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March 27, 2020

The Honorable Seema Verma
Administrator
Centers for Medicare & Medicaid Services
Hubert H. Humphrey Building
200 Independence Ave, S.W., Room 445-G
Washington, DC 20201

Dear Administrator Verma:

I write to request that, during the coronavirus pandemic, the Center for Medicare and Medicaid Services (CMS) immediately expand telehealth access for Medicare recipients. CMS should expand coverage of telehealth to include audio-only telehealth services, and not require an audio-video connection. No Medicare recipients should be denied telehealth access at this perilous time simply because they lack video-conferencing capabilities.

Under current regulations, CMS reimburses health care providers only for telehealth services provided through “communications equipment that includes, at a minimum, audio and video equipment permitting two-way, real-time interactive communication.”¹ This rule allows telehealth to be offered to Medicare beneficiaries through video-conferencing on laptops, tablets, and other similar devices, but excludes telephone conversations. As a result, many of the more than 44 million Americans who rely on Medicare do not have access to telehealth services at home.²

Many of these beneficiaries lack communications equipment with both audio and video capabilities, especially as they quarantine or abide by the stay-at-home orders in effect around the country. This problem is especially acute for individuals who lack the know-how to utilize the latest technologies or adequate internet connectivity. In Massachusetts, for example, studies estimate that at least 140,000 residents, and likely more, cannot access fixed wireless or wired broadband.³

¹ 42 C.F.R. § 410.78(a)(3).

² Ctrs. for Medicare & Medicaid Servs., Information on Medicare Telehealth (Nov. 15, 2018), <https://www.cms.gov/About-CMS/Agency-Information/OMH/Downloads/Information-on-Medicare-Telehealth-Report.pdf>.

³ Fed. Comm. Comm’n, *2019 Broadband Deployment Report* (May 8, 2019), <https://docs.fcc.gov/public/attachments/FCC-19-44A1.pdf>; John Busby and Julia Tanberk, *FCC Reports Broadband Unavailable to 21.3 Million Americans, BroadbandNow Study Indicates 42 Million Do Not Have Access*, BroadbandNow (Feb. 3, 2020), <https://broadbandnow.com/research/fcc-underestimates-unserved-by-50-percent>.

Telehealth is also an especially critical tool for providing behavioral and mental health services during the current pandemic. Telehealth access to mental and behavioral health services is very important for Medicare beneficiaries, who are by definition particularly vulnerable to COVID-19. Without physical access to mental health practitioners or social workers, our most vulnerable populations need the option of remotely communicating with caregivers, especially as they face new anxieties and stressors related to the ongoing crisis.

CMS has taken some steps to expand telehealth availability during this crisis, but it needs to do more. On March 17, CMS issued guidance temporarily waiving certain Medicare requirements for telehealth services.⁴ For example, under this guidance, patients can now access their Medicare practitioners “using a wider range of communication tools including telephones that have audio and video capabilities.”⁵ I applaud CMS for taking this step, but the recent guidance is insufficient to meet the nation’s needs during this public health crisis. CMS must further bolster its response by doing everything in its power to assist patients seeking telehealth services through audio-*only* communications tools as well.

CMS created the prohibition on audio-only telehealth by regulation, and CMS has the authority to lift it. I urge CMS to do so immediately, and reimburse providers for audio-only telehealth services during the remainder of this public health crisis. Although Congress is currently considering legislation that would clarify CMS’s authority to waive these requirements during a public health emergency, CMS can modify regulation-based requirements now, without congressional action.

During this public health crisis, CMS must do everything it can to help on our nation’s most vulnerable populations. I urge CMS to allow providers to bill Medicare for telehealth services provided by audio-only communications equipment.

Thank you in advance for your attention to this important matter.

Sincerely,



Edward J. Markey
United States Senator

⁴ Press Release, Ctrs. for Medicare & Medicaid Servs., President Trump Expands Telehealth Benefits for Medicare Beneficiaries During COVID-19 Outbreak (Mar. 17, 2020), <https://www.cms.gov/newsroom/press-releases/president-trump-expands-telehealth-benefits-medicare-beneficiaries-during-covid-19-outbreak>.

⁵ *Id.*