Partnership to Advance Virtual Care

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Chiquita Brooks-LaSure
Administrator
Centers for Medicare & Medicaid Services
U.S. Department of Health and Human Services
200 Independence Ave SW
Washington, DC 20201

Submitted electronically

Re: Comments on the Calendar Year (CY) 2022 Payment Policies under the Physician Fee Schedule (PFS) and Other Changes to Part B Payment Policies Proposed Rule [CMS–1751–P]

Dear Administrator Brooks-LaSure:

On behalf of the Partnership to Advance Virtual Care (the "Partnership"), I write to thank you and the Centers for Medicare and Medicaid Services (CMS) for continuing the work to ensure that Medicare beneficiaries maintain access to telehealth care services during the public health emergency (PHE) and beyond. Our Partnership is composed of health systems, health IT vendors, chronic care specialists, behavioral health providers, and primary care stakeholders that are leading innovation in telehealth care delivery. We appreciate the opportunity to comment on the telehealth proposals included in the Calendar Year (CY) 2022 Medicare Physician Fee Schedule (PFS) proposed rule.

The COVID-19 PHE has vastly accelerated the revolution in telehealth care delivery. During the pandemic, enhanced flexibilities and enhanced access to telehealth services served as a lifeline to patients across the country, allowing patients to access critical health care services while keeping vulnerable patients out of clinics and hospitals. Telehealth will continue to play an important role in our health care delivery system by expanding access to high-quality health care services and improving health equity. After the pandemic ends, telehealth care services should continue to be leveraged to enhance patient experiences, improve health outcomes, and reduce health care costs.

We greatly appreciate CMS's foresight and action to address Medicare beneficiaries' telehealth care access during and after the pandemic. To that effect, we strongly support the proposed coverage extension for Category 3 telehealth services through CY 2023. We remain concerned however, that statutory site-of-service restrictions will prevent Medicare beneficiaries from meaningfully accessing these needed telehealth services. We will continue to urge Congress to remove all Medicare telehealth originating site and geographic restrictions, and we urge CMS to interpret applicable

statutory language in a manner that provides Medicare beneficiaries with the broadest possible access to telehealth services.

Additionally, we generally support the proposal to revise the definition of direct supervision in the Medicare regulations for certain services to allow the supervising professional to be immediately available through virtual presence. We also support the proposal to make code G2252, which enables coding and payment for extended virtual check-ins with established patients, permanent.

Finally, we are concerned about the lack of substantive guidance in the proposed rule on remote physiologic monitoring (RPM) services. We urge CMS to continue to engage with stakeholders as the agency develops more robust guidance around the use of RPM services in the future.

More detailed comments on these proposals follow.

Extending Coverage of Category 3 Services through CY 2023

In the proposed rule, CMS proposes temporary extension of coverage for certain telehealth services through CY 2023. Our Partnership supports this coverage extension, but continues to recommend that Congress remove all telehealth originating site and geographic limitations to allow Medicare beneficiaries to access telehealth services from hospitals, health care facilities, their homes, and all other locations deemed appropriate by a clinician. Without these changes, CMS's commendable actions to extend coverage for these services will have a dampened practical impact.

CMS also proposes to add services that were added to the Medicare telehealth services list on an interim basis but were not extended on a temporary Category 3 basis in the CY 2021 PFS final rule. Under current policy, these services would be removed from the Medicare telehealth services list as of the date the PHE ends. Our Partnership requests that these services be added to the Medicare telehealth services list on a Category 3 basis.

In-Person Requirements for Mental Telehealth Services

The Consolidated Appropriations Act, 2021 (CAA) imposes an in-person visit requirement, after the PHE ends, for certain mental telehealth services provided in certain locations. Specifically, the in-person visit requirement applies when providers seek to deliver certain mental health services via telehealth without meeting Medicare's typical geographic restrictions or when the originating site is the patient's home, regardless of geography. In these circumstances, providers must first see the patient in-person before being able to provide certain mental telehealth services. We strongly

oppose the in-person visit requirement for mental telehealth services, as it unnecessarily restricts access to much-needed mental health care after the pandemic.

If enforced, the in-person requirement would stifle beneficiary choice and necessitate the termination of countless existing provider-patient relationships. This would not be because the clinical quality is inferior, but simply because the practitioner lacks a brick-and-mortar location. The in-person requirement also inadvertently discourages and places a moratorium on Medicare provider enrollment for behavioral health providers at a time when the demand for, and ability to, access behavioral health treatment has significantly increased. Many studies show that, within the past year, the prevalence of serious psychological distress among adults older than 55 nearly doubled compared to pre-pandemic levels.

We are currently engaging with Congress to repeal these harmful provisions of the CAA. However, absent Congressional change, we urge the agency to interpret the in-person requirement so as to provide Medicare beneficiaries the broadest possible access to mental telehealth services. If possible, we urge the agency to delay enforcement of the in-person requirement and announce a period of non-enforcement for one to two years.

The CAA delegated regulatory authority to CMS to impose additional, subsequent in-person visit requirements. In the proposed rule, CMS proposes to require an in-person visit at least every six months by the same practitioner. CMS seeks feedback regarding whether the agency should take an expansive interpretation of "same practitioner," such that a subsequent in-person visit could be provided by another provider of the same specialty or sub-specialty within the same practice group (without limitation, only when the initial provider is unavailable, or when the two professionals are practicing as a team). CMS also proposes to permit the delivery of certain mental health services via audio-only communications.

We strongly urge CMS to interpret the statutory language in a manner that places the fewest possible restrictions on Medicare beneficiaries' access to mental telehealth services. This would include delaying enforcement of the in-person requirement and announcing a period of non-enforcement for one to two years, implementing the least burdensome requirements possible, and allowing the broadest possible array of mental health services to be provided via audio-only communications.

Direct Supervision

CMS changed the definition of ''direct supervision'' for certain services during the PHE, allowing the supervising professional to be immediately available through virtual presence (using real-time audio/video technology) instead of requiring physical

presence. In the CY 2021 PFS final rule, CMS finalized the continuation of this policy through the later of the end of the calendar year in which the PHE ends or December 31, 2021.

In the proposed rule, CMS seeks comment on the extent to which this flexibility should be made permanent by revising the definition of ''direct supervision'' at 42 CFR § 410.32(b)(3)(ii). We generally support making the expanded definition of "direct supervision," which enables the supervising professional to be immediately available through virtual presence, permanent. We note that there may be certain circumstances where this is not appropriate and encourage CMS to engage with stakeholders to determine those situations.

Extended Virtual Check-in Code

In the CY 2021 PFS final rule, CMS established code G2252, on an interim basis, for an extended virtual check-in. This code allows health care providers to check in with an established patient using any form of synchronous communications technology, including audio-only communication. In the proposed rule, CMS plans to adopt coding and payment for code G2252 on a permanent basis. We support the proposal to permanently adopt the extended virtual check-in code, as it facilitates continued access to care for established patients.

Remote Physiologic Monitoring (RPM)

In recent years, CMS has established payment for several remote physiologic monitoring (RPM) codes. During the PHE, CMS implemented flexibilities to allow for broader use of these services, but has provided limited guidance on how these services should be reported. Despite dramatic growth in the use of these codes, CMS has not yet provided additional clarifying guidance on the use and potential limitations of the codes. We urge CMS to continue to engage with stakeholders as the agency develops clarifying guidance regarding the use of RPM codes.

Closing

The COVID-19 pandemic greatly accelerated the adoption of telehealth care delivery. Advances in telehealth have made health care more accessible and equitable, and we believe that these advances should remain part of our health care system after the pandemic ends. The Medicare population will greatly benefit from extended access to telehealth services that enables beneficiaries to engage with providers from the safety, comfort, and convenience of their homes.

We welcome the opportunity to discuss these important issues further, and to continue to work together to ensure that Medicare beneficiaries maintain access to high-quality telehealth services.

Respectfully,

Mara McDermott
Executive Director
Partnership to Advance Virtual Care