ConnectedHealthInitiative

November 28, 2022

The Honorable Chuck Schumer
Majority Leader
United States Senate
Washington, District of Columbia 20510

The Honorable Mitch McConnell
Minority Leader
United States Senate
Washington, District of Columbia 20510

The Honorable Nancy Pelosi
Speaker
United States House of Representatives
Washington, District of Columbia 20515

The Honorable Kevin McCarthy
Minority Leader
United States House of Representatives
Washington, District of Columbia 20515

Dear Majority Leader Schumer, Minority Leader McConnell, Speaker Pelosi, and Minority Leader McCarthy:

We write today to thank you and express our support for your efforts to ensure that American patients continue to benefit from virtual healthcare services including live audio and video visits and other tech-driven health tools, both during and after the public health emergency (PHE). Through the COVID-19 response bills, you and your colleagues provided an important temporary waiver authority for the Department of Health and Human Services (HHS)—as well as a safe harbor for high-deductible health plans (HDHPs)—to bypass statutory restrictions on coverage of telehealth visits between providers and patients. Now, you face a difficult question as to how to amend the law to ensure Americans can continue to access covered live audio and video visits. As Congress works to extend greater flexibilities for Medicare to cover live audio and video telehealth services, we also urge you to extend the safe harbor for telehealth coverage by HDHPs, which expires at the end of this year.

We continue to support permanently removing geographic and originating site restrictions on Medicare's coverage of telehealth services and appreciate Congress' progress on this aspect of digital health access, including the House's passage of the *Advancing Telehealth Beyond COVID-19 Act* (H.R. 4040), as amended, in July. However, American beneficiaries with HDHPs also face a telehealth deadline at the end of 2022, when the statutory allowance for first-dollar coverage by HDHP plans for telehealth and "other remote care services" expires.[1] Therefore, we also urge you to separately extend the safe harbor for HDHPs to cover telehealth and other remote care services with first-dollar coverage, allowing them to maintain HDHP status. Similarly, we urge that Congress provide clarity—in report language or otherwise—as to what "other remote care services" includes. Live interactions are important, but platforms that enable physicians and caregivers to provide asynchronous care have also proven essential during and outside of the pandemic and should be included in "other remote care services." Lastly, because health plans must make subsequent year coverage decisions a few months in advance, most have already made decisions in light of the upcoming expiration of the HDHP telehealth safe harbor. Therefore, we urge you to extend the safe harbor for at least two years to avoid encountering this issue again at the end of 2023.

[1] Coronavirus Aid, Relief, and Economic Security (CARES) Act (Pub. L. No. 116-136), Sec. 3701.

In part due to regulatory and statutory changes related to COVID-19, patients turned to digital health platforms, tools, and services to consult with caregivers in greater numbers as clinicians seek to treat their patients at home. And as a result, telehealth usage increased dramatically, accounting for over 30 percent of visits in the summer and fall of 2020 at Health Resources and Services Administration (HRSA)-funded centers,[2] up from close to zero. Without question, the broadened availability of digital health technologies, such as telehealth video calls, enabled better and more equitable access to cost-effective care. For example, in Virginia, Medicaid expenditures on healthcare services in 2020 slightly decreased overall while telehealth expenditures stabilized toward the end of the year at about 6 percent of overall healthcare expenses.[3] Importantly, the effect was more substitutive than additive: the amounts Virginia spent on telehealth services were roughly equal to the drop in in-person visits.[4] The evidence here appears to provide no support whatsoever for arguments that access to telehealth would cause patients and providers to bill for unnecessary services, and the Congressional Budget Office (CBO) should factor this evidence into its assumptions as it forecasts the costs of legislation to remove barriers to coverage. The evidence in Virginia also shows that coverage of telehealth services, including audio-only, improved equitable access to care. Before the pandemic, Black Medicaid beneficiaries accounted for 22 percent of claims for telehealth visits, but in the most intense months of the pandemic, they accounted for 30 percent of all telehealth claims.[5] This relative increase in utilization weighs against notions that covering these services will only benefit advantaged patients.

While Congress and HHS took key steps to enable the use of digital health technologies both tied to and separate from the PHE, the statutory limitations on HDHP coverage of telehealth will resume at the beginning of 2023 without legislative action. Among Americans on private insurance, a majority now have HDHPs.[6] If Congress does not act before this deadline, coverage of services furnished using basic, widely available live audio and video technology will be as limited as it was before the pandemic, a disaster scenario for American patients and caregivers. Ensuring that Americans can continue to access virtual services is crucial to maintaining and expanding access to care for Americans, whether they are Medicare or HDHP beneficiaries. The sudden unavailability of live video and audio services would force these beneficiaries to travel to healthcare sites to access care in person—a sometimes impossible proposition especially in rural areas—straining providers across the healthcare ecosystem.

With a dire physician shortage of 30,000 poised to expand to as much as 121,900 by 2032,[7] providers must be able to extend their capabilities with virtual modalities to serve their patients. These modalities include enabling both live interactions and store-and-forward capabilities, underscoring the need for policymakers to clarify the meaning of "other remote care services" if the HDHP safe harbor is extended. Pulling these expanded virtual health capabilities away from

---

[2] CTRS. FOR DISEASE CONTROL AND PREVENTION, TRENDS IN USE OF TELEHEALTH AMONG HEALTH CENTERS DURING THE COVID-19 PANDEMIC – UNITED STATES, JUNE 26 – NOVEMBER 6, 2020 (Feb. 19, 2021), *available at* https://www.cdc.gov/mmwr/volumes/70/wr/mm7007a3.htm.

[3] Presentation by Dr. Chethan Bachireddy, Chief Medical Officer, Virginia Department of Medical Assistance Services (DMAS) for congressional staff (May 2021), Slide 8.

[4] *Id.*

[5] *Id.* at Slide 8.

[6] Jamie Cattanach, "High-Deductible Health Plans Continue to Grow in Popularity, but Are They Right for You?" VALUEPENGUIN BY LENDINGTREE (Jan. 24, 2022), *available at* https://www.valuepenguin.com/high-deductible-health-plan-study.

[7] Press release, "U.S. physician shortage growing," ASSOC. OF AMER. MED. COLLEGES (Jun. 26, 2020), *available at* https://www.aamc.org/news-insights/us-physician-shortage-growing.

patients by allowing the flexibilities that come with the PHE and allowing the HDHP safe harbor to sunset would be a grave mistake for patients, providers, and government.

Sincerely,

The Connected Health Initiative
1401 K St NW, Suite 501
Washington, District of Columbia 20005

The Connected Health Initiative (CHI), an initiative of ACT | The App Association, is the leading multistakeholder spanning the connected health ecosystem seeking to effect policy changes that encourage the responsible use of digital health innovations throughout the continuum of care, supporting an environment in which patients and consumers can see improvements in their health. CHI is driven by the its Steering Committee, which consists of the American Medical Association, Apple, Cambia Health Solutions, Dogtown Media, George Washington University Hospital, GoodRX, Intel Corporation, Kaia Health, Microsoft, Noom, Inc., Novo Nordisk, The Omega Concern, Otsuka Pharmaceutical, Podimetrics, Rimidi, Roche, United Health Group, the University of California-Davis, the University of Mississippi Medical Center (UMMC) Center for Telehealth, the University of New Orleans, and the University of Virginia Center for Telehealth.

For more information, see www.connectedhi.com.