

June 10, 2020

Alexander Azar
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, DC 20201

RE: Regulatory Relief to Support Economic Recovery Executive Order

Dear Secretary Azar:

On May 19, 2020, President Trump issued an Executive Order entitled “Regulatory Relief to Support Economic Recovery” in which he directed federal agencies to remove regulatory barriers to economic recovery and identify actions that they had taken previously in response to COVID-19 which would promote economic recovery if made permanent. Each agency is to report its findings to the Director of the Office of Management and Budget, the Assistant to the President for Domestic Policy, and the Assistant to the President for Economic Policy. The undersigned organizations tender the recommendations in this letter in the hope that you include them in the report of the U.S. Department of Health and Human Services required by the Executive Order.

The coronavirus pandemic demands that health care policymakers, payers, and providers reconsider how care is delivered. We greatly appreciate the actions that HHS and the Centers for Medicare & Medicaid Services have taken to afford flexibilities to health care providers and patients, including expanding the eligibility of providers who can furnish and bill for telehealth and communication technology-based services under Medicare.

Consistent with Sections 4 and 7 of the Executive Order, the undersigned organizations strongly encourage HHS to work with Congress to amend the Social Security Act to provide CMS with the statutory authority to permanently extend the policy that allows telehealth services furnished by all outpatient occupational therapy, physical therapy, speech-language pathology, and audiology providers to be reimbursed under Medicare, as well as make permanent the flexibilities associated with the originating site geography, authorized originating site, and audio-visual technology to allow all Medicare beneficiaries to receive telehealth services from their home, whether that home is in the community or part of an institutional setting. In the meantime, CMS should maintain these policies, which impact a particularly vulnerable population, until an effective COVID-19 vaccine is available and widely deployed in order for Congress to fully consider making such changes permanent.

The coronavirus pandemic highlighted and resulted in a need for patients, health systems, payers, and providers to rapidly adopt or expand models and modes of care delivery that minimize disruptions in care and the risks associated with those disruptions. The expansion of telehealth payment and practice policies during this Public Health Emergency (PHE) have demonstrated that many needs can be effectively met via the use of technology and that patients can have improved access to skilled care by leveraging these resources. Providers who had to rapidly deploy telehealth services in less than ideal situations were still able to support patients and positively impact outcomes. In addition, the HHS Office for Civil Rights (OCR) decision to modify HIPAA enforcement processes has been extremely beneficial mostly due to the flexibilities that permitted the use of more affordable, familiar, and available audio-visual

technologies such as smartphones, tablets, and software like Apple Facetime and Facebook Messenger. The sudden termination of these options and resources would unnecessarily interrupt care, since the safety of patients, especially older adults, to leave their homes for care is far from certain. It would not make sense, nor would it demonstrate a commitment to supporting patients when and where their needs exist.

For patients who have difficulty leaving their homes without assistance, lack transportation, or need to travel long distances, the ability to supplement or replace in-person sessions with those furnished via telehealth greatly reduces the burden on the patient and family when accessing care. Therapy interventions delivered through an electronic or digital medium have the potential to prevent falls, functional decline, costly emergency room visits, and hospital admissions and readmissions. Telehealth helps to overcome access barriers caused by distance, lack of availability of specialists and/or subspecialists, and impaired mobility; and can prevent unnecessary exposure during a pandemic, epidemic, or even the annual flu season, especially for frail and immunocompromised persons.

Further, the very nature of therapy services makes them well-suited to telehealth, especially when used as an enhancement to service delivery rather than a replacement. Education and home exercise programs, including those focused on falls prevention, function particularly well with telehealth because the therapist is able to evaluate and treat the patient within the real-life context of their home environment, which is not easily replicable in the clinic. Patient and caregiver self-efficacy are inherent goals of care provided by occupational therapists, physical therapists, speech-language pathologists, and audiologists. A patient's and/or caregiver's ability to interact in their own environment with a therapist when they are facing a challenge, rather than waiting for the next appointment, can be invaluable in supporting the adoption of effective strategies to improve function, enhance safety, and promote engagement.

Occupational therapy practitioners, physical therapy practitioners, speech-language pathologists, and audiologists can use telehealth as a supplement to in-person services to evaluate and treat a variety of conditions prevalent in the Medicare population, including but not limited to: Alzheimer's disease, arthritis, cognitive/neurological/vestibular disorders, multiple sclerosis, musculoskeletal conditions, Parkinson disease, pelvic floor dysfunction, frailty, and sarcopenia. Below we highlight the benefits of telehealth services furnished by disciplines individually.

Occupational Therapy Services

In many ways, occupational therapy is a perfect match for telehealth technologies that enable completion of one of the key aspects of occupational therapy: defining and enabling function within a specific context and environment, such as a patient's home. Occupational therapy interventions delivered via telehealth can assist patients regain, develop, and build functional independence in everyday life activities to significantly enhance a Medicare beneficiary's quality of life.

Examples of occupational therapy practitioners using telehealth technologies include the following:

- Occupational therapy practitioners use telehealth technologies in four models of care: evaluation, intervention, consultation, and monitoring.
- Occupational therapy practitioners can use telehealth technologies to provide educational programming and targeted interventions to promote independent living skills (e.g., management of one's home, time, money, medication); behavioral health (e.g.,

assertiveness, self-awareness, interpersonal and social skills, stress management); and occupational performance in activities of daily living (e.g., dressing, grooming, self-care).

- Occupational therapy practitioners remotely monitor their clients' occupational performance and provide recommendations for environmental modifications and adaptive equipment.
- Occupational therapy practitioners use telehealth technologies to conduct home safety evaluations, preadmission consultation for patients undergoing total hip and total knee replacement, and to facilitate support groups for people with chronic conditions.
- Occupational therapy practitioners use telehealth for targeted clinical check-ins with established patients.
- Occupational therapy practitioners use telehealth for caregiver education.

Physical Therapy Services

Telehealth improves access to physical therapy for patients who have mobility issues. Telehealth is an effective way to get specialists and sub-specialists into communities that would otherwise lack access. Telehealth has been shown to improve access to care for rural populations, as well as outcomes for a variety of health problems, including PTSD, chronic pain, stroke recovery, and joint replacement.

Examples of physical therapy practitioners using telehealth technologies include the following:

- Physical therapy practitioners use telehealth technologies to conduct evaluations or provide quicker screening, assessment, and referrals that improve care coordination.
- Physical therapy practitioners provide interventions using telehealth by observing how patients move and perform exercises and activities. Physical therapy practitioners then provide verbal and visual instructions and cues to modify how patients perform various activities. They also may change the environment to encourage more optimal outcomes.
- Physical therapy practitioners use telehealth technologies to provide prehabilitation and conduct home safety evaluations.
- Physical therapy practitioners use telehealth technologies to observe how patients interact with their environment and/or other caregivers and provide caregiver education. Physical therapy practitioners are able to assess the carryover of the activity modification strategies and activities to determine effectiveness.
- Physical therapists provide consultative services by working with other physical therapists, physical therapist assistants, and other health care providers to share expertise in specific movement-related activities to optimize the patient's participation.
- Physical therapy practitioners use telehealth for quick check-ins with established patients.

Speech-Language Pathology and Audiology Services

Computer-based clinical applications are common in audiology today. For example, telepractitioners frequently use computer peripherals—such as audiometers, hearing aid systems, and auditory brainstem response (ABR), otoacoustic emissions (OAEs), and immittance testing equipment—that can be interfaced to existing telepractice networks. Speech-language pathology services lend themselves to telehealth technology. Additionally, ASHA's Code of Ethics requires that for telehealth services to be provided, they must be of equivalent quality as in-person services.¹ Only clinically appropriate services and clinically appropriate patients, based on individualized determination, can receive telehealth services in compliance with ASHA's code.

¹ <https://www.asha.org/Code-of-Ethics/>

Access to these services via telehealth is essential during the PHE, as in-person speech-language pathology services often require close contact with the patient. For example, swallowing evaluation and treatment requires examination of the patient's oral structure and function, and speech-generating device (SGD) services require the clinician to position the patient's assistive equipment and reach over and around the patient to program and modify the device. Providing these services via telehealth with the assistance of a caregiver to position the patient and the video camera allows the clinician an equivalent level of access to examine the patient and perform clinical functions required during evaluation and treatment.

Without access to a clinical evaluation of swallowing, Medicare beneficiaries may not be identified for risk of aspiration or recommended for further instrumental assessment and intervention. Patients with neurodegenerative diseases, such as amyotrophic lateral sclerosis (ALS), may quickly lose the ability to communicate if they are not evaluated by an SLP for suitability for an SGD early enough.

Examples of audiologists using telehealth technologies include the following interventions:

- Aural rehabilitation.
- Cochlear implant fitting via telehealth technologies.
- Hearing aid fitting via telehealth technologies.
- Infant and pediatric hearing screenings.
- Pure-tone audiometry.
- Perform speech-in-noise testing.
- Perform video otoscopy.
- Virtual check-ins to assist established patients with specific medically necessary needs.
- Caregiver education.

Examples of speech language pathologists using telehealth technologies for assessment and treatment of beneficiaries include the following:

- Aphasia for individuals who have suffered a stroke or traumatic brain injury.
- Articulation disorders to increase intelligibility and clarity for communicating medical and personal needs.
- Autism evaluation, diagnosis and treatment in regard to communication and cognition.
- Dysarthria.
- Dysphagia.
- Language and cognitive disorders.
- Neurodevelopmental disabilities.
- Voice disorders.
- Virtual check-ins to assist established patients with specific medically necessary needs.
- Caregiver education.

Specific COVID-19-Related Telehealth Waiver Extensions Requested Until an Effective COVID-19 Vaccine is Widely Available and Deployed

As stated above, the need for increased infection control will continue to challenge beneficiary access to safe and effective medically necessary skilled outpatient therapy services for the most vulnerable Medicare population, and will not go away in the immediate future. These challenges may even grow as the nation begins to resume more normal social interactions. **We strongly encourage HHS/CMS to extend the following specific COVID-19-related telehealth waivers that impact beneficiary access to outpatient therapy services until an effective COVID-19 vaccine is widely available and deployed nationwide.** We offer to work with HHS/CMS to develop further guidance related to appropriate use of these waivers.

- **Outpatient PT/OT/SLP Therapy Services Furnished by All Office- and Facility-Based Providers**

The Secretary waived the requirements of Section 1834(m)(4)(E) of the Social Security Act and 42 CFR § 410.78(b)(2) which specify 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 expanded the type 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.

<https://www.cms.gov/files/document/summary-covid-19-emergency-declaration-waivers.pdf>.

Associated fee-for-service billing guidance is located in the CMS COVID-19 Frequently Asked Questions on Medicare Fee-for-Service Billing at:

<https://www.cms.gov/files/document/03092020-covid-19-faqs-508.pdf>.

- **Telehealth Geographic Limitation Waiver**

Under the waiver, limitations on where Medicare patients are eligible for telehealth is removed during the PHE. In particular, due to the waiver of 42 CFR § 410.78(b)(3) patients outside of rural areas, and patients in their homes are eligible for telehealth services. <https://edit.cms.gov/files/document/medicare-telehealth-frequently-asked-questions-faqs-31720.pdf>.

- **Enforcement Discretion for Telehealth Remote Communications**

The new waiver in Section 1135(b) of the Social Security Act waived the interactive telecommunications systems requirements of 42 CFR § 410.78(a)(3) and allowed the Secretary to authorize use of telephones and other technology that have audio and video capabilities for the furnishing of Medicare telehealth services during the COVID-19 PHE. In addition, the HHS OCR is exercising enforcement discretion and is waiving penalties for HIPAA violations against health care providers that serve patients in good faith through everyday communications technologies, such as Apple Facetime or Facebook Messenger, during the COVID-19 nationwide PHE.

<https://www.hhs.gov/hipaa/for-professionals/special-topics/emergency-preparedness/notification-enforcement-discretion-telehealth/index.html>.

Specific Telehealth Statutory Limitations We Request HHS/CMS to Work with Congress to Remove

As previously stated, we strongly encourage HHS/CMS to work with Congress to amend the Social Security Act to provide CMS with the statutory authority to permanently extend the policy that allows telehealth services furnished by outpatient occupational therapy, physical therapy, speech-language pathology, and audiology providers to be reimbursed under Medicare, as well as make permanent the flexibilities associated with the originating site geography, authorized originating site, and audio-visual technology to allow all Medicare beneficiaries to receive telehealth services from their home, whether that home is in the community or part of an institutional setting.

We offer to work with HHS/CMS in identifying a pathway for Congress to enact the following permanent statutory changes that will enable continued beneficiary access to

those outpatient therapy telehealth services that are successfully being furnished nationwide without increasing trust fund costs during the COVID-19 PHE.

- **Definition of Eligible Telehealth Practitioners to Include all Therapy Providers**
We request that HHS/CMS work with Congress to enact changes to Section 1834(m)(4)(E) of the Social Security Act to include outpatient therapy services furnished *“by a provider of services, a clinic, rehabilitation agency, or a public health agency, or by others under an arrangement with, and under the supervision of, such provider, clinic, rehabilitation agency, or public health agency to an individual as an outpatient”* and physical therapy, occupational therapy, speech-language pathology, and audiology services *“furnished an individual by a...therapist (in his office or in such individual’s home).”* As defined in Sections 1861(p), 1861(g), and 1861(ll) of the Social Security Act. Such a comprehensive definition of an outpatient therapy provider for the purposes of furnishing Medicare telehealth services would be consistent with existing sub-regulatory policy defining a *“Qualified Professional”* permitted to furnish Medicare outpatient therapy services in Chapter 15, Section 220 of the Medicare Benefit Policy Manual.
- **Removal of Geographic Telehealth Limitations**
We request that HHS/CMS work with Congress to enact changes to Section 1834(m)(4)(C)(i) of the Social Security Act so that telehealth services, including therapy services, will no longer be restricted by geographic location.

In summary, we are requesting that HHS/CMS 1) extend the COVID-19-related therapy telehealth waivers and HIPAA technology flexibilities until an effective COVID-19 vaccine is widely available and deployed, and 2) work with Congress in enacting a permanent statutory solution for these services.

The waiver extension period is critically important in settings such as skilled nursing facilities where the effects of the pandemic may linger among this vulnerable population. Permanent adoption of such policies will provide greater flexibility to providers and patients and increase access to skilled care, especially to those living in rural, medically underserved areas, and even in urban areas for individuals living with impaired mobility. Maintaining coverage to include the delivery of appropriate and beneficial telehealth services by therapy practitioners will lead to reduced health care expenditures, increased patient access, and improved management of chronic disease and quality of life. Patient geography would no longer be a barrier to receiving timely, appropriate medical care. Access to telehealth services will also serve to reduce caregiver burden by providing them with an alternative means by which to access the specialized knowledge and skills of an occupational therapy practitioner, physical therapy practitioner, speech-language pathologist, or audiologist.

Thank you for the opportunity to provide input as HHS explores what changes should be continued after the public health emergency is lifted. Please do not hesitate to contact Kara Gainer, APTA’s director of regulatory affairs, at karagainer@apta.org, with any questions. Thank you for your consideration.

Sincerely,

Alliance for Physical Therapy Quality and Innovation
American Health Care Association/National Center for Assisted Living
American Occupational Therapy Association
American Physical Therapy Association

American Society of Hand Therapists
American Speech-Language-Hearing Association
APTA Geriatrics, an Academy of the APTA
Health Policy & Administration Section of the APTA
Home Health Section of the APTA
LeadingAge
National Association for Home Care & Hospice
National Association for the Support of Long Term Care
National Association of Rehabilitation Providers and Agencies
Private Practice Section of the APTA

cc:

Seema Verma, Administrator
Demetrios Kouzoukas, Principal Deputy Administrator for Medicare and Director, Center for Medicare
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