



June 26, 2020

The Honorable Lamar Alexander
Chair
Committee on Health, Education,
Labor and Pensions
United States Senate
Washington, DC 20510

The Honorable Patty Murray
Ranking Member
Committee on Health, Education,
Labor and Pensions
United States Senate
Washington, DC 20510

Dear Chairman Alexander and Ranking Member Murray:

On behalf of the American College of Physicians (ACP), I am pleased to offer our recommendations regarding telehealth policy and we greatly appreciate that the Health, Education, Labor and Pensions (HELP) Committee has convened this hearing, Telehealth: Lessons from the COVID-19 Pandemic. Thank you for your shared commitment to ensuring that both patients and clinicians have the increased ability to access telehealth during the ongoing public health emergency (PHE) caused by Coronavirus 2019 (COVID-19). Through the experience of physicians on the frontlines of furnishing care during the COVID-19 pandemic, ACP strongly believes that several policies and statutory and regulatory waivers related to telehealth should remain in place for an extended period of time, even after the national PHE comes to an end.

The American College of Physicians is the largest medical specialty organization and the second-largest physician membership society in the United States. ACP members include 159,000 internal medicine physicians (internists), related subspecialists, and medical students. Internal medicine physicians are specialists who apply scientific knowledge and clinical expertise to the diagnosis, treatment, and compassionate 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.

During the Coronavirus pandemic, internal medicine specialists continued to deliver care to their patients with the expanded utilization of telehealth made possible by new policies either enacted by Congress, the U.S. Department of Health and Human Services (HHS), as well as private payers. However, many of the telehealth flexibilities and policy changes made by Congress and HHS are due to expire at the conclusion of the PHE, wherein patients and physician practices would be expected to revert back to primarily face-to-face services without any type of risk-based assessment for gradually reopening medical practices and health systems

to care for non-COVID and non-acute patients.¹ This quick reversal in policy does not take into account patients' comfort level in returning to physician offices to seek necessary care, as well as changes in office workflow and scheduling practices to mitigate spread of the virus within practices resulting in substantially lower volume of in-person visits for as long as the pandemic is with us. Therefore, the quick reversal in policy is not an effective way to recover from the PHE, nor prepare for possible future outbreaks. The College believes that the patient care and revenue opportunities afforded by telehealth functionality will continue to play a significant role within the U.S. healthcare system and care delivery models, even after the PHE is lifted. In order to address the many barriers to patient access and physician adoption and use of telehealth prior to the COVID-19 pandemic, and properly assess how to foster and strengthen longitudinal, patient-centered care delivery, ACP believes there are a number of interim policies that should remain in effect for a period of time after the PHE is lifted. **Specifically, the following policies and waivers should remain in effect through at least the end of 2021, or until such a time when effective vaccines and treatments are widely available, with an option to extend even further, or consider making permanent, based on the experiences and learnings of both patients and physicians utilizing these revised policies:**

- Pay Parity for Audio-Only and Telehealth Services
- Geographical Site Restriction Waivers
- Telehealth Cost-Sharing Waivers
- Flexibilities in Direct Supervision by Physicians at Teaching Hospitals
- Revised Policies for Remote Patient Monitoring Services
- Interstate Licensure Flexibility for Telehealth and Promotion of State-Level Action

Pay Parity for Audio-Only and Telehealth Services

The College wholeheartedly supports the Centers for Medicare and Medicaid Services' (CMS) actions to provide additional flexibilities for patients and their doctors by providing payment for telephone services. These changes in payment policy address some of the biggest issues facing physicians as they struggle to make up for lost revenue and provide appropriate care to patients. **The College strongly recommends that pay parity between telephone claims and in-person visits and between all telehealth and in-person visits be maintained after the PHE is lifted. This extension—either continued by CMS or mandated by Congress—should last at least through the end of 2021, or until such a time when effective vaccines and treatments are widely available, with an option to extend it even further, or consider making permanent, based on the experience and learnings of patients and physicians who are utilizing these visits.**

¹ Doherty R., Erickson S., Smith C., Qaseem A. "Partial Resumption of Economic, Health Care and Other Activities While Mitigating COVID-19 Risk and Expanding System Capacity." American College of Physicians, May 6, 2020: https://www.acponline.org/acp_policy/policies/acp_guidance_on_resuming_economic_and_social_activities_2020.pdf

Evidence shows that patient visits to ambulatory practices have declined significantly and despite a rebound, visits remain 30 percent lower than they were pre-pandemic², with utilization for practice areas such as adult primary care declining by well over 60 percent.³ Given the uncertainty around the timeline for a COVID-19 vaccine or treatment, many expect that the virus will continue to spread well into 2021. Therefore, as the need to contain the virus and maintain appropriate social distancing protocols continues into next year, it is unlikely that in-person visits to practices will return to pre-pandemic levels as patients remain uncomfortable with making these in-person visits and physicians schedule fewer patients to be seen in the office. Additionally, the HHS Office of Civil Rights (OCR) announcement regarding enforcement discretion around non-HIPAA-compliant technologies during the PHE has shown to be useful in allowing physicians to quickly shift their predominately in-person practices to more virtual care, as well as allowing increased access by patients to more widely available technologies. **Due to the long-lasting effects of the pandemic, and the need for physician practices to maintain the ability to provide care virtually, ACP recommends Congress urge OCR to maintain this enforcement discretion after the PHE is lifted, or until effective vaccines and treatments are widely available.**

ACP also urges Congress to establish uniform policy for all payers that reimburses all services furnished via telehealth and audio-only taking place between patients and their own physicians on par with in-person services for both new and established patients. Practices are struggling to keep their doors open during this pandemic; time spent monitoring for constant updates on individual payer policies is time that could be devoted to direct patient care or slowing the spread of the disease. We are also concerned that many health plans are restricting full payment parity for telehealth and telephone services to proprietary platforms. **Therefore, the College further calls on Congress to require that all payers allow the use of non-public facing synchronous video platforms, such as Skype and FaceTime—in order to offer patients and physicians more options to ensure effective and efficient virtual care during and ideally beyond the PHE.**

Geographical Site Restriction Waivers

ACP strongly supported CMS' policy changes to pay for services furnished to Medicare beneficiaries in any healthcare facility and in their home — allowing services to be provided in patients' homes and outside rural areas. ACP has long-standing policy in support of lifting these geographic site restrictions that limit reimbursement of telehealth services by CMS to those that originate outside of metropolitan statistical areas or for patients who live in or receive

² Mehrotra, A., Chernew, M., Linetsky, D., Hatch, H., & Cutler, D. (2020, May 19). What Impact Has COVID-19 Had on Outpatient Visits? Retrieved June 03, 2020, from

<https://www.commonwealthfund.org/publications/2020/apr/impact-covid-19-outpatient-visits>

³ FAIR Health. Healthcare Professionals and the Impact of COVID-19, A Comparative Study of Revenue and Utilization. June 10, 2020.

<https://s3.amazonaws.com/media2.fairhealth.org/brief/asset/Healthcare%20Professionals%20and%20the%20Impact%20of%20COVID-19%20-%20A%20Comparative%20Study%20of%20Revenue%20and%20Utilization%20-%20A%20FAIR%20Health%20Brief.pdf>

service in health professional shortage areas.⁴ While limited access to care is prevalent in rural communities, it is not an issue specific to rural communities alone. Underserved patients in urban areas have the same risks as rural patients if they lack access to in-person primary or specialty care due to various social determinants of health such as lack of transportation or paid sick leave, or sufficient work schedule flexibility to seek in-person care during the day, among many others. The experience with COVID-19 suggests many patients are at higher overall risk of mortality and morbidity due to these types of social determinants and racial and ethnic characteristics, particularly for African-Americans.⁵ Such patients are more likely to reside in these underserved communities that fall within the metropolitan statistical areas that are normally not included in Medicare telehealth reimbursement outside of the waivers offered through the PHE.⁶ Research has shown the extensive role that social determinants play in health and health equity,⁷ and the pandemic has highlighted how providing expanded access to telehealth services within underserved communities, rural and urban, is an important aspect for infection control as well as addressing social determinants that exist outside of the pandemic. Moreover, the funding provided through the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) to the Federal Communications Commission (FCC), and other efforts through the FCC to expand access to telehealth services, offer the opportunity to provide the technologies and broadband needed for these underserved patient populations to utilize these services. **Accordingly, it is essential to maintain expanded access to and use of telehealth services for these communities, as well as rural communities, and ACP recommends that Congress permanently extend the policy to waive geographical and originating-site restrictions after the conclusion of the PHE.**

Telehealth Cost-Sharing Waivers

ACP appreciated the flexibility provided by CMS to allow clinicians to reduce or waive cost-sharing for telehealth and audio-only telephone visits for the duration of the PHE. At the same time, we call on CMS or preferably Congress to ensure that they make up the difference between these waived copays and the Medicare allowed amount of the service. Many practices are struggling or closing. It is critical that CMS and other payers not add to the financial uncertainties already surrounding these physicians. Given the enormity of the COVID-19 pandemic, cost should not be a prohibitive factor for patients in attaining treatment. This critical action has led to increased uptake of telehealth visits by patients. **At the conclusion of the COVID-19 PHE, ACP recommends that Congress (or CMS) continue to provide flexibility in the Medicare and Medicaid programs for physician practices to reduce or waive cost-sharing**

⁴ Daniel H, Snyder Sulmasy L. "Policy Recommendations to Guide the Use of Telemedicine in Primary Care Settings." American College of Physicians, November 17, 2015: <https://www.acpjournals.org/doi/full/10.7326/M15-0498>

⁵ Webb Hooper M, Nápoles AM, Pérez-Stable EJ. "COVID-19 and Racial/Ethnic Disparities." JAMA. Published online May 11, 2020. doi:10.1001/jama.2020.8598

⁶ Robert Wood Johnson Foundation. "Overcoming Obstacles to Health: Report from the Robert Wood Johnson Foundation to the Commission to Build a Healthier America." Princeton: Robert Wood Johnson Foundation; February 2008. Accessed on 11 May 2017at: www.rwjf.org/content/dam/farm/reports/reports/2008/rwjf22441

⁷ Daniel H, Bornstein S, Kane G. "Addressing Social Determinants to Improve Patient Care and Promote Health Equity." American College of Physicians, April 17, 2018: <https://www.acpjournals.org/doi/10.7326/M17-2441>

requirements for telehealth services, while also making up the difference between these waived copays and the Medicare allowed amount of the service. This extension should last at least through the end of 2021, or until such a time when effective vaccines and treatments are widely available, with an option to extend it even further based on the experience and learnings of patients and physicians who are utilizing these visits. This action in concert with others has the potential to be transformative for practices while allowing them to innovate and continue to meet patients where they are.

Flexibilities in Direct Supervision by Physicians at Teaching Hospitals

In the first interim final rule (IFR) published by CMS to combat the COVID-19 PHE, the agency noted that in instances where direct supervision is required by physicians and at teaching hospitals, CMS will allow supervision to be provided using real-time interactive audio and video technology. The College welcomes this decision by the agency to allow attending physicians and residents/fellows the ability to communicate over interactive systems asynchronously by waiving the in-person supervision requirement. This important step promotes efficient patient care and allows physicians and supervisees to work together unencumbered by social distancing restrictions. **We encourage Congress to maintain these modifications for a period of time after the PHE ends and until supervising physicians feel comfortable they are able to control the spread of infection rates. This extension should last at least through the end of 2021, or until such a time when effective vaccines and treatments are widely available, with an option to extend it even further based on the experience and learnings of patients and physicians who are utilizing these supervision flexibilities. The College remains ready and willing to work with both Congress and CMS on these changes to ensure that they work in harmony with the additional historic actions taken to date.**

Revised Policies for Remote Patient Monitoring Services

CMS finalized policy that now allows remote patient monitoring (RPM) to be used for both new and established patients. The agency also notes that consent to receive RPM services can be obtained once annually, including at the time services are furnished for the duration of the PHE for the COVID-19 pandemic.


The College supports expanded access to RPM by allowing physicians to utilize them for both new and established patients during the PHE. We also welcome the burden reduction attained by allowing patients to consent to these services once annually. Additionally, the decision by the CMS to allow RPM to be used for both acute and chronic conditions further expands access to these services at this important time when patients and their care teams need additional resources to meet the current challenges. These changes will help to relieve physician burden and allow physicians more time to treat the more complex patient issues that require more than remote monitoring. **We encourage Congress (or CMS) to maintain these modifications at least through the end of 2021, or until such a time when effective vaccines and treatments are widely available, with an option to extend it even further, or consider making permanent, based on the experience and learnings of patients and physicians who are utilizing these services. ACP also asks Congress to require that all payers implement these recently finalized CMS flexibilities for RPM services.**

Interstate Licensure Flexibility for Telehealth and Promotion of State-Level Action

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.⁸ **We appreciated CMS’ temporary waiver allowing physicians to provide telehealth services across state lines, as long as physicians meet specific licensure requirements and conditions. ACP recommends that Congress keeps these changes in place at least through the end of 2021, or until such a time when effective vaccines and treatments are widely available, with an option to extend it even further based on the experience and learnings of patients and physicians who are utilizing these flexibilities.** 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.

In conclusion, we commend you and your colleagues for working in a bipartisan fashion to hopefully develop legislative proposals to combat the ongoing Coronavirus crisis—as well as future pandemics—through continuing innovative telehealth policies. We wish to assist in the HELP Committee’s efforts in this area by offering our input and suggestions about ways that Congress and federal health departments and agencies can intervene through evidence-based policies to continue telehealth expansion past the end of the PHE. Thank you for consideration of our recommendations that are offered the spirit of providing the necessary support to physicians and their patients going forward.

Sincerely,



Jacqueline W. Fincher, MD, MACP
President

⁸ Daniel H, Snyder Sulmasy L. “Policy Recommendations to Guide the Use of Telemedicine in Primary Care Settings.” American College of Physicians, November 17, 2015:
<https://www.acpjournals.org/doi/full/10.7326/M15-0498>