



April 9, 2020

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Re: Request for Guidance Regarding Telehealth

Dear Ms. Rivers, Mr. Wu, Ms. Weiser and Ms. Judson:

We write on behalf of the American Benefits Council (“the Council”), America’s Health Insurance Plans (AHIP”) and America’s Physician Groups (APG) to voice our strong support for greater access to telehealth services, which provide necessary medical care in a manner designed to support the practice of social distancing, thereby helping prevent the further spread of COVID-19.

We commend you for your efforts to date to address the pandemic, and look forward to working with you as the Department of Labor, the Department of Health and Human Services, and the Department of the Treasury (collectively, “the Tri-Agencies”) provide guidance to group health plans and health insurance issuers in responding to the novel COVID-19 pandemic. In this letter, we provide recommendations on important guidance needed from the Tri-Agencies to expand access to telehealth and help physicians, patients, employers and health insurance plans meet this unprecedented challenge.

The Council is a Washington, D.C.-based employee benefits public policy organization. The Council advocates for employers dedicated to the achievement of best-in-class solutions that protect and encourage the health and financial well-being of their workers, retirees and families. Council members include over 220 of the world’s largest corporations and collectively either directly

sponsor or administer health and retirement benefits for virtually all Americans covered by employer-sponsored plans. We note that on March 27, the Council submitted a letter to the Tri-Agencies on the topics addressed in this letter, among other items, and the Council is now following up along with AHIP and APG to emphasize the importance of the requested guidance.

AHIP is the national association whose members provide coverage for health care and related services to millions of Americans every day. Through these offerings, AHIP members improve and protect the health and financial security of consumers, families, businesses, communities and the nation. AHIP and health insurance providers are committed to market-based solutions and public-private partnerships that improve affordability, value, access, and well-being for consumers.

APG is a national professional association representing over 300 physician groups, approximately 195,000 physicians, and the nearly 45 million patients they care for. APG's tagline, "Taking Responsibility for America's Health," represents APG members' vision and efforts to move away from the antiquated fee-for-service (FFS) reimbursement system where clinicians are paid "per click" for each service rendered rather than on the outcomes of the care provided. Instead, APG members are taking responsibility for improving the health of the patients and communities they serve by holding themselves accountable for the cost and quality of care through alternative payment models (APMs).

With the spread of COVID-19, providers are quickly changing their care models to a virtual system to prevent the further spread of the virus while also providing care to their patients with chronic disease. Employers and health insurance plans recognize the vital role of telehealth in caring for patients during the COVID-19 crisis. Although the visit itself to the health care provider may not relate to COVID-19, the ability of employees and their families to abide by social distancing and other containment efforts could significantly contribute to containment of the epidemic. Further, it would allow employees and their families to avoid medical facilities if at all possible, which is essential for public health and safety.

The provision allowing Health Saving Account-eligible high-deductible health plans to cover telehealth services without cost-sharing under the Coronavirus Aid, Relief, and Economic Security (CARES) Act is an important step in expanding access to telehealth services. However, further guidance is needed to more fully support the efforts of employers and health insurance plans to expand telehealth coverage, in the interest of employees and the public health. Given the urgency of the public health crisis, we request that the following guidance be issued as soon as possible.

Summary of Benefits and Coverage ("SBC")

Many employers and health insurance plans are making (or contemplating making) changes to the health coverage they provide in response to COVID-19 to expand access to or reduce costs for telehealth services. At the same time, the law and regulations regarding SBCs require that plans, which make a material modification to the plan terms that would affect the content of the SBC mid-year, provide notice of the modification to enrollees not later than 60 days *prior to* the date on which the modification will be effective and update the SBC.

Due to the urgency of the pandemic, plans are concerned that they will not be able to comply with the 60-day advance notice requirement if they are seeking to implement changes immediately, such as eliminating copayments on telehealth services. We request that the Tri-Agencies adopt a

non-enforcement safe harbor from this SBC requirement (to notify 60-days in advance and to update the SBC), so long as the changes at issue are benefit enhancements related to COVID-19 and the plan provides notice to participants of the changes as soon as practical. A benefit enhancement related to COVID-19 would include eliminating co-pays or cost-sharing for telehealth services, even for telehealth services not directly related to the screening for or treatment of COVID-19. We request that the safe harbor apply to the current plan year and any plan year that begins before the end of the COVID-19 related public health emergency.

Telehealth Services for Employees Who Are Not Benefits-Eligible

In response to the pandemic, many employers wish to provide telehealth services to their employees who are not benefits-eligible and employees who opted out of the employer's group health plan. In some instances, these employees have other coverage (for example, through a spouse's coverage or through a union plan), while in other instances, the employee may not have other coverage. A number of employers provide these benefits on a limited basis consistent with the current excepted benefits regulations. During this public health emergency, other employers, however, wish to provide more substantial telehealth coverage than may otherwise currently be considered an excepted benefit.

We request that the Tri-Agencies take action to ensure that an employer's more robust offer of telehealth services does not result in a violation of the Affordable Care Act's market reforms to the extent the benefits provided give rise to an ongoing administrative scheme (*i.e.*, an ERISA plan) and provide significant benefits in the nature of medical care. The Tri-Agencies could accomplish this flexibility by adopting a non-enforcement policy that applies to the current plan year and any plan year that begins before the end of the COVID-19 related public health emergency, or by issuing additional excepted benefit guidance. Regardless of which approach the Tri-Agencies adopt, we believe that expanding employers' flexibility to offer all employees more substantial telehealth benefits during the pandemic, regardless of whether the employee is enrolled in the employer's comprehensive medical plan, is essential to protect the employees' and the public health.

We thank you for your important efforts to address the COVID-19 pandemic and for your consideration of our recommendations to protect patients and the public health through telehealth. Please contact Ilyse Schuman (ischuman@abcstaff.org), Adam Beck (abeck@ahip.org) and Valinda Rutledge (vrutledge@apg.org) to let us know how we can best assist you. Thank you again.

Sincerely,

American Benefits Council
America's Health Insurance Plans
America's Physician Groups