

June 21, 2022

The Honorable Ron Wyden
Chairman
Senate Committee on Finance
219 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Ben Cardin
Senate Committee on Finance
509 Hart Senate Office Building
Washington, DC 20510

The Honorable Mike Crapo
Ranking Member
Senate Committee on Finance
219 Dirksen Senate Office Building
Washington, DC 20510

The Honorable John Thune
Senate Committee on Finance
511 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Wyden, Ranking Member Crapo, Senator Cardin, and Senator Thune:

On behalf of the American Medical Association (AMA) and our physician and medical student members, I am writing to provide our comments to the Finance Committee's discussion draft for telehealth policies. Telehealth expansion has been the silver lining of the pandemic, particularly for Medicare patients, allowing them to maintain access to their physicians while avoiding the threat of potential exposure to the infectious COVID-19 virus. Mental health has been the single largest beneficiary of Congress' expansion of telehealth coverage, and the AMA supports the continuation of this coverage permanently. **The AMA strongly supports the provisions in the discussion draft that provide guidance to states on furnishing health care services through telehealth under Medicaid and the Children's Health Insurance Program (CHIP) and provide incentives to states to use their CHIP programs to establish local solutions to serve behavioral health needs in schools, including through telehealth. The AMA also supports the collection of information related to whether network providers offer telehealth, as this information has the potential to inform future policy on telehealth and access to care.**

However, while there are provisions in the discussion draft aimed at easing the delivery of telemental health services, the effect of these new requirements would be so burdensome that they would create a new barrier for mental health physicians. Additionally, the provision in section 3 of the bill, which requires the Secretary of the U.S. Department of Health and Human Services (HHS) to review claims to identify those physicians who provide an above-average number of telemental health services per beneficiary, is problematic. We are concerned that this will create significant potential for misuse without more context, and it could also have a chilling effect on the continued provision of telemental health services. There is no nexus between above-average delivery of telemental health services and fraud and abuse. Some physicians only provide mental health services through telehealth, especially those treating patients in rural and underserved areas, and they would unfairly be swept up into this review and targeted for potential program integrity concerns.

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The AMA continues to study the changing landscape as it relates to coverage, payment, and access to telehealth, and data suggests that telehealth has and will continue to play an important role in increasing access to quality care. For example, studies suggest that telehealth has the potential to be an important tool for addressing long-standing health inequities among historically marginalized and minoritized communities. However, drivers impacting inequitable access to telehealth need to be addressed, including gaps in broadband infrastructure, lack of affordable internet connectivity, lack of access to devices and other necessary technologies, and gaps in digital literacy among patients. Telehealth has also played an important role during the COVID-19 pandemic in improving access to mental health care, and all indications are that this will continue. It is important to remember, however, that telehealth is best viewed as one modality for delivering care, and not as a service separate or distinct from care provided via other modalities, such as in-person. The AMA's work with Manatt Health on a [Return on Health](#) framework has demonstrated that there are significant benefits for patient care from integrating telehealth, in-person, and remote monitoring services in a digitally enabled hybrid model of care delivery.

Although the AMA strongly supports continuing efforts to integrate these different modalities to best address patients' needs, the AMA does not support the requirement outlined in the discussion draft for a new modifier on each claim for telemental health services as a means for physicians to attest regarding their capabilities to provide or refer a patient for in-person services if indicated. Requiring such a burdensome and onerous attestation creates an unnecessary hardship for physicians providing mental health services. While we agree physicians providing services via telehealth should have a plan in place to provide and/or refer a patient for in-person care if necessary to meet the standard of care, we believe these specifics are best left to state regulatory and licensing boards and evidence-based clinical practice guidelines issued by national specialty societies. **Instead, the AMA encourages Congress to eliminate the in-person requirement for telemental health services, and we strongly support Congress passing H.R. 4058/S. 2061, the Telemental Health Care Access Act.** Section 123 of the Consolidated Appropriations Act, 2021 (CAA) removed the geographic restrictions and added the home of the beneficiary as a permissible originating site for telehealth services when used for the purposes of diagnosis, evaluation, or treatment of a mental health disorder, effective for services furnished on or after the end of the COVID-19 public health emergency (PHE). The CAA also prohibits payment for a mental health service via telehealth unless the physician or a practitioner provides care in person within six months before the first time they provide care via telehealth. H.R. 4058/S. 2061 would remove these arbitrary restrictions on accessing telemental health services, a policy change consistent with the 2022 Mental Health Parity and Addiction Equity Act (MHPAEA) Report to Congress' broad recommendations.

In implementing section 123 of the CAA, the Centers for Medicare & Medicaid Services (CMS) established regulations permitting telehealth services for patients with mental health conditions and/or substance use disorders to be delivered as audio-only services instead of audio-video when the patient is unable to use, does not wish to use, or does not have access to two-way, audio-video technology. It would be helpful for the committee to clarify how the audio-only provision in the discussion draft interacts with the regulations previously established by CMS, as well as whether these provisions would apply to patients being treated for substance use disorders. It would also be helpful for the committee to clarify the effect that its discussion draft legislation eliminating the requirement for an in-person visit within six months of the first telemental health service would have on the regulations established by CMS for subsequent telemental health services. Current CMS regulations that would take effect after the PHE require an in-person, non-telehealth service to be furnished by the physician or practitioner at least once

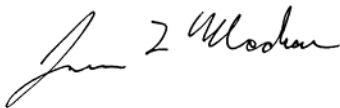
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within 12 months after the telehealth service furnished for the diagnosis, evaluation, or treatment of mental health disorders, with exceptions for circumstances where the physician and patient agree that the benefits of an in-person visit are outweighed by the risks and burdens associated with an in-person service. Although the discussion draft includes within the information to be communicated to people insured by Medicare a statement that they may “continue such Medicare-covered telehealth visits without being required to periodically have an in-person visit,” it is not clear to us how these requirements are eliminated in the discussion draft text.

The AMA agrees with the 2022 MHPAEA Report recommendation that Congress consider ways to permanently expand access to telehealth and remote care services. The AMA strongly supports legislation that would provide permanent telehealth flexibilities upon conclusion of the COVID-19 PHE, especially H.R. 1332/S. 368, the Telehealth Modernization Act, and H.R. 2903/S. 1512, the CONNECT for Health Act. Both bills would eliminate the antiquated Medicare telehealth geographic and originating site restrictions. These statutory barriers largely reserve access to telehealth services only for Medicare patients located within a rural area who also travel outside of the home to an accepted health care facility.

We appreciate the opportunity to provide our comments and look forward to working with the Committee to finalize legislation that promotes and builds on the opportunity to improve and expand patient access to telemental health services.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim L. Madara".

James L. Madara, MD