Partnership to Advance Virtual Care

Tel +1 202 204 1460
Fax +1 202 379 1490
rstauffer@mcdermottplus.com

August 30, 2022

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) 2023 Payment Policies under the Physician Fee Schedule (PFS) and Other Changes to Part B Payment Policies Proposed Rule [CMS-1770-P]

Dear Administrator Brooks-LaSure:

On behalf of the Partnership to Advance Virtual Care (PAVC), thank you for your commitment to ensuring that Medicare beneficiaries maintain access to telehealth care services during the COVID-19 public health emergency (PHE) and beyond. PAVC 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) 2023 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 have 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, these services should continue to be leveraged in order to enhance patient experiences, improve health outcomes, and reduce health care costs.

PAVC appreciates the Centers for Medicare & Medicaid Services' (CMS') continued actions to address Medicare beneficiaries' telehealth care access during and after the pandemic. Our comments on the telehealth-related provisions of the proposed rule are as follows.

Partnership to Advance Virtual Care

Tel +1 202 204 1460
Fax +1 202 379 1490
rstauffer@mcdermottplus.com

Coverage of Category 3 Services through CY 2023

In CY 2022, CMS finalized the temporary extension of telehealth coverage for certain services through CY 2023. This temporary extension—which PAVC supported—is allowing the agency to collect more data to inform the structure of telehealth coverage in a post-COVID-19 environment. As demand for telehealth beyond the pandemic has grown, CMS has placed a priority on determining which services can be appropriately provided via telehealth from a clinical perspective, and on addressing fraud and abuse. The agency has also indicated that COVID-19 has demonstrated that expanded telehealth policies may also help address access disparities.

As the COVID-19 PHE continues, it was anticipated that CMS may have proposed to extend this end date beyond CY 2023. However, the proposed rule maintains the end of CY 2023 as the end date for the services that are temporarily included on a Category 3 basis remain on the Medicare Telehealth Services List.

PAVC appreciates CMS' stated intention to revisit this policy, should the PHE remain in place well into CY2023. PAVC also 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 long-term changes beyond current PHE flexibilities, any actions to extend coverage for these services will have a dampened practical impact.

Alignment with 151-Day Post-PHE Extension

Use of telehealth services increased dramatically during the PHE. Providers, patients and other stakeholders have urged Congress and CMS to allow continued access to telehealth services by maintaining these flexibilities after the PHE ends.

In the Consolidated Appropriations Act, 2022 (CAA 2022), Congress extended certain telehealth flexibilities related to the PHE for 151 days after the PHE ends. These current waivers—which are tied to the PHE—provide flexibility related to where telehealth can be provided (*e.g.*, at home), which services can be provided (*e.g.*, expanded list of covered services), what type of technology can be used (*e.g.*, enforcement discretion around Health Insurance Portability and Accountability Act rules), and the level of payment for these services (*e.g.*, allowing the higher non-facility rate for office-based physicians).

Current CMS policy provides coverage through the end of the PHE for more than 100 services added to the Medicare Telehealth List on an interim basis. In this rule, CMS proposes to extend coverage for the services added on an interim basis (but not yet

Tel +1 202 204 1460
Fax +1 202 379 1490
rstauffer@mcdermottplus.com

given Category 3 status), for 151 days post-PHE to align with telehealth flexibilities included in the CAA 2022.

PAVC appreciates CMS' proposal to align the timeframes in which certain Medicare telehealth flexibilities end. While the agency has taken steps to provide more clarity to stakeholders, Congressional action on extensions beyond the 151 days—including efforts to make these flexibilities permanent—remains necessary, and PAVC will continue to advocate for such legislative action in 2022 and beyond.

In-Person Requirements for Mental Telehealth Services

The Consolidated Appropriations Act, 2021 (CAA 2021) and subsequent CMS regulation put into place 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.

PAVC has strongly opposed, and continues to 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.

PAVC appreciates and supports CMS' effort to align this provision with the other 151-day post-PHE extensions set forth in the CAA 2022, by proposing to delay the in-person requirements for telehealth services furnished for purposes of diagnosis, evaluation, or treatment of a mental health disorder to be effective on the 152nd day after the PHE ends. This proposed alignment will allow stakeholders to continue to engage with Congress on a permanent repeal of these in-person requirements that will harm patients' post-pandemic access to needed mental health care benefits.

Partnership to Advance Virtual Care

Tel +1 202 204 1460
Fax +1 202 379 1490
rstauffer@mcdermottplus.com

Assessing Equity – Language Barriers

PAVC appreciates the Biden Administration's comprehensive, interagency efforts to study and address methods for assessing whether agency policies and actions create or exacerbate barriers to full and equal participation by all eligible individuals. These efforts include the assessment of equity with respect to race, ethnicity, religion, income, geography, gender identity, sexual orientation, and disability.

While "disability" includes individuals who are deaf or hard of hearing, the category is broader than that. Many people who were born deaf would argue, in fact, that they do not have a disability at all, but rather, just speak a different language. Further, language access does not fit squarely in the disability category any more than it does in the categories related to race, income, or geography, though people in all of these groups can lack meaningful access to health care services due to a language barrier.

In order to more accurately assess and address health equity, PAVC recommends that CMS take English language ability—or lack thereof—into account. Efforts should be made to measure language ability through Census data, or other relevant data sources, and take steps to incorporate this data into health equity efforts.

Summary and Conclusion

The COVID-19 pandemic greatly accelerated the adoption of telehealth care delivery. Advances in telehealth have made health care more accessible and equitable, and PAVC strongly believes 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,

Rachel Stauffer
Executive Director
Partnership to Advance Virtual Care