Partnership to Advance Virtual Care

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August 14, 2020

The Honorable Kevin Brady
Ranking Member
House Ways and Means Committee
United States Representative
1011 Longworth House Office Building
Washington, DC 20515

The Honorable Devin Nunes
House Ways and Means Committee
United States Representative
1013 Longworth House Office Building
Washington, DC 20515

Re: Comments in response to the proposed Republican House Ways and Means Committee Telehealth legislation

Dear Representatives Brady and Nunes,

On behalf of the Partnership to Advance Virtual Care, we thank you and the Committee for your ongoing efforts to support the healthcare community during this unprecedented time. We are a diverse group of stakeholders that are working to ensure that patients and providers have access to safe, convenient, telehealth services. The statutory and regulatory flexibility provided to the medical community has been essential to treating patients impacted by the COVID-19 virus, as well as those needing on-going medical care. We are grateful for the opportunity to comment on the recent proposed telehealth legislation, as well as identify other important policies we encourage the Committee to consider.

Comments in Response to Ways and Means Proposals

To that end, we are pleased to provide feedback on the recently released draft legislation *Keeping Medicare Patients' Improved Access to Care through Telehealth.* We appreciate the provisions in Section 2, which allow for the patient to be in their home for the purposes of receiving telehealth services. However, while adding the home as an eligible site is helpful, we believe fully lifting the "originating site" and "geographic" restrictions are key to expanding access to and appropriate use of telehealth services.

As you know, prior to the flexibilities provided during the pandemic, Medicare beneficiaries' ability to use telehealth was extremely limited due to these outdated restrictions. The statutory limitations, which tie availability of telehealth services to the zip code where the patient lives, significantly exacerbates inequities in providing care. Beneficiaries must receive telehealth services at an originating site located in either a county outside a Metropolitan Statistical Area

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(MSA) or a rural Health Professional Shortage Area (HPSA) in a rural census tract. However, beneficiaries outside of these areas have, and will continue to, experience delays in care as there is a maldistribution of both primary care and specialists outside of these designated areas. Permanently removing these restrictions will allow for patients to receive care where and when they need it and we encourage the Committee to consider expanding this provision. In addition, we would recommend that Congress ensure fair and adequate payment for originating sites.

We are also pleased there are provisions that look beyond existing statutory limitations to improve access. This includes Section 6, which would permanently allow Health Savings Account-eligible plans to cover telehealth services before meeting the plan's deductible. By removing potential economic barriers, more patients will be able to take advantage of new telehealth flexibilities. Additionally, to further improve access to care during the pandemic, we believe that expanding employers' flexibility to offer all employees more substantial telehealth benefits during the pandemic, regardless of whether the employee is enrolled in the employer's comprehensive medical plan, is essential to protect the employees' and the public health. We would be pleased to share specific ideas on how this provision could be included.

Equally as important for providing patient care is expanding the list of eligible providers at distant sites who are eligible for telehealth services reimbursement. As you know, this is currently limited to physicians, nurse practitioners, physician assistants, nurse-midwives, clinical nurse specialists, certified registered nurse anesthetists, clinical psychologists, clinical social workers, and registered dietitians or nutrition professionals. We applaud the Centers for Medicare and Medicaid Services (CMS) for expanding the types of health care professionals that can furnish distant site telehealth services to include all those that are eligible to bill Medicare for their professional services during the public health emergency. And, we are pleased that Section 4 of the draft legislation expands the list of eligible providers to include physical therapists, occupational therapists, qualified speech-language pathologists, and other suppliers specified by the Secretary. We encourage the Committee to ensure this list is inclusive of all providers who are eligible to bill Medicare to ensure necessary access to telehealth services.

Further, the Partnership appreciates the changes made in Section 3 of the draft legislation. These would permanently lift outdated and unnecessary restrictions on Federally Qualified Health Centers and Rural Health Clinics, which currently prevent them from serving as distant site providers. This will help ensure increased access to telehealth in rural and underserved areas. Similarly, we would again urge the Committee to go further and permit any provider that is eligible to bill Medicare to serve as a distant site. In addition, we would recommend that Congress ensure fair and adequate payment for originating sites.

The Partnership recommends removing Section 7, which would permanently eliminate the requirement for face-to-face visits between home dialysis patients and physicians. Currently, a home dialysis patient must have a face-to-face visit with his or her physician once every three months. Conducting these visits via telehealth in the context of the current PHE is appropriate to prevent the spread of COVID-19 and support social distancing measures. However, dialysis patients are a uniquely vulnerable patient population with a high number of comorbidities.

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Removing the requirement for home dialysis patients to have an in-person visit with a physician without additional data and feedback from patients and physicians is premature at this juncture.

Recommended Additions to the Proposed Legislation

The Partnership believes it is important for Congress to consider expanding permissible modalities to ensure broader access to telehealth services. Current statute requires telehealth services to be provided via a telecommunications system, which CMS has defined as an interactive audio and video telecommunications system that permits real-time communication. While there are circumstances where real-time, face-to-face interaction between patient and provider is essential for diagnosis and treatment purposes, our experiences during the pandemic have shown that other forms of communication between provider and patient are equally as effective, and sometimes necessary, for the purposes of providing care. For example, access to devices capable of interactive audio and video can be challenging for specific populations, including rural and underserved communities especially for those seeking care from their homes. Until the expansion of internet capacity in rural and underserved areas has been completed, allowing continued use of audio-only visits and expanding to permit text-based visits as a stop-gap measure is important for ensuring that services are available to beneficiaries in these areas. In some situations where a visual component may be important to the visit, the Committee should consider asynchronous store and forward alternatives when interactive video is not feasible. To this end, we recommend that Congress increase funding for the Federal Communications Commission (FCC) to expand broadband access to rural and underserved communities.

Consideration should also be given to permit the safe prescribing of controlled substances via telehealth with appropriate safeguards. To be clear, we support protecting patients and combating the opioid crisis, and this must be a priority. At the same time, with certain guardrails, there are appropriate cases where prescribing of certain controlled substances would be appropriate via telehealth. With respect to patients needing pain management, requiring an established and pre-existing patient relationship and treatment protocol is an appropriate guardrail. The Ryan Haight Online Pharmacy Consumer Protection Act of 2008 (PL 110–425) should be updated to permit such prescribing with guardrails to protect patients, including requiring compliance with prescription drug monitoring programs, addressing when prescribing is medically appropriate and necessary under pain management and substance use disorder (SUD) treatment plans, and including specific measures to prevent addiction. With respect to patients with substance use disorders, Congress should permit prescribing of certain limited controlled substances appropriate for SUD via telehealth, even in the absence of a pre-existing relationship, if it will stabilize that individual while the necessary behavioral health relationships are established. This is especially important at this time given the potential for exacerbation of behavioral health issues during and following the current COVID-19 pandemic.

Another barrier to increased access to telehealth services is the licensure process. In a country where patients are demanding virtual care no matter where they live, it is currently burdensome and difficult for providers to be able to provide this care across state lines. This was particularly

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enhanced in the early days of the pandemic. We are grateful for the flexibilities provided at the federal and state levels and have seen the benefits of these licensure flexibilities. As such, we strongly encourage Congress to establish a working group to identify federal and state barriers to participation in state licensure compacts and develop policy recommendations to improve provider access to licensure recognition when working across state lines, which at a minimum should include the development of a multi-state telehealth license. Additionally, Congress should enhance funding to facilitate growth of the Health Resources and Services Administration's Licensure Portability Grant Program and enable the development of additional practitioner licensure compacts.

In addition to the legislative proposals above, there are also a few key areas on which Congress could consider taking action to ensure a robust statutory and regulatory framework exists to support the availability of these services. Specifically, CMS has provided a significant number of waivers during the current pandemic, and while the agency may have the authority under current law to make many of these waivers permanent, we would encourage Congress to consider directing the agency to make these policies permanent where appropriate.

- Congress should direct CMS to maintain payment parity for virtual care visits and in-person visits under fee-for-service Medicare.
- Congress should direct CMS to maintain current flexibilities from the requirement that pathologists be physically located at a site that is licensed under the regulations from the Clinical Laboratory Improvement Act. Permanently lifting this restriction will prevent infection-related loss of the pathology workforce and enable a safer and more efficient workplace. This flexibility is clinically appropriate and consistent with other approved remote work for other specialists providing diagnostic services, such as radiologists.
- Congress should direct CMS to make permanent the waiver allowing a shorter billing cycle for the remote monitoring of patients instead of the traditional 16-day minimum.

Finally, we understand the sensitivities and importance of ensuring quality and patient safety as the way we deliver care changes. We already have robust systems and processes in place to maintain the highest quality while always keeping patient safety top of mind. We welcome a discussion with you on best practices and lessons learned on effective guardrails.

Again, we appreciate the work of the Committee and look forward to engaging in an on-going dialogue on this important legislation.

Sincerely,

The Partnership to Advance Virtual Care