April 11, 2024

House Energy & Commerce Health Subcommittee Holds Hearing on Telehealth Access

On Wednesday (April 10), the House Energy and Commerce Committee's Health Subcommittee held a hearing on "Legislative Proposals to Support Patient Access to Telehealth Services." During the hearing, lawmakers heard from a panel of witnesses including patient and Medicare beneficiary advocates, digital health care providers, and academics. Witnesses and lawmakers discussed 15 bills aimed at increasing patients' access to telehealth coverage. There was broad bipartisan agreement on the need to extend Medicare telehealth flexibilities, with most of the debate centered on ways to monitor and ensure care quality for a virtual service and the cost associated with extending or making permanent the current waivers.

- *For more information*: https://energycommerce.house.gov/events/health-subcommittee-hearing-legislative-proposals-to-support-patient-access-to-telehealth-services

Opening statements

Subcommittee Chairman Brett Guthrie (R-KY): In his statement, Subcommittee Chairman Guthrie said telehealth flexibilities that Congress enacted to remove access barriers for Medicare beneficiaries are set to expire on December 31, 2024. He said, "The looming deadline gives us a chance to examine long term telehealth solutions that can drive innovation in health care through greater delivery." He added, "The legislation we're discussing today looks at many facets of telehealth from the now traditional issues such as originating site requirements to improving our past investments in behavioral health and new opportunities such as making it easier for those with language barriers to see a telehealth care provider and addressing challenges around physician licensure." However, he noted that cost remains a concern, citing a Congressional Budget Office (CBO) estimate that found a previous extension would increase Medicare costs by over $2 billion. He said that short-term extensions are likely to cost less than permanent policies. Full statement.

Ranking Member Anna Eshoo (D-CA): In her statement, Subcommittee Ranking Member Eshoo spoke about the dramatic rise in telehealth visits during the pandemic and the "urgent need to extend" the Medicare telehealth flexibilities that enabled uptake. However, she warned that the subcommittee also must ensure policies are appropriately structured to prevent industry stakeholders from "gaming" telehealth. She said, "We want to make sure that those that would game it won't be able to because there's costs, money, associated with this." Full statement.

Full Committee Chair Cathy McMorris Rodgers (R-WA): In her statement, Committee Chair McMorris Rodgers spoke about how health systems in her district scaled up telehealth services during the COVID-19 pandemic and the need to act on the soon-to-expire telehealth flexibilities to ensure "patients remain in control of their doctor

visit decisions." She noted that some of the bills being considered would continue telehealth flexibilities while others would create new policies, particularly related to mental health. Full statement.

Full Committee Ranking Member Frank Pallone (D-NJ): In his statement, Committee Ranking Member Frank Pallone praised Congress' actions to increase Medicare beneficiaries' access to telehealth during the COVID-19 pandemic, but said, "I believe that any further expansion of telehealth flexibilities in Medicare must meaningfully increase patient access to care and ensure high quality care for seniors." He urged Congress to continue to assess and monitor the quality of the services, including audio-only services, and ensure the Centers for Meidcare and Medicaid Services (CMS) has the tools and data necessary to monitor the quality of telehealth services Medicare beneficiaries receive. He added that Congress must also "ensure that additional expansions of telehealth policies do not limit access to in-person care" or undermine network adequacy standards, and called on Congress "to continue to monitor any program integrity risks associated with telehealth billing." Full statement.

Witness Testimony

Jeanette Ashlock, Patient Advocate, National Multiple Sclerosis Society. In her testimony, Ms. Ashlock shared her experience navigating her multiple sclerosis (MS) diagnosis in 2001 and the important role telehealth has played in managing her symptoms in recent years. "I have used [telehealth] for appointments with my primary care provider and some of my specialists including my OB-GYN, I have been able to talk to my providers for follow up visits… and to talk through new health issues as they come up." She said that while it can take months to get an in-person appointment, she often "can get a quick telehealth visit right away." Further, she said the telehealth visit can reduce her stress and minimize symptom flare ups and enable her to concentrate on the visit and take detailed notes. She noted that many MS patients live in "neurology deserts" and it is important for those MS patients, as well as those with mobility issues or limited access to transportation to have access to their providers via telehealth. Full Testimony.

Fred Riccardi, President, Medicare Rights Center. In his testimony, Ms. Riccardi said that pre-COVID-19 pandemic telehealth restrictions were "woefully outdated," but warned that policy must "be driven by evidence and outcomes" and must meet Medicare beneficiaries "where they are and recognize the importance of patient choice and autonomy in care delivery. He noted that some Medicare beneficiaries have "enjoyed easier access to remote care, but others report being left behind" because "they may lack adequate technology or infrastructure, prefer in person care or want a modality that their provider just can't offer." When contemplating changes to Medicare telehealth, he said, "we recommend advancing policies that: (1) Meaningfully increase access to care, (2) promote health equity (3) include robust consumer protections and oversight, and (4) drive high-quality care." Full Testimony.

Lee Schwamm, Volunteer, American Heart Association; Associate Dean for Digital Strategy and Transformation, Yale School of Medicine; Senior Vice President and Chief Digital Health Officer, Yale New Haven Health System. In his testimony, Dr. Schwamm, who leads digital health strategy for the Yale School of Medicine and Yale New Haven Health System a program that promotes the equitable adoption of telehealth, said telehealth allows doctors to truly provide patient centered care. He said, "The pandemic era payment and eligibility flexibilities have created a highly effective hybrid model of care that blends telehealth and in person

delivery into an integrated care model to support coordinated care for complex conditions delivered by established health care providers." He added, "Research shows that fraud and abuse are rare and there's no evidence that such abuse is more prevalent in telehealth than in person." In conclusion, he said, "it is in the best interest of all Medicare beneficiaries that a permanent extension of the pandemic era flexibilities be enacted." Full Testimony.

Eve Cunningham, Group Vice President and Chief of Virtual Care and Digital Health, Providence. In her testimony, Dr. Cunningham said, "Telehealth is no longer a nice to have but a core function of health care delivery, constituting approximately 20% of our ambulatory care encounters." She added, "As a physician, there is no better way to promote the health and healing of a patient, especially for our seniors and those with disabilities than to care for them in their homes and communities." She noted how telehealth enables her health system to provide specialty services in remote and rural areas and address workforce shortage and burnout that can limit patients' access to specialized care. She voiced her support for the Connect for Health Act and the Telehealth Modernization Act, saying, "The most important thing that Congress can do this year is make the Medicare telehealth flexibilities that you have enacted and extended on a bipartisan basis permanent." Full Testimony.

Ateev Mehrotra, Professor of Health Care Policy and Medicine, Harvard Medical School; Hospitalist, Beth Israel Deaconess Medical Center. In his testimony, Dr. Mehrotra said, "telemedicine has resulted in a more modest change in health care delivery than initially envisioned." He noted that his research shows that while telemedicine leads to improvements in chronic disease, medication adherence, and fewer emergency department visits, it also results in more visits, which comes at a cost. He said, "We estimate the greater telemedicine use is associated with a one to 2% increase in overall health care spending in the Medicare program." While he noted the need for telemedicine to remain an option in Medicare, he said it should be paid less than in person visits because it takes fewer resources than an in-office visit. He warned that cross subsidizing in-person visits with telehealth visits "will create distortions in the market" and "give virtual-only companies … an unnecessary competitive advantage," reducing the number of independent physicians. He also urged Congress to create exceptions for physician licensure to enable providers to care for their patients even when they are out of state. Full testimony.

Q&A

Subcommittee Chair Brett Guthrie (R-KY) spoke about the complexity of physician licensure and asked how to strike the right balance with telehealth. Dr. Mehrotra recommended requiring physicians to be licensed in the state in which they're located but creating exceptions for instances in which their patients leave the state. When asked which services are least appropriate for telehealth, Dr. Cunningham said that should be a clinical or patient preference decision and Ms. Ashlock said she preferred in-person for visits that required physical exams. Dr. Cunningham said there are opportunities for telehealth across fields, particularly with more cognitive focused specialties, such as neurology and mental health. She also noted that Providence is working to launch teleinfectious disease and telecardiology service programs this year, as well as teleICU or critical care.

Ranking Member Anna Eshoo (D-CA) spoke favorably about telehealth but asked witnesses what services should not be included and what measures could be in place to ensure Medicare beneficiaries are receiving high-quality care. Dr. Mehrotra noted some of the bills would address "incident to" billing and said ensuring there is a modifier

code when "incident to" billing is used via telehealth will help Medicare track care quality. He also suggested putting guardrails on the types of patients who qualify for remote patient monitoring.

Committee Chair Cathy McMorris Rodgers (R-WA) asked about the factors patients consider when deciding between an in-person and telehealth visit and the how allowing the current Medicare telehealth flexibilities to expire would impact patient care. Dr. Cunningham said telehealth is a critical need for Providence and connects patients in smaller communities with specialists. When asked about disparities in telehealth access, Dr. Schwamm said providers need certainty in telehealth payments in order to invest in services, such as telehealth language interpretation services, to address disparities.

Rep. Frank Pallone (D-NJ) asked about the importance of continuing to examine the quality of care for telehealth services to which Dr. Mehrotra said telehealth is a rapidly changing, new modality that requires constant oversight. He said CMS needs access to quality data to monitor telehealth services, particularly those provided by telehealth-only companies. Further, he raised concerns about overuse of "incident to" billing in telehealth, as well as policies to permanently extend audio-only Medicare coverage. He added that creating payment differentials between telehealth and in-person visits can help address potential telehealth overuse. In response to a different question, Mr. Riccardi spoke about ensuring telehealth providers are not used to meet network adequacy standards in Medicare and Medicare Advantage. He also warned against using telehealth in Medicaid long-term care and hospice care.

Rep. Morgan Griffith (R-VA) spoke favorably about telehealth and its ability to increase patients' access to providers who may be hours away. In response to a question, Dr. Schwamm spoke about the benefits of hospital-to-hospital telehealth services to provide specialist capabilities, as well as the benefits of direct-to-consumer telehealth services, which eases travel burdens on patients, particularly those with chronic conditions.

Rep. Debbie Dingell (D-MI) spoke favorably about telehealth and the bills she is co-sponsoring to make permanent the Medicare telehealth flexibilities and ease physician licensure. Witnesses including Ms. Ashlock and Dr. Cunningham praised the flexibilities for increasing access to telehealth services and removing travel burdens that come with in-person care. Dr. Schwamm said current licensure requirements are "onerous" and suggested Congress change the definition of "site of care" to the provider's location, instead of the patient's location. He said, "It makes no sense to anchor it to where the patient is located, the care is being rendered and prescribed where the provider is located."

Rep. Bob Latta (R-OH) spoke about the value of telehealth, particularly in rural areas, and focused his comments and questions on mental health treatment. Dr. Cunningham said patients often travel for work, pleasure, or school and the current rules create barriers to the continuity of care with an established provider. When asked, Dr. Mehrotra spoke favorably about continuing to allow patients to receive telehealth services from their home.

Rep. John Sarbanes (D-MD) spoke about the need to strike "the right balance" in health care delivery mechanisms and ways to support continued access to telehealth services at a sustainable cost, while ensuring it remains an option for patients. Dr. Mehrotra said there are clinical benefits to telehealth and the best way to balance access and utilization is to establish appropriate reimbursements based on resources needed and to avoid creating market distortions that drive independent physicians out of practice. Rep. Sarbanes also spoke about the

importance of network adequacy standards and Mr. Riccardi said Congress must ensure telehealth visits are not used to meet Medicare Advantage network adequacy standards and erode access to in-patient care.

Rep. Larry Bucshon (R-IN) asked about the importance of health systems having a long-term consistent payment policy. Dr. Cunningham said telehealth is a "new standard of care" and providers need "permanency in [their] ability to deliver this type of care." She noted that consistent payment is needed to build out other programs, like Hospital at Home, remote patient monitoring, telephysical therapy and others that require investment. She explained, "There's expenses involved in standing up programs, the implementation, the workflow, redesign the change, management, licensing, credentialing, ensuring that you have billing and compliance and administrative costs as well." Dr. Schwamm said health systems also need foresight into payment to properly structure health care teams and repurpose leases.

Rep. Tony Cárdenas (D-CA) asked about the ways telehealth can improve access to care for underserved populations. Dr. Cunningham said after the pandemic Providence was able to quickly scale up hospital-to-hospital telehealth services to fill specialty care gaps and improve patient care in both rural and urban communities.

Rep. Buddy Carter (R-GA) spoke favorably about telehealth and urged Congress to pass the Telehealth Modernization Act to make permanent existing Medicare telehealth flexibilities. In response to a question, Mr. Riccardi said allowing the flexibilities to expire would remove a care option for millions of seniors. When asked about audio-only telehealth coverage, Dr. Cunningham said a video interaction is ideal but when that is not available "the next best thing is to be able to provide an audio-based visit."

Rep. Raul Ruiz (D-CA) spoke about the benefits telehealth has provided to underserved communities and asked witnesses about the most important change for Congress to make. Ms. Ashlock said to ensure decisions on visits can be made between the patient and provider; Dr. Cunningham said creating permanency and reimbursement for telehealth services without geographic barriers. Rep. Ruiz also spoke about the importance of affordable, reliable broadband internet access to which Dr. Schwamm agreed, saying it facilitates more than just telehealth: "It's your health care portal, it's access to the internet. It's the ability to view your medical record online," he said.

Rep. Neal Dunn (R-FL) said Congress will need to look at the upcoming Department of Health and Human Services (HHS) Office of Inspector General report and address their recommendations to address risk. He focused his questions on physician licensure and asks questions about physician liability in certain interstate compact agreements, raising questions about the agreement Florida is currently considering. Dr. Schwamm said he believes "care should be considered to be rendered where the provider is located, and the provider should be disciplined by the medical board in that state and any other medical board should be able to bring an action to the home medical board if they raise concerns."

Rep. Ann Kuster (D-NH) spoke about her bill to allow federally qualified health centers and rural health clinics to continue delivering virtual care and asked whether Congress should establish a permanent telehealth policy for safety-net providers like rural health clinics. Dr. Cunningham said Providence has 14 rural health clinics in their health system, many of which serve underserved populations, and virtual care is their only option for certain services. Rep. Kuster also spoke about the importance of broadband access and for those who do not have adequate access to be able to use audio-only services.

Rep. John Joyce (R-PA) spoke favorably about extending Medicare telehealth flexibilities that enabled cardiopulmonary rehabilitation services to be provided remotely. Dr. Schwamm said he's uncertain of data suggesting virtual cardiac rehab is as effective as in-person but believes virtual rehab is better than nothing.

Rep. Robin Kelly (D-IL) spoke about the benefits of telehealth and asked witnesses about needed safeguards to ensure equitable access to the services and monitor care quality. Mr. Riccardi said Congress should look to programs in the Older Americans Act to strengthen broadband and digital literacy. He also said telehealth should not be the long-term solution to the workforce shortage. Dr. Mehrotra said to address instances in which a small number of physicians inappropriately order high-cost tests, Congress could set in-person requirements for certain tests.

Rep. Diana Harshbarger (R-TN) spoke about the Expanded Telehealth Access Act and expanding the types of practitioners who can provide telehealth services under Medicare. When asked about the use of facility fees for telehealth, Mr. Riccardi said Medicare beneficiaries need clear notification about cost sharing responsibilities and the total cost of telehealth. When asked how telehealth can be used to ease workforce shortages in rural areas, Dr. Cunningham spoke about the need for consistent and predictable reimbursement in order for health systems to build out those programs.

Rep. Nanette Barragán (D-CA) focused her questions on ensuring equitable telehealth access for non-English speaking communities and the cost savings associated with virtual chronic disease management programs. Dr. Cunningham said Providence has invested in interpretive services and supports the Speak Act, which would develop best practices to improve language application access for patients with limited English proficiency. Rep. Barragán also noted that the Affordable Connectivity Program will soon expire and urged Congress to take action as it considers telehealth legislation.

Rep. Gus Bilirakis (R-FL) spoke favorably of the proposals to extend Medicare telehealth flexibilities, including audio-only telehealth, and the need to repeal the in-person visit requirement for telemental health visits.

Rep. Kim Schrier (D-WA) spoke favorably about extending telehealth flexibilities and asked about ways to optimize telehealth to address workforce shortages. Dr. Schwamm said the rise of telehealth and other electronic documentation led to physician "pajama time" or after hours work on the pre- and post-visit items essential to care continuity. He said, "permanent payment allows us to invest in those other pre and post visit experiences, … and we're poised to implement technologies like ambient listening, which is artificial intelligence powered scribing. So that much of the work of documentation can be occurring during the visit rather than at night after you've put the kids to bed." When asked about instances in which telehealth use may have led to a missed diagnosis, Dr. Schwamm said the data is anecdotal and not unrelated to what is seen during in-person visits.

Rep. Richard Hudson (R-NC) spoke about the value of telehealth, particularly for mental health, and asked about appropriate guardrails to ensure care quality. Dr. Schwamm said Congress should identify and capture a category of visits where there is a strong belief that the services should be provided in person but urged lawmakers not to try to legislate broad categories of ICD-10 codes or sub-speciality certifications. Dr. Mehrotra said ensuring Medicare has access to the data to monitor care quality will be essential.

Rep. Lori Trahan (D-MA) spoke about the cost of patient no-shows to the health care system and asked how permanently implementing telehealth flexibilities could reduce both direct and indirect costs to the health care system while ensuring access to care for low-income patients. Dr. Schwamm suggested Congress create incentives for employers to create workspaces for telehealth visits, similar to nursing mother spaces. Rep. Trahan also spoke favorably about the availability of medication assisted treatment, such as buprenorphine, via telehealth and the importance of audio-only prescribing for underserved and hard to reach populations.

Rep. Greg Pence (R-IN) asked about the role of AI in expediting telehealth and whether it could become more integrated into care delivery. Witnesses spoke favorably about AI's potential to improve patient care and ease physician burdens. Dr. Cunningham clarified that AI should not be considered a different layer of care like in-person versus telehealth, but a tool to augment care.

Rep. Dan Crenshaw (R-TX) asked witnesses to clarify some of their concerns around telehealth and spoke about his support for direct primary care. Mr. Riccardi said telehealth could be more prone to fraud than in person, and said CMS needs the tools to monitor the program. He cited a Government Accountability Office study that found CMS doesn't have the capacity to analyze telehealth outcomes. He added that CMS should be tasked with setting appropriate reimbursement rates.

Rep. Mariannette Miller-Meeks (R-IA) spoke about her bill the Telehealth Modernization Act and the need to extend existing telehealth flexibilities. She asked witnesses about policies to address potential fraud. Witnesses agreed fraud in telehealth is minimal but said CMS should monitor the program for quality and abuse. Dr. Mehrotra said that "the Medicare program needs the tools to track that and then remove those clinicians or those companies in case when those do occur."

Rep. Jay Obernolte (R-CA) spoke about the costs associated with telehealth and reducing how much the US spends on health care. Dr. Mehrotra said he views telehealth as a new technology that improves the health of Americans, but is likely to come at a cost. Dr. Cunningham said a virtual visit isn't necessarily delivered at a lower cost for providers.

Rep. Troy Balderson (R-OH) spoke about how individuals with chronic and mental health conditions could benefit from telehealth and voiced his support for legislation to increase access to remote patient monitoring services. Dr. Cunningham said she is "most excited" about Providence's remote patient monitoring programs and the promise they hold for patient care.

Rep. August Pfluger (R-TX) focused his comments and questions on the impact on rural communities, particularly the removal of geographic restrictions.

Legislation included in the hearing

Legislation discussed	
H.R. 134, To amend title XVIII of the Social Security Act to remove geographic requirements and expand originating sites for telehealth services (Reps. Vern Buchanan and Michelle Steel)	**H.R. 1110, KEEP Telehealth Options Act of 2023** (Reps. Troy Balderson, Susie Lee, Ashley Hinson, and Joe Neguse)

The bill would remove Medicare geographic requirements and expand originating sites for telehealth services.	Directs HHS Secretary, Medicaid and CHIP Payment and Access Commission to conduct studies and report to Congress on actions taken to expand access to telehealth services under Medicare, Medicaid, and CHIP during the COVID-19 public health emergency.
H.R. 3432, Telemental Health Care Access Act (Rep. Doris Matsui) Codifies Medicare coverage for mental and behavioral health services furnished through telehealth.	**H.R. 3875, Expanded Telehealth Access Act** (Reps. Mikie Sherrill, Diana Harshbarger, Lisa Blunt Rochester, Andre Carson, David Valadao, Jennifer Kiggans, Mark Pocan, Glenn Thompson, Tracey Mann, Chellie Pingree, Salud Carbajal, Marc Veasey, Marie Gluesenkamp Perez, Susan Wild, Greg Stanton, Don Bacon, Colin Allred, and Josh Gottheimer) Expands the scope of practitioners eligible for payment for telehealth services under Medicare to include qualified audiologist, occupational therapist, occupational therapy assistant, physical therapist, physical therapist assistant, qualified speech-language pathologist, and others.
H.R. 4189, CONNECT for Health Act of 2023 (Reps. Mike Thompson, David Schweikert, Doris Matsui) Removes Medicare geographic and originating site requirements for telehealth, expands practitioners eligible to furnish telehealth services, overhauls process to add telehealth services to Medicare coverage list, repeals 6-month in-person visit requirement for telemental health, allows telehealth in hospice recertification, allows telehealth at FQHCs, rural health clinics and Native American health facilities, adds new program integrity provisions, and requires new data collection.	**H.R. 5541, Temporary Reciprocity to Ensure Access to Treatment (TREAT) Act** (Reps. Robert Latta and Debbie Dingell) Provides temporary licensing reciprocity for telehealth and interstate health care treatment.
H.R. 5611, Helping Ensure Access to Local TeleHealth (HEALTH) Act of 2023 (Reps. Glenn Thompson and Ann Kuster) **Provides permanent payments for telehealth services furnished by Federally qualified health centers and rural health clinics under the Medicare program.**	**H.R. 6033, Supporting Patient Education And Knowledge (SPEAK) Act of 2023** (Reps. Michelle Steel, Jimmy Gomez, Juan Ciscomani, Adriano Espaillat, Tony Cardenas, Monica De La Cruz, Young Kim, Henry Cuellar, Judy Chu, Jimmy Panetta, David Valadao, Juan Vargas, Salud Carbajal, Susie Lee, and Terri Sewell) Requires the HHS Secretary to establish a task force to improve access to health care information technology for non-English speakers.
H.R. 7149, Equal Access to Specialty Care Everywhere (EASE) Act of 2024 (Reps. Michelle Steel, Susie Lee, Mike Kelly, Darrin LaHood, Donald Davis, Yadira Caraveo, Lori Chavez-DeRemer, Don Bacon, Monica De La Cruz, Andrea Salinas, and David Valadao) Requires the Center for Medicare and Medicaid Innovation to test a model to improve access to specialty health services for certain Medicare and Medicaid beneficiaries.	**H.R. 7623, The Telehealth Modernization Act of 2024** (Reps. Earl "Buddy" Carter, Lisa Blunt Rochester, Gregory Steube, Terri Sewell, Miller-Meeks, Debbie Dingell, Jefferson Van Drew, and Joseph Morelle) Permanently eliminate geographic restrictions on originating sites for telehealth services and allow rural health clinics and federally qualified health centers to receive Medicare reimbursement for telehealth services. Permanently add audio-only telehealth coverage to the Medicare program and allow the use of telehealth for hospice care and home dialysis assessments if clinically appropriate.
H.R. 7711, To amend title XVIII of the Social Security Act to make permanent certain telehealth flexibilities under the Medicare program (Reps. Debbie Dingell, and Jack Bergman) Permanently eliminate geographic restrictions on originating sites for telehealth services and allow rural health clinics and federally qualified health centers to receive Medicare reimbursement for telehealth services. Expands the list of practitioners eligible to furnish telehealth	**H.R. 7858, Telehealth Enhancement for Mental Health Act of 2024** (Reps. John James, Donald Davis, and David Schweikert) Establishes a Medicare "incident to" modifier for mental health services furnished through telehealth.

services under Medicare, eliminates 6-month in-person visit requirement for telemental health.	
H.R. 7856, The PREVENT DIABETES Act (Reps. Diana DeGette, Gus Bilirakis, and Jason Crow) Make virtual care a permanent option for the Medicare Diabetes Prevention Program.	**H.R. 7863, To require the Secretary of Health and Human Services to issue guidance on furnishing behavioral health services via telehealth to individuals with limited English proficiency under Medicare program** (Reps. Michelle Steel, Gus Bilirakis and Susie Lee) Requires the HHS Secretary to issue guidance on furnishing behavioral health services via telehealth to individuals with limited English proficiency under Medicare program.
H.R. ____, Hospital Inpatient Services Modernization Act (Reps. Brad Wenstrup and Earl Blumenauer) Extends by three years the acute hospital care at home waiver flexibilities.	

If you have questions, please contact Heather Meade or Heather Bell.

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