June 16, 2022

The Honorable Ron Wyden
Chairman, Senate Finance Committee
Washington, DC  20510

The Honorable Mike Crapo
Ranking Member, Senate Finance Committee
Washington, DC  20510

Dear Chairman Wyden and Ranking Member Crapo:

On behalf of the American College of Physicians (ACP), I am pleased to offer our comments regarding the draft legislation released by the Senate Finance Committee that would expand access to telehealth services for patients in need of behavioral health services. This legislation will expand access to mental health services via telehealth by removing Medicare’s in-person requirement for tele-mental health services, preserve access to audio-only telehealth consultations for mental health services when necessary and appropriate, and direct Medicare and Medicaid to promote physicians use of telehealth services. We look forward to working with the Senate Finance Committee to move forward on the provisions that we support in this legislation and to address our concerns before it is finalized.

The ACP is the largest medical specialty organization and the second-largest physician membership society in the United States. The ACP’s members include 161,000 internal medicine physicians (internists), related subspecialists, and medical students. Internal medicine physicians are specialists who apply scientific knowledge, clinical expertise, and compassion to the preventive, diagnostic, and therapeutic care of adults across the spectrum from health to complex illness. Internal medicine specialists treat many of the patients at greatest risk from COVID-19, including the elderly and patients with pre-existing conditions like diabetes, heart disease, and asthma.

The ACP supports the expanded role of telehealth as a method of health care delivery that may enhance patient-physician collaborations, improve health outcomes, increase access to care from physicians and members of a patient’s health care team, and reduce medical costs when used as a component of a patient's longitudinal care. An article published by the Commonwealth Fund notes that “tele-mental health has a robust evidence base and numerous studies have demonstrated its effectiveness across a range of modalities (e.g., telephone, videoconference) and mental health concerns (depression, substance use disorders).”

Last year we provided our response to the Finance Committee’s inquiry on policies to improve behavioral health and we appreciate your sustained commitment to improving access to mental health services with the release of this draft legislation. Below, please find detailed
responses to a number of sections in the draft legislation, including identification of areas where the College is supportive or may have concerns.

**Ensuring Coverage for Mental Health Services Furnished through Telehealth**

This legislation would repeal Medicare’s periodic in-person visit requirement for tele-mental health services in the physician office, rural health clinic setting, and Federally Qualified Health Center (FQHC) setting. One year after the enactment of this legislation, patients could continue to access tele-mental health services without an in-person visit to their physician if their physician uses a claims modifier or code to attest that: (1) the patient is capable of consent and has consented to the visit; (2) the telehealth visit is suitable for the individual instead of an in-person visit; (3) the physician could furnish an in-person visit or refer a patient to an in-person visit on the same day or within a reasonable period of time after the telehealth visit; and (4) the physician documents in the medical record that the telehealth visit is coordinated with other services recommended by a primary care practitioner for the overall treatment of the individual.

The ACP is supportive of the repeal of the in-person visit requirement to expand access to mental health services, but we urge the Senate Finance to ensure that the guardrails specified for patients to access tele-mental health services without an in-person visit to a physician do not impart a distinction via differing documentation requirements between mental health services provided via telehealth and those in the in-person setting. Generally, the College believes the intent to treat documentation requirements for telehealth services differently than for in-person visits is misguided as telehealth services are, indeed, not different. In addition, CMS has recently alleviated the administrative burden of evaluation and management services (E/M) documentation in 2021, so additional documentation requirements for telehealth would be contradictory to CMS’ ongoing efforts to minimize documentation and focus on medical decision-making. Since medical record documentation continues to be an incredibly burdensome task for clinicians, the ACP would be disappointed – and it would be a disservice to patients – to include any requirements that further complicate the provision of these services.

**Coverage of Mental Health Services Furnished via Audio-Only Telecommunications**

The College appreciates that this legislation would extend Medicare coverage of audio-only mental health consultations between physicians and their patients. The legislation specifies that in establishing and maintaining coverage and payment for audio-only mental health consultations, the Secretary of Health and Human Services (HHS) shall require documentation via a code or modifier for this service. It would also require the National Academy of Medicine to conduct an evaluation of, and submit to Congress a report on, mental health services furnished via audio-only telecommunications systems. The report shall be completed and submitted to Congress not later than five years after the date of the enactment of this legislation and shall include a review of the following: whether quality of care, patient outcomes, patient experience of care, and practitioner experience of care differ based on
whether a Medicare beneficiary receives services described via an audio-only telecommunications system or an audio-video telecommunications system.

The ACP is extremely supportive of continuing to allow audio-only mental health consultations between patients and their physician and other clinicians. During the Public Health Emergency (PHE), Medicare has covered some audio-only services for tele-mental health provided to patients and we are pleased that coverage for these services will extend beyond the pandemic especially due to the challenges many patients have in gaining access to mental health treatment.

**Promote Equity in the Use of Telehealth**

The College supports efforts in this legislation to promote equity in the use of telehealth, especially for rural, underserved, and economically disadvantaged communities, since the declaration of the COVID-19 pandemic. We are pleased that this bill would require the Secretary of HHS to provide technical assistance and issue guidance to states on improving access to telehealth under Medicaid and the Children’s Health Insurance Program. This initiative would encompass strategies to promote the delivery of accessible and culturally competent care via telehealth, including addressing the needs of individuals with disabilities, medically underserved urban and rural communities, racial and ethnic minorities, such as American Indians and Alaska Natives, individuals with limited English proficiency, and individuals of different age groups including children, young adults, and seniors.

We remain concerned about the increasing inequities associated with telehealth as there are disparities in access to this technology. A February 2022 HHS publication reported that telehealth utilization during the period of April to October 2021 varied by race, region, education, income, and insurance. For those in rural and underserved communities, the nearest clinic may be hours away. Unfortunately, rural and underserved communities also suffer from more limited access to broadband internet, which restricted the ability of many in these communities to access telemedicine pre-pandemic.

Additionally, research shows that Black and Hispanic Americans own laptops at lower rates than White Americans, further dividing pre-pandemic access to telemedicine. Equitable access to broadband internet is critical to the promotion of health equity and quality of care outcomes through telehealth. We urge Congress to provide support for further broadband deployment to reduce geographic and sociodemographic disparities and improve access to care.

**Ensuring Timely Communication Regarding Interstate Licensure Requirements**

We support a provision in this legislation that would require CMS to regularly update guidance on how Interstate Licensure Compacts can fulfill Medicare and Medicaid requirements that a practitioner be licensed in the state that the beneficiary is located. It would mandate that CMS provide regular updates to guidance and other information that clarify the extent to which licenses through the interstate license compact pathway can qualify as valid and full licenses for the purposes of meeting federal licensure requirements.
We also urge the Senate Finance Committee to include legislation, S. 168, H.R. 708, the Temporary Reciprocity to Ensure Access to Treatment (TREAT) Act, in this tele-mental health bill. The TREAT Act would provide temporary licensing reciprocity for telehealth and interstate health care treatment. This legislation would improve the ability of physicians to continue treating patients who move across state lines, which is especially important to maintain care for patients with long established relationships with their primary care physicians.

The ACP supports a streamlined approach to obtaining several medical licenses that would facilitate telehealth services across state lines while allowing states to retain individual licensing and regulatory authority. We appreciated the CMS’ temporary waiver allowing physicians to provide telehealth services across state lines, as long as physicians meet specific licensure requirements and conditions. These waivers offer an opportunity to assess the benefits and risks to patient care in addressing the pandemic, as well as the ability to maintain longitudinal care for patients who move across state lines. While these waivers do not supersede any state or local licensure requirements, they provide the opportunity to promote state-level action that may further promote more streamlined licensure requirements across the country.

**Extend Flexibility for Mental Health Services Furnished Through Clinicians**

This legislation would also extend flexibility for mental health services furnished through telehealth by clinicians acting under the direct supervision of a physician. It would allow these clinicians to use a code or modifier to bill these claims directly to a physician’s office. The ACP believes that providing for a permanent flexibility in this space supports the expansion of telehealth services and protects frontline health care workers by allowing appropriate social distancing measures. Similarly, we believe that clinicians should feel empowered to supervise clinical staff virtually, at their discretion, regardless of whether there is a declared PHE. The College would be supportive of the use of a service level modifier if it does not add additional burden to the patient or physician. The use of a service level modifier could prove useful in tracking the experience and learnings of patients and physicians who utilize these services. We look forward to continued work with the Senate Finance Committee and the CMS to provide flexibility in this regard as we determine the effectiveness and the level of burden for the use of this code or modifier to the patient or physician.

**Expand the Use of Audio-Only Telehealth Services for Evaluation and Management Services**

While the College is supportive of policies in this legislation to expand access to tele-mental health, we are disappointed that CMS, as well as Congress, did not provide the same extension for audio-only evaluation and management (E/M) services. Unless Congress or CMS acts, Medicare coverage of audio-only telehealth consultations between physicians and their patients will end 151 days after the expiration of the PHE. Additionally, because the College believes that audio-only telehealth is an important component tool for physicians to improve health equity and patient access, it should not be limited to only patients seeking behavioral and mental health services. In our [comments](#) to the CY22 Medicare Physician Fee Schedule, we
recommended that the CMS broaden the flexibility and continue to allow other E/M services to be provided using audio-only communication.

Primary care services delivered via telephone have become essential to a sizable portion of Medicare beneficiaries who lack access to the technology necessary to conduct video visits. These services are instrumental for patients who do not have the requisite broadband/cellular phone networks, or do not feel comfortable using video visit technology. In addition, these changes have greatly aided physicians who have had to make up for lost revenue while still providing appropriate care to patients. For these reasons, the College strongly encourages the Congress and the CMS promptly act to retain the ability for patients to access E/M services audio-only technology.

Conclusion

We appreciate the work of the Senate Finance Committee in moving this draft legislation forward and look forward to working with you to address our concerns in this letter before the bill is finalized. Should you have any questions regarding this comment letter, please do not hesitate to contact our Senior Associate for Legislative Affairs, Brian Buckley at bbuckley@acponline.org.

Sincerely,

Ryan D. Mire, MD, FACP
President