American Academy of
Allergy Asthma & Immunology

May 6, 2020

The Honorable Alex Azar
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Re: Strengthening Access to Virtual Care and Telehealth Services Beyond the COVID-19 Public Health Emergency

Dear Secretary Azar:

Established in 1943, the AAAAI is a professional organization with more than 7,000 members in the United States, Canada and 72 other countries. This membership includes allergist/immunologists (A/I), other medical specialists, allied health and related healthcare professionals—all with a special interest in the research and treatment of patients with allergic and immunologic diseases.

A/I practitioners greatly appreciate the new flexibilities provided through two interim final rules from the Centers for Medicare and Medicaid Services (CMS) and the 1135 waivers that have significantly improved access to telehealth services for beneficiaries during the public health emergency. The overall A/I practitioner and patient experience with virtual care and telehealth services has been very positive. Our members report increased uptake of telehealth and virtual technology platforms that are helping them diagnose, treat and manage the care of Medicare and Medicaid patients with allergies, asthma and other respiratory and immunologic diseases.

While we are hopeful that the worst of the pandemic's effects will soon be behind us, we believe it is imperative to have in place adequate capacity and infrastructure to continue to accommodate ongoing shelter-in-place and social distancing measures should the need arise. Moreover, the pandemic has led to a paradigm shift, transforming the way that patients and providers expect to receive and deliver health care services through virtual and telehealth modalities. Beyond the current and future public health emergencies, patients and providers should continue to have this access when we are living in the "new normal."

(more)

We also note that the economic hardship on A/I practices remains inconsistent across the country. Small, community-level healthcare providers, including A/I practices, face different and unique financial and other hardships than large-scale, institutional healthcare systems. Despite the financial assistance provided by the federal government in the form of loans and grants, we are deeply concerned that A/I practitioners will face great difficultly reopening their offices and reestablishing their practices, ultimately resulting in reduced access to high-quality A/I care.

Given the above, ***we believe it is essential for the agency and its federal partners to promulgate rulemaking that would make permanent the virtual care and telehealth flexibilities outlined in CMS rulemaking and as part of approved section 1135 waivers to the extent permitted by statute***. ***We further urge HHS to seek new authorities from Congress, as needed, where current law limits HHS authority to waive requirements after the end of the public health emergency. We specifically urge HHS to pursue the following changes on a permanent basis:***

- Maintain newly-added services to the Medicare telehealth list, and continue using subregulatory processes to expand the services that may be furnished via telehealth for the Medicare program
- Maintain the ability for practitioners and patients to use an array of non-public-facing audio and video technologies for virtual care and telehealth services
- Maintain policies allowing telehealth and virtual care services (e.g., virtual check-ins, e-visits, and other communication technology-based services) to be furnished to both new *and* established patients
- Maintain policies that allow patients to receive, and physicians to deliver, telehealth and other virtual care services, regardless of their location
- Maintain Medicare coverage for "telephone" E/M services (CPT 99441 – 99443), at payment rates consistent with payments for similar office and outpatient E/M visits
- Maintain policies that eliminate site-of-service payment differentials for telehealth visits
- Maintain policies that remove frequency limitations on Medicare telehealth services
- Maintain flexibilities that allow physicians to choose between time and medical decision making (MDM) when selecting the level of service for office and outpatient E/M services, and further update documentation guidelines to better accommodate the delivery of E/M services furnished via telehealth
- Encourage state Medicaid programs and private payers to reimburse providers for telehealth services in the same manner or at the same rate that they pay for face-to-face services
- Maintain waiver of the Medicare and federal Medicaid requirement that a physician must be licensed in the state in which he or she is practicing, in order to facilitate practicing across state lines
    - Encourage states to adopt similar waivers for Medicaid and CHIP, and to adopt the Interstate Medical Licensure Compact (IMLC) allowing increased physician practice across state lines
- Maintain direct supervision revisions that allow physicians to supervise in-office clinical staff using communications technologies, when appropriate

We also urge you to work with your counterparts in the Departments of Defense (DoD) and Veterans Affairs (VA) to take the same approach with respect to virtual care and telehealth services in the TRICARE program and as part of the VA's community care offerings.

Additional Concerns

COVID-19 Testing by NPPs

As part of the April 30th interim final rule, CMS amended its regulations to remove the requirement that certain diagnostic tests are covered only based on the order of a treating physician or non-physician practitioner. Specifically, during the COVID-19 PHE, COVID-19 tests may be covered when ordered by any healthcare professional authorized to do so under state law. CMS also removed the same ordering requirements for a diagnostic laboratory test for influenza virus and respiratory syncytial virus, a type of common respiratory virus. This change follows the Department of Health and Human Services (HHS) guidance authorizing licensed pharmacists to order and administer COVID-19 tests[1].

While we greatly appreciate the need to expand access to testing for Medicare seniors, we are deeply concerned about HHS' and CMS' policies. First, COVID-19 testing kits are in short supply, and hospitals and physician practices face difficultly obtaining these kits for their patients. Large pharmacy chains could easily deplete the available supply given their vast networks and significant buying power. More importantly, pharmacists do not have the education and training to properly manage patients with COVID-19. Despite prescribing authority in several states, pharmacists cannot practice medicine. We urge HHS and CMS to reconsider its policies.

Narrow networks

We remain concerned about the public health emergency's impact on private health insurers and access to care. Given the potential for increased financial pressure, insurers may further narrow their provider networks, making access to care even more challenging for patients. We urge CMS to use its existing authorities, and seek new authorities where necessary, to ensure that network adequacy is not further challenged, putting access to specialty medicine at risk.

Extend the Public Health Emergency

We urge you to continue extending the public health emergency as long as a public health threat exists, and especially considering the likelihood of ongoing outbreaks over the course of the next few years.

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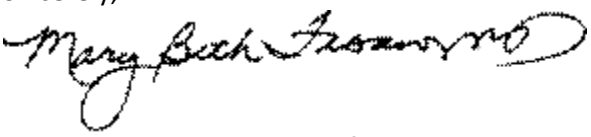
We appreciate the opportunity to share the concerns of A/I professionals. Should you have questions, please contact Sheila Heitzig, Director of Practice and Policy, at sheitzig@aaaai.org or (414) 272-6071.

Sincerely,



Mary Beth Fasano, MD, MSPH, FAAAAI
President, American Academy of Allergy, Asthma & Immunology

University of Iowa Carver College of Medicine
Iowa City, IA

[1] https://www.hhs.gov/sites/default/files/authorizing-licensed-pharmacists-to-order-and-administer-covid-19-tests.pdf