Partnership to Advance Virtual Care

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Introduction: The Need to Repeal the In-Person Requirement for Medicare Mental Telehealth Services

The COVID-19 pandemic has had a particularly devastating impact on the mental wellbeing of America's seniors and those living with disabilities.[1] Enhanced access to mental telehealth services during the pandemic has served as a lifeline to patients across the country, including Medicare patients. To protect and improve the mental health of Medicare beneficiaries, we urge Congress to repeal the "in-person requirement" – put into place by the Consolidated Appropriations Act, 2021 (CAA) and Centers for Medicare and Medicaid Services (CMS) regulation – for telehealth treatment of certain mental health conditions.

The In-Person Requirement: An Arbitrary Barrier to Mental Telehealth Care

Medicare generally only allows patients in specific, qualifying locations to access telehealth services. These geographic and originating site restrictions are extremely limiting: only two out of every 100 Medicare beneficiaries reside in counties eligible to receive telehealth services under the Medicare coverage restrictions that exist outside of the Public Health Emergency (PHE).[2] During the PHE, waiver of these restrictions greatly expanded Medicare beneficiaries' access to mental and other telehealth services at a critical time.

Congress sought to codify expanded access to mental telehealth services for Medicare beneficiaries post-PHE in the CAA in December 2020. The CAA permits Medicare beneficiaries to access telehealth treatment for a broader range of mental health conditions from a broader range of qualifying locations, including the beneficiary's home, even after the PHE ends.[3] While the CAA expanded access to mental telehealth treatment, in theory, a subsequent provision in the legislation severely limits this access in practice.

For telehealth treatment of the expanded range of mental health conditions and treatment locations, the CAA also imposes an in-person requirement. For Medicare beneficiaries to receive telehealth treatment for the expanded range of mental health conditions, such as anxiety and depression, from the expanded list of qualifying sites (including the home), the beneficiary must have an *in-person* visit with her health care provider within the six months prior to the telehealth treatment. In effect, Congress

[1] The Kaiser Family Foundation, *One in Four Older Adults Report Anxiety or Depression Amid the COVID-19 Pandemic* (Oct. 2020), available here.
[2] CMS Master Beneficiary Summary File, 2019.
[3] Before the PHE, telehealth treatment for substance use disorders (and co-occurring mental health disorders) was already exempted from the Medicare originating site and geographic restrictions. In other words, Medicare beneficiaries seeking treatment for substance use (and co-occurring) disorders could already access mental telehealth treatment regardless of their location. The CAA permanently expanded Medicare beneficiaries' ability to receive mental telehealth treatment from home for additional mental health conditions after the PHE, subject to the in-person requirement.

expanded the range of telehealth-eligible mental health conditions and qualifying locations with one hand, but then imposed significant barriers to access with the other.

The CAA also allowed the Secretary of Health and Human Services (HHS) to impose additional in-person visit requirements. In the CY2022 Physician Fee Schedule Final Rule, CMS finalized a 12-month continuing in-person requirement. Combining the CAA's statutory requirement and CMS' additional regulatory requirement, a Medicare beneficiary must have seen her health care provider in person within the six-month period *prior* to starting her mental telehealth treatment, and generally must *subsequently* see her provider in 12-month intervals to continue her mental health treatment.[4]

There is no compelling clinical reason to mandate an in-person visit for all patients for the expanded range of mental health conditions. Whether a patient requires an in-person visit prior to commencing their mental telehealth treatment should be left to the clinical judgment of her health care provider. CMS' decision to provide exceptions to the additional annual in-person requirement, based on whether the risks and burdens of an in-person visit outweigh the benefits, underscores that the clinical necessity of an in-person visit should be left to the mental health professional's judgment. The nature of mental and behavioral health care services, which rely primarily on extensive verbal communications between patient and provider, does not require in-person assessments with legislated frequency. In cases where an in-person visit would be warranted, providers can exercise their clinical judgment.

Repealing the in-person requirement would also simply bring telehealth treatment for the expanded range of mental health conditions in line with how Congress has *already* addressed access to services for substance use disorders. Before the PHE, Medicare beneficiaries seeking treatment for substance use (and co-occurring mental health) disorders could already access mental telehealth treatment from home. As with telehealth treatment for substance use disorders, Congress should allow Medicare beneficiaries to have unimpeded access to telehealth services for other mental health conditions, such as anxiety and depression.

Unintended Consequences: Limiting Access, Discouraging Provider Enrollment, Increasing Administrative Burden, and Driving Up Volume

The in-person requirement will have several unintended negative consequences. First, the requirement will force many existing provider-patient relationships to terminate simply because the provider does not have a physical office location. Mental telehealth care delivery is increasingly provided via virtual-only practice models. During the pandemic, many Medicare beneficiaries have accessed care via virtual-only practices to meet their mental health needs. Without a physical office location, these providers will *de facto* be unable to meet the in-person requirement, resulting in treatment disruptions

[4] CMS also established criteria for an exception to its in-person annual visit requirement, including situations in which the risks and burdens associated with an in-person service may outweigh the benefit.

for their patients. These harmful disruptions will not be the result of inferior care quality; they will be the result of unnecessary barriers to care.

The in-person requirement will also discourage providers, particularly behavioral health providers who often do not have brick-and-mortar offices, from enrolling in Medicare. This disincentive for enrollment comes at a time when the demand for behavioral health treatment has significantly increased. Not only will the in-person requirement disrupt existing care relationships, it will also reduce the number of providers enrolled to provide much-needed and in-demand behavioral and mental health care services, in turn reducing beneficiary access.

The in-person requirement will also unnecessarily drive up volume. The requirement mandates an in-person visit prior to telehealth treatment, in addition to the CMS-imposed annual visits for continuing treatment, regardless of whether the visit is truly clinically necessary. As Congress and CMS continue the hard work of developing and implementing value based care models in Medicare, requirements like the in-person requirement needlessly increase volume and undercut progress in the value based care movement. The in-person requirement will also shift costs to every state Medicaid program that covers telemental health without an in-person requirement for dual eligibles.

The in-person requirement will increase administrative burden on providers, who will have to track compliance rather than focusing on care. Providers who have been providing mental telehealth care services to Medicare patients during the pandemic will now have to invest time in understanding when the in-person requirements apply. Instead of focusing on patient care, providers will have to devote more time and energy to ensuring that patients meet the requirement. The requirement imposes an additional layer of patient management when the in-person visit may have no clinical value.

Most importantly, the in-person requirement unnecessarily restricts Medicare beneficiaries' access to telehealth treatment for mental health conditions. For example, if a Medicare beneficiary seeks treatment from her home via telehealth for depression, that beneficiary will have to satisfy the in-person requirement. The beneficiary will have to go to her provider's physical office location for an in-person visit in the six-month time period before her telehealth treatment begins. Per the CMS regulation, she will then also have to attend an in-person visit annually to continue her treatment. Attending these in-person visits will be inconvenient for some beneficiaries; it will be next-to-impossible for others. In short, this arbitrary and physical barrier to care will prevent many Medicare beneficiaries from getting the mental health care they need and deserve.

Congress Should Urgently Repeal the In-Person Requirement

If Congress's overarching goal is to expand access to care for vulnerable populations, including America's senior and disabled populations, constructing unnecessary barriers to care access undercuts these goals. Mental health in seniors has deteriorated during the pandemic, and imposing barriers to care after the PHE will only worsen this mental

health crisis. As the in-person requirement becomes effective when the PHE ends, there is an urgent need for Congress to act to prevent disastrous mental health consequences for Medicare beneficiaries.

There is a bipartisan legislative effort already underway to repeal the in-person requirement. In June, Senators Bill Cassidy, M.D. (R-LA), Tina Smith (D-MN), John Thune (R-SD), and Ben Cardin (D-MD) introduced the bipartisan Telemental Health Care Access Act of 2021 to repeal barriers to mental telehealth care. Representatives Doris Matsui (D-CA) and Bill Johnson (R-OH) have also introduced a companion bill in the House. Our Partnership joined 20 other telehealth advocacy organizations in support of this legislation. Our full letter of support is available here.

The Medicare population will greatly benefit from extended access to mental telehealth services that enables beneficiaries to engage with providers from the safety, comfort, and convenience of their homes. To achieve this goal, we urge Congress to remove artificial and harmful barriers to mental telehealth care and to ensure that Medicare beneficiaries continue to have access to the mental telehealth services they need.

About Us

The Partnership to Advance Virtual Care is composed of health systems, health information technology vendors, chronic care specialists, behavioral health providers, and primary care stakeholders who are leading innovation in telehealth care delivery.