

September 3, 2020

Michelle Radosevich, JD
Chair
Uniform Laws Commission
Davis Wright Tremaine
920 Fifth Ave, Ste. 3300
Seattle, WA 98104

Re: AMA Support for ULC Development of Telehealth Model Bill

Dear Chair Radosevich:

On behalf of the American Medical Association (AMA) and our physician and student members, I write to state our support for the development of a telehealth model bill by the Uniform Laws Commission (ULC) that includes language supporting coverage parity and state-based licensure among other provisions.

The AMA welcomed the opportunity to engage with the ULC's Telehealth Study Committee as they discussed the merits of model telehealth legislation and would appreciate the opportunity to work with the drafting committee if there is a decision to move forward with model legislation on this timely issue. In light of the COVID-19 pandemic, there has been great advancement in physicians and patients realizing the value of telehealth. Now is an important moment for organizations like the ULC to uphold policies that support sustainable adoption and wise deployment of telehealth that maximizes benefits to patients and the health care system. The AMA has been heavily engaged with state medical societies and state policymakers for many years on this issue, but never so intensely as since the beginning of the COVID-19 pandemic. As you consider the scope of your model bill, we offer the attached issue brief as an outline of our priorities, which include:

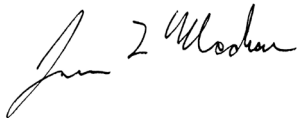
- **Coverage parity** – Coverage of services provided via telehealth should be on the same basis as comparable services provided in-person. Telehealth can and should be integrated seamlessly into the delivery of health care – when clinically appropriate. Telehealth is just one of the ways physicians can provide care to their patients, therefore, coverage of services provided via telehealth should be on the same basis as comparable services provided in-person. Similarly, all unnecessary barriers to accessing telehealth, such as originating site and geographic restrictions should be removed.
- **Maintaining state-based licensure** – State licensure requirements remain important patient protections. To protect patients, physicians and other health care professionals providing care via telehealth must be licensed or otherwise authorized to practice in the state where the patient is receiving care. This ensures the state practice acts, informed consent and scope of practice laws apply, and the state has oversight of the health care professional. Alternatives raise serious enforcement issues as states do not have interstate policing authority and cannot investigate crimes that happen in another state.

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Our priorities are focused largely on advancing telehealth not as a replacement for offering in-person care, but as a valuable supplement when clinically appropriate. Telehealth has the ability to improve coordination of care, ensure that vulnerable populations have access to their physicians and providers, and to create efficiencies in the health care system that come with expanding the means by which care can be provided.

The AMA is ready to work with the ULC to advance telehealth policies that promote patient access to quality care and capitalize on the important investments and advancements that have been made by physicians and other providers during the COVID-19 pandemic. Please contact Emily Carroll, Senior Legislative Attorney, AMA Advocacy Resource Center at emily.carroll@ama-assn.org or Kimberly Horvath, Senior Legislative Attorney, AMA Advocacy Resource Center at kimberly.horvath@ama-assn.org with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim L Madara". The signature is written in a cursive, flowing style.

James L. Madara, MD

Attachment

Telehealth: Ensuring access to quality care during and after the COVID-19 pandemic

Background

The COVID-19 pandemic has accelerated advancements and pushed patients, physicians and other stakeholders to realize the value of offering care via telehealth. For example, telehealth is:

- Allowing patients, especially those vulnerable to COVID-19 complications, to continue accessing care safely and continuously with their physicians;
- Helping many physicians maintain their practice operations and retain their staff during stay-at-home orders and when providing in-person care is not safe or feasible; and
- Proving to be an important tool in addressing longstanding health inequities among marginalized and minoritized communities that have been impacted disproportionately by the COVID 19 pandemic, although more work remains to ensure access for patients in areas lacking broadband and access to technology.

As policymakers move forward with telehealth reforms during the pandemic, it is important to keep in mind:

- Patients, including those with disabilities, chronic conditions, and mental health care needs, should have assurances that care will continue to be available to them in a safe and convenient manner, including through telehealth.
- Significant investments (both time and money) in telehealth continue to be made by many physician practices to ensure access to care remains available to their patients during the pandemic. These practices should have certainty going forward that such investments are sustainable and are being deployed optimally for high quality patient care.
- Physicians continue to face critical shortages of personal protective equipment (PPE) as well as uncertainty as to reopening and the potential of new stay-at-home orders in various hot spots across the country. As the health and economic toll of COVID-19 continues, telehealth will remain a valuable tool for delivering care.

Policy Opportunities

Legislators and regulators have an important opportunity to codify coverage, access and payment policies that supports many of the telehealth advancements throughout the pandemic and beyond, knowing that patients will greatly benefit.

Coverage, access and payment recommendations:

Coverage of services provided via telehealth should be on the same basis as comparable services provided in-person. Telehealth can and should be integrated seamlessly into the delivery of health care – when clinically appropriate, telehealth is just one of the ways physicians can provide care to their patients, therefore, coverage of services provided via telehealth should be on the same basis as comparable services provided in-person. Similarly, all unnecessary barriers to accessing telehealth, such as originating site and geographic restrictions should be removed.

Insurers should allow all contracted physicians to provide care via telehealth. Many insurers established a separate network for telehealth or select telehealth providers prior to the pandemic, which did not always include contracted physicians who provide in-person services. As a result of the pandemic, adoption of telehealth has increased dramatically and is more likely to be available from an individual's physician. The pre-pandemic separation of telehealth and in-person visits can no longer be justified based on low levels of adoption that no longer exist. Perpetuation of separate networks is confusing for patients and threatens continuity of care and the patient-physician relationship.

Cost-sharing should not be used to incent care from certain providers. Physicians should have continued flexibility to waive cost-sharing requirements for telehealth services during the COVID-19 public health emergency. However, cost-sharing for services provided via telehealth should not vary based on the telehealth provider. Reducing cost sharing for select telehealth providers who do not also provide in-person care inappropriately steers patients away from their current physicians, fragmenting the health care system and threatening patients' continuity of care.

Telehealth should be a supplement to, not a replacement for, in-person provider networks. Patients should always have the opportunity, to access care in-person if they choose. Moreover, it is often impossible for a physician to know whether a telehealth visit may necessitate in-person care. As such, telehealth networks should not be used to meet network adequacy requirements (i.e. regulators must evaluate network adequacy based on access to in-person care).

Transparency of coverage is important. Health insurers should ensure transparency in coverage and patient cost-sharing of services provided via telehealth, and health care professionals should effectively communicate information about the scope of telehealth visits to patients.

Fair payments support advancements and investments in telehealth. There are many benefits and potential cost-savings opportunities associated with telehealth, but those costs-savings should not come from payment reductions to physicians who are simultaneously investing in telehealth expansion. As stakeholders promote and expect access to care via telehealth and services provided via two-way audio-video telehealth are commensurate with in-person visits, payment should be the same.

Flexibility in how a patient-physician relationship is established may be appropriate. A patient-physician relationship should ideally be established before the provision of services via telehealth. However, for new patients, a relationship can be established via telehealth if it meets the standard of care, including via real-time audio/video.

State licensure requirements remain important patient protections. To protect patients, physicians and other health care professionals providing care via telehealth must be licensed or otherwise authorized to practice in the state where the patient is receiving care. This ensures the state practice acts, informed consent and scope of practice laws apply, and the state has oversight of the health care professional. Alternatives raise serious enforcement issues as states do not have interstate policing authority and cannot investigate crimes that happen in another state.

Next Steps

The AMA stands ready to work with state legislators and regulators to advance telehealth policy reforms that promote patient access to quality care and capitalize on the important investments and advancements that have been made by physicians and other providers during the pandemic. The AMA offers model state legislation, toolkits, and other important resources to aid in such policy work.

For more information, contact Kimberly Horvath, Senior Legislative Attorney, AMA Advocacy Resource Center, at kimberly.horvath@ama-assn.org or Emily Carroll, Senior Legislative Attorney, AMA Advocacy Resource Center, at emily.carroll@ama-assn.org.