STATEMENT

of the

American Medical Association

U.S. House of Representatives

Energy and Commerce Subcommittee on Health

Re: Legislative Proposals to Support Patient Access to Telehealth Services

April 10, 2024

Division of Legislative Counsel

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The American Medical Association (AMA) appreciates the opportunity to submit the following Statement for the Record to the U.S. House Energy and Commerce Subcommittee on Health as part of the hearing entitled, "Legislative Proposals to Support Patient Access to Telehealth Services." The AMA commends the Subcommittee for its consideration of this critically important issue aimed at, among other things, ensuring the continuation of certain programs and policy flexibilities granted as part of the response to the COVID-19 pandemic that help ensure patients retain access to at-home care. The COVID-19 pandemic made clear that rural and underserved areas that have historically lacked adequate access to health care services can greatly benefit from permanent legislative and regulatory flexibilities. As a result, we applaud the Subcommittee for recognizing the importance of promoting health equity as it considers which COVID-19 policies to retain to facilitate continued access to home-based care. In addition, we urge Congress to consider how making many of these existing flexibilities permanent will provide the necessary assurances that physicians, health care organizations, and patients may need before investing additional resources into policies such as telehealth and the Hospital at Home program. Long-term or permanent extensions of policies that promote and enable at-home care will bring further value to the American health care system.

Improving and expanding access to telehealth services by removing antiquated statutory restrictions and requirements.

The AMA strongly recommends that Congress permanently lift the restrictions on access to telehealth services for Medicare patients by passing S. 2016/H.R. 4189, the "Creating Opportunities Now for Necessary and Effective Care Technologies (CONNECT) for Health Act," H.R. 7623, the "Telehealth Modernization Act," H.R. 134, to amend title XVIII of the Social Security Act to remove geographic requirements and expand originating sites for telehealth services, H.R. 5611, the "Helping Ensure Access to Local TeleHealth (HEALTH) Act of 2023," H.R. 3432, the "Telemental Health Care Access Act," and H.R. 7711, the Advancing Access to Telehealth Act."

Introduced by Representatives Mike Thompson (D-CA) and David Schweikert (R-AZ), the "CONNECT for Health Act" is bipartisan legislation that would permanently extend many important COVID-19 telehealth flexibilities that have significantly improved access to care for patients in rural and underserved areas. More specifically, the bill repeals the existing Medicare geographic site restrictions and

permanently modifies the originating site requirements to allow patients to receive telehealth services wherever the patient can access a telecommunications system, including, but not limited, to the home. These COVID-19 policies have allowed patients to obtain telehealth services at home instead of having to travel to a medical facility to receive virtual care from a distant site. They have also allowed Medicare patients located in urban and suburban areas to have access to telehealth services for the first time. COVID-19 flexibilities also enabled patients to access health care services through audio-only visits when they do not have reliable access to two-way audio-video telecommunications technology. Therefore, passage of the "Telehealth Modernization Act" (S. 3967/H.R. 7623), introduced by Senators Tim Scott (R-SC) and Brian Schatz (D-HI) in the Senate, and Reps. Buddy Carter (R-GA), Lisa Blunt Rochester (D-DE), Greg Steube (R-FL), Terri Sewell (D-AL), Mariannette Miller-Meeks (R-IA), Jeff Van Drew (R-NJ), and Joe Morelle (D-NY) in the House, is crucial because in addition to eliminating the Medicare geographic and originating site restrictions on telehealth coverage, it permanently continues the ability to use audio-only telehealth services beyond the current statutory deadline of December 31, 2024. Access to two-way audio-visual telehealth and audio-only services has lowered or eliminated barriers that many patients in rural and underserved areas face when trying to obtain in-person care, such as functional limitations that make it difficult to travel to physician offices, long travel times, workforce shortages, the need for a caregiver to accompany the patient, and patients experiencing unstable housing and lack of transportation and childcare.

Permanently removing the antiquated geographic restrictions and modifying the originating site requirements means patients will no longer have to travel, counterintuitively, to a limited set of brick-and-mortar medical sites to access virtual care. In an effort to boost access to virtual mental health services, The Connect for Health Act also repeals the requirement within the Consolidated Appropriations Act, 2021, requiring patients to see a physician in-person within six months of an initial telehealth visit for a mental health condition. Federal lawmakers have also introduced stand-alone bills, specifically H.R. 3432/S. 3651, the "Telemental Health Care Access Act," to remove these in-person visit requirements that will only stifle access to mental health services. While federal lawmakers have, thus far, passed legislation delaying the mandate for patients to receive an in-person visit within six months of receiving an initial telemental health service from taking effect, it is crucial this policy is permanently removed to ensure patients retain ample access to virtual mental health services. Absent Congressional intervention, the in-person telemental health requirements will go into effect on January 1, 2025, so it is crucial legislative action occurs expeditiously.

The dramatic increase in the availability of telehealth services has catalyzed the development and diffusion of innovative hybrid models of care delivery utilizing in-person, telehealth, and remote monitoring services so that patients can obtain the optimal mix of service modalities to meet their health care needs. These models can also reduce fragmentation in care by allowing patients to obtain telehealth services from their regular physicians instead of having to utilize separate telehealth-only companies that may not coordinate care with patients' medical home. Now, all Americans, including rural, underserved, minoritized and marginalized patients, can receive a combination of in-person and virtual care, which is crucial for patients with chronic diseases. Congress should not permit these flexibilities to expire as it will run counter to its goals of promoting more home-based care.

Addressing fraud, waste, and abuse concerns associated with expanded access to telehealth.

In general, the AMA urges members of the Subcommittee to reject any inclination to establish additional guardrails, including in-person visits or mandatory audits, in the name of rooting out fraud, waste, and

abuse. The AMA believes these concerns are misplaced given CMS' existing tools for combating fraud and abuse, the increased ability telehealth services provide for documentation and tracking, and the lack of data to suggest that fraud and abuse or duplication of services are of particular concern for telehealth services.

The AMA believes existing HHS and OIG fraud capabilities and authorities are more than adequate to police telehealth services in the same way they oversee in-person Medicare services. A February 2024 HHS OIG report confirms this conclusion.[1] For 105 out of the 110 sampled Evaluation and Management (E/M) services provided via telehealth during the early parts of the pandemic, providers appropriately complied with Medicare requirements. As a result, OIG did not provide any policy recommendations to CMS because, "…providers generally met Medicare requirements when billing for E/M services provided via telehealth and unallowable payments we identified resulted primarily from clerical errors or the inability to access records." Medicare fraud is still Medicare fraud, irrespective of whether it involved telehealth services. Additional restrictions do not currently apply under the Medicare Advantage, the Center for Medicare & Medicaid Innovation, section 1116 waiver authorities, the existing Medicare telehealth coverage authority, or other technologies such as phone, text, or remote patient monitoring.

In February 2021, HHS's Principal Deputy Inspector General (OIG) released a statement dispelling any concerns with OIG's authority or ability to address concerns of fraud and abuse. Instead, HHS OIG's statement highlights concerns stem from "telefraud" schemes, rather than "telehealth fraud," in which bad actors use "telehealth" as a basis for fraudulent charges for medical equipment or prescriptions which are unrelated to the telehealth service at issue. In those cases, fraudulent actors typically do not bill for the telehealth visit but instead use the sham telehealth visit to induce a patient to agree to receive unneeded items and gather their info. In other words, whether the telehealth service itself is covered has no impact on these kinds of fraudulent schemes.

Moreover, telehealth services may prove even easier to monitor for fraud and abuse because of the digital footprint created by these services, state practice of medicine laws requiring documentation of these services, and the ability to track their usage with Modifier 95. CMS has also implemented Place of Service (POS) indicators for this purpose, including POS 02 when the originating site is someplace other than the patient's home and POS 10 when the patient is in their home. Additional indicators may be used for asynchronous services and home health services provided via telehealth. Telehealth services are even more likely to have electronic documentation in medical record systems than in-person services. Practice of medicine laws in all 50 states permit physicians to establish relationships with patients virtually so long as it is appropriate for the service to be received via telehealth. In addition, two-way audio-visual services can be effectively deciphered and tracked by CMS via Modifier 95 and other CMS indicators. The Modifier 95 describes "synchronous telemedicine services rendered via a real time Interactive audio and video telecommunications system" and is applicable for all codes listed in Appendix P of the CPT manual. Modifier 95 and the POS indicators are applicable for telemedicine services rendered through December 31, 2024. The requirement to code with Modifier 95 and POS enables CMS to properly decipher and track telemedicine services, thus improving the chances of identifying and rooting out fraud, waste, and abuse.

[1] https://oig.hhs.gov/oas/reports/region1/12100501.asp.

Extending the Acute Hospital Care at Home Waiver Program.

In addition to telehealth, the Subcommittee should consider extending flexibilities that permit the continuation of the hospital-at-home program. Introduced by Representatives Brad Wenstrup (R-OH) and Earl Blumenauer (D-OR), the "Hospital Inpatient Services Modernization Act" achieves this goal by extending acute hospital care at home waiver flexibilities until September 2027. On March 11, 2023, the AMA along with other organizations, including medical groups participating in the Acute Hospital Care at Home (AHCaH) waiver program, submitted a request to Congress asking for at least a five-year extension of AHCaH before its expiration at the end of 2024. Without an extension, Medicare beneficiaries will lose access to AHCaH programs that have demonstrated excellent clinical outcomes and lower costs of care. With an expiration set for the end of this year, medical groups and health systems nationwide need assurance that this waiver program will be extended if they are going to invest their resources into logistics, supply chain, and workforce for AHCaH. A five-year extension can also help ensure hospital inpatient unit care is available for the patients who need it while enabling patients who can and want to be treated in their home to have the opportunity to do so, creating needed capacity for hospitals without increasing health system costs.

The State of Health at Home Models: Key Considerations and Opportunities

Building on existing playbooks and resources supporting digitally enabled care, the American Medical Association conducted research to explore the different ways health care is and can be provided in the home. The AMA report titled, "The State of Health at Home Models: Key Considerations and Opportunities" offers a comprehensive guide that outlines the concept and benefits of delivering care to patients in their home environments.[2] These include recommendations to:

- Determine whether your practice or organization should build your health at home program internally or partner with another organization.
- Consider required training to strengthen your mobile workforce, which is a core component of health at home programs.
- Ensure you understand the unique and varied circumstances of each home environment and plan for the patient and caregiver experience in detail.
- Develop the infrastructure up front that will provide the necessary tools to appropriately handle the flow of resources and information to provide patient care as required by your specific program.

Future of Health Case Study: Atrium Health

This case study highlights how this vision is being accomplished through a strategic partnership between a traditional brick-and-mortar health system and a technology company, with a common goal to build and scale a program that enables patients to continue their care and recovery at home. Each organization brings its expertise to the partnership, enabling thoughtful development and implementation of a complex, digitally enabled clinical initiative.

Creating a permanent Medicare Diabetes Prevention Program benefit that allows services to be delivered virtually.

[2] https://www.ama-assn.org/system/files/health-at-home-models.pdf.

The AMA supports H.R. 786, the "PREVENT DIABETES Act," introduced by Representatives DeGette (D-CO), and Bilirakis (R-FL). This important legislation would broaden access to diabetes prevention services by aligning the Medicare Diabetes Prevention Program (MDPP) with the Centers for Disease Control and Prevention's (CDC) National Diabetes Prevention Program (DPP), make MDPP a permanent benefit in Medicare, ensure seniors can participate in the program more than once, and expand access to all CDC-recognized delivery modalities including virtual diabetes prevention platforms in the program. We, among other stakeholders, believe that one of the most significant factors contributing to current low enrollment in MDPP includes restrictions with respect to eligible suppliers and limiting the benefit to in-person programs. The consequence of this limitation prevents Medicare beneficiaries from taking advantage of the same virtual DPP programs that have greatly expanded access to DPP services under the CDC Diabetes Prevention Recognition Program. This legislation would expand access to life-changing preventative services while keeping important oversight, accountability, and program integrity protections in place.

Improving maternal and infant health outcomes for pregnant and postpartum women with the support of telehealth and remote patient monitoring solutions.

Telehealth and technology enabled devices have proven to be key assets in the physician's toolbox for prevention and improved health outcomes for a number of conditions. The AMA recognizes the same technology is critical to addressing maternal mortality and morbidity by helping screen new mothers for high blood pressure and related treatable and preventable conditions, such as preeclampsia, that lead to unnecessary and avoidable maternal deaths and adverse health outcomes. AMA supports the Connected Maternal Online Monitoring (MOM) Act. This bill would require CMS to send a report to Congress identifying barriers to coverage of remote physiologic devices (e.g., pulse oximeters, blood pressure cuffs, scales, blood glucose monitors) under state Medicaid programs to improve maternal and child health outcomes for pregnant and postpartum women. This bipartisan legislation would also require CMS to update state resources, such as state Medicaid telehealth toolkits, to align with evidence-based recommendations to help decrease maternal mortality and morbidity. The AMA strongly supports this legislation which would make a meaningful difference in addressing the unacceptably high rate of maternal mortality in the U.S., especially for women from marginalized populations.

CONCLUSION

The AMA is committed to working with Congress to find permanent solutions that ensure Medicare beneficiaries have uninterrupted continued access to high quality, affordable health care, including virtual care and care delivered in the home setting. We must build on the gains achieved during the pandemic so that all patients regardless of their zip code have access to the care they need.