October 26, 2021

Melissa Scarborough, MPH, CHES
Local Engagement and Administration Staff, CMS Dallas
1301 Young Street, Suite 900 W-2
Dallas, Texas 75202

Via: melissa.scarborough@cms.hhs.gov

RE: Requested Feedback on Medicare and Medicaid COVID-19 Public Health Emergency Flexibilities

Dear Ms. Scarborough:

On behalf of the Texas Medical Association (TMA) and our more than 55,000 physician and medical student members, we thank you for the opportunity to provide requested input on Medicare and Medicaid COVID-19 Public Health Emergency (PHE) Flexibilities. Given the short notice, TMA's feedback is limited. We would appreciate an extension to respond to your request more thoroughly. In the meantime, TMA offers the following feedback:

Waiver: The Centers for Medicare & Medicaid Services (CMS) is waiving restrictions on the types of practitioners that may bill for their services when furnished as Medicare telehealth services from the distant site. The waiver of these requirements expands the types of health care professionals that can furnish distant-site telehealth services to include all those that are eligible to bill Medicare for their professional services. This allows health care professionals who were previously ineligible to furnish and bill for Medicare telehealth services – including physical therapists, occupational therapists, speech language pathologists, and others – to receive payment for Medicare telehealth services.

TMA Comment: TMA believes the type of practitioners should revert to the pre-PHE standards. TMA believes a physician-led and collaborative team-based approach is optimal for patient care delivery and overall health care outcomes, especially when using telehealth.

Audio-Only Telehealth Waiver: Pursuant to authority granted under the CARES Act, CMS is waiving the requirements for use of interactive telecommunications systems to furnish telehealth services, to the extent they require use of video technology, for certain services. This waiver allows the use of audio-only equipment to furnish services described by the codes for audio-only telephone evaluation and management (E&M) services, and behavioral health counseling and educational services.

TMA Comment: TMA urges CMS to consider expansion of audio-only visits to patients. For audio-only visits, CMS should seek public input for new, permanent, separately payable services – beyond the existing and low-paying check-in services – that can be provided appropriately through that technology and in a manner consistent with other applicable state and federal laws. These new services would significantly impact rural and underserved populations as well as complex and chronically ill patients who do not have access to two-way audio-visual technology.

Additionally, TMA encourages CMS to continue to pay for E&M visits via telehealth at parity with in-person visits for established patients. TMA believes CMS and Congress should consider paying physicians appropriately for time spent caring for patients regardless of delivery type. The public health emergency widely opened the doors to telehealth, and patients and physicians alike quickly adapted. Patients will now expect telemedicine visits when they're appropriate. In fact, telemedicine really is about convenience for the patient more so than the physician.

Physicians must have the flexibility to decide whether to see their patients via telehealth or in person without unnecessary and disconnected pricing incentives. Physician payment is determined using the resource-based relative value scale, which aligns payments based on the cost and resources used to provide services using three factors: (1) physician work (54%), (2) practice expense (41%), and (3) medical liability (5%). A recent RAND study lists five practice expense categories for care delivery and some components within each one.

Staffing	Clinical services supplies and equipment	Office space	Office Supplies and services	Professional Services
• Nonphysician clinical staff • Nonclinical support staff • Other labor	• Clinical and clinical support services • Disposable supplies and drugs • Acquisition, operating, and depreciation costs of equipment	• Rent/lease • Building services and maintenance • Utilities • Repairs	• IT-related supplies, equipment, and services • EHR costs • Appliances and furniture • Non-IT office supplies	• Billing services from third party • Accounting, management, and consultant fees • Professional memberships • Certifications

For continuity of care and thus better health outcomes, patients should be encouraged to seek telemedicine visits from their own physician. Augmenting a physician's practice with telemedicine incurs additional expenses different from those of delivering only in-person care. Clinical staff in the physician's practice still have integral roles in telemedicine visits by gathering the history of present illness and other visit-related information. Plus, offering telemedicine adds these expenses to a brick-and-mortar practice:

- Telemedicine software and supporting equipment (monitors, cameras, digital exam tools);
- Staff and physician telemedicine training;
- Additional staff time assisting patients with technology challenges;
- Enhanced security;
- Remote patient-monitoring tools;
- Telemedicine-specific policies and procedures;
- Supplemental telemedicine patient-education materials; and
- Expanded internet bandwidth.

When physicians use their existing practice to conduct a telemedicine visit for new and established patients, they should be paid at least the same rate as for an in-person visit. TMA's recommendation is that CMS and Congress ensure that services provided to a Medicare patient are paid according to the physician fee schedule regardless of whether the care is delivered in person or via telemedicine.

Originating Site Restriction Waiver: Under the expansion of telehealth with 1135 waiver, Medicare can pay for office, hospital, and other visits furnished via telehealth across the country and including in a patient's places of residence as of March 6, 2020.

TMA Comment: TMA urges CMS to make the originating site restriction waiver permanent. Many times, Medicare patients are the most vulnerable and have difficulty traveling to appointments. This can be related to mobility issues and/or access to transportation.

HIPAA Waiver: The Department of Health and Human Services Office for Civil Rights (OCR) will exercise enforcement discretion and waive penalties for Health Insurance Portability and Accountability Act (HIPAA) violations against health care providers who serve patients in good faith through everyday communications technologies, such as FaceTime or Skype, during the COVID-19 nationwide public health emergency.

TMA Comment: TMA appreciates that CMS exercised enforcement discretion during the public health emergency, allowing physicians to serve patients using readily available technology platforms. TMA encourages CMS to evaluate the security and potential risk of various platforms to determine the feasibility of technologies that patients already have and are comfortable using.

TMA appreciates the opportunity to provide this important feedback to CMS. Any questions may be directed to Shannon Vogel, TMA associate vice president for health information technology, by emailing shannon.vogel@texmed.org or calling (512) 370-1411.

Sincerely,

E. Linda Villarreal, MD
President, Texas Medical Association