” and should “give rural providers flexibilities from existing Medicare rules, establish predictable financial payments, and encourage the movement into high-quality, value-based care.”

Additionally, and also within 30 days, the Order requires HHS and the Department of Agriculture (USDA) to develop and implement a strategy to improve the “physical and communications healthcare infrastructure” available to patients in rural areas. Notably, the Order appears to recognize that increasing rural patients’ ability to access telehealth services may also help to support and sustain the availability of non-remote health care, potentially offering a new (or expanded) stream of revenue for struggling rural hospitals.

Finally, the Order requires HHS within 60 days to review certain temporary measures put in place during the Public Health Emergency (PHE) related to COVID-19, and to “propose a regulation to extend these measures, as appropriate, beyond the duration of the PHE.” Specifically, HHS must review (1) the additional telehealth services offered to

Medicare beneficiaries generally; and (2) the services, reporting, staffing, and supervision flexibilities offered to Medicare providers in rural areas. Given that the PHE was recently extended for another 90 days (through October 23, 2020), it appears possible that at least some of the current regulatory flexibilities (overview available [here](#)) may be implemented on a permanent basis without interruption.

The new Executive Order is available in full [here](#).

If you have questions about the Order, its impact, or telehealth generally, please contact Jonathan Ishee, Liam Gruzs, Mairi Mull, or your regular Vorys attorney.

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Vorys COVID-19 Task Force

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