

HR 3081 & S 1778 - TELEmedicine for MEDicare Act of 2015

Rep. Nunes (R-CA), Pallone (D-NJ), Cartwright (D-PA), Peters (D-CA), Rush (D-IL), Sarbanes (D-MD), Wagner (R-MO), Young (R-IN), Marchant (R-TX), Tiberi (R-OH), Collins (R-NY), Kelly (R-PA), Pearce (R-NM), Peterson (D-MN), Calvert (R-CA), Holding (R-NC), Roe (R-TN), Boustany (R-LA) & Sen. Hirono (D-HI), Ernst (R-IA)

Author Intent: To permit certain Medicare providers licensed in a State to provide telemedicine services to certain Medicare beneficiaries in a different state.

BILL DRAFT	CURRENT LAW
A Medicare participating physician or practitioner may provide a telemedicine service to a Medicare beneficiary in a different state without obtaining a license or being legally authorized by the patient state to provide such service.	Services are considered being furnished in the patient's location requiring the need to be licensed in the patient's state.
Enforcement and disciplinary action of licensure or authorization of service will be by the state the physician is licensed/authorized by.	Currently, enforcement is typically done by the patient's state.
No later than 9 months after the enactment of this section in HR 3081 (or 12 months after enactment in S 1778), the Secretary of HHS shall issue guidance to the States to develop a definition for "telemedicine services" to be applied to this section.	N/A
No later than 12 months after the enactment of this section, the Secretary of HHS shall submit a report to Congress on plans to develop and expand the use of current and emerging Internet and communications technologies to expand access of Medicare beneficiaries to health programs.	N/A
Definition of Medicare participating physician or practitioner includes how a physician is currently defined in SSA, but also includes "supplier" (as defined in section 1842(h)(1)). "Any physician or supplier may voluntarily enter into an agreement with the Secretary to become a participating physician or supplier. For purposes of this section, the term 'participating physician or supplier' means a physician or supplier (excluding any provider of services) who, before the beginning of any year beginning with 1984, enters into an agreement with the Secretary which provides that such physician or supplier will accept payment under this part on an assignment-related basis for all items and services furnished to individuals enrolled under this part during such year. In the case of a newly licensed physician or a physician who begins a practice in a new area, or in the case of a new supplier who begins a new business, or in such similar cases as the Secretary may specify, such physician or supplier may enter into such an agreement after the beginning of a year, for items and services furnished during the remainder of the year."	There is no mention of "supplier" in the telehealth sections of the SSA.
S 1778: This law would not replace or supersede any State law regarding negligence or medical malpractice; or impede any court from hearing civil claims arising from a physician's provision of telemedicine services; and have not impact on obligations to the Controlled Substances Act.	States have laws and regulations governing medical malpractice and professional conduct.

Impact and Analysis

Medicare participating physicians or practitioners will be able to provide services to a Medicare beneficiary across state lines without being licensed in that patient's state as long as the provider is licensed or authorized to provide that service in their own state. This will only impact Medicare providers providing services to a Medicare beneficiary. If that provider has other out-of-state patients who are not in Medicare, this law would not apply. Additionally, there is no mention of Medicaid in the language so it will not apply to state Medicaid programs.

This bill will not affect state malpractice laws or jurisdiction claims in civil cases nor would any obligations a physician has under the Controlled Substance Act be affected. A provider may still be subject to the patient's state's jurisdiction in a law suit, although, the provider's licensing state will have jurisdiction to enforce licensure or other legal authorization requirements over telemedicine services.

The bill calls for the Secretary of Health and Human Services to develop guidance to states to develop a definition for "telemedicine services". Will this cause greater confusion as currently Medicare uses the term "telehealth" or are they considering creating a different subset called "telemedicine services"?

Under this bill, a "participating physician or practitioner" now includes a "supplier". Under current law, a supplier is not included in the definition for either "physician" or "practitioner". It is unclear what a "supplier" is and what cross state licensing requirements they have to meet in order to warrant this exception in the bill.