



December 20, 2018

The Honorable Seema Verma, Administrator
Centers for Medicare and Medicaid Services
Department of Health and Human Services
Attention: CMS-4185-P
P.O. Box 8013
Baltimore, MD 21244-8013

Dear Administrator Verma,

The Association for Behavioral Health and Wellness (ABHW) appreciates the opportunity to comment on the Medicare and Medicaid Programs; Policy and Technical Changes to the Medicare Advantage, Medicare Prescription Drug Benefit, Program of All-Inclusive Care for the Elderly (PACE), Medicaid Fee-for-Service, and Medicaid Managed Care Programs for Years 2020 and 2021 proposed rule (proposed rule). Our comments focus exclusively on the telehealth provisions in the proposed rule.

ABHW is the national voice for payers that manage behavioral health insurance benefits. ABHW member companies provide coverage to approximately 200 million people in both the public and private sectors to treat mental health, substance use disorders, and other behaviors that impact health and wellness.

ABHW is supportive of efforts to continue expanding telehealth services in order to make health care more accessible. We have specifically advocated for the elimination of restrictions in 1834(m), including geographic and originating site limits. ABHW members would also like to see the Ryan Haight Act amended and licensure issues addressed. The initial intent of the Ryan Haight Act has become a real barrier to administering telehealth services, as oftentimes patients are unable to have an initial visit with a provider in person because of a behavioral health provider shortage or physical difficulty traveling. Additionally, harmonizing state licensure requirements to enable providers to

more easily deliver care across state lines would optimize the availability and reach of telehealth services.

Additional Telehealth Benefits

ABHW agrees with allowing Medicare Advantage (MA) plans to provide services under Medicare Part B as “additional telehealth benefits” and treating them as basic benefits for the purposes of bid submission and payment by the Centers for Medicare and Medicaid Services (CMS). We also approve of the continued authority to allow plans to offer supplemental telehealth benefits if those services do not meet the requirements of additional telehealth benefits. These provisions will help increase access to behavioral health services, assist with early identification of illness, aid in keeping people in recovery, and address some of the workforce shortage issues that exist in behavioral health.

ABHW understands the current need to provide enrollees with an option to receive telehealth services in-person and not just via telehealth. We hope that as the Medicare program has more experience with telehealth, and telehealth gains greater acceptance, we can move to some services being offered either in person or via telehealth and not requiring both options be offered for all services. This would fully recognize the shift in the manner in which health care is delivered and allow for the realization of additional health care costs savings.

We support letting the MA plan decide which services are clinically appropriate to be provided via electronic information and telecommunications technology. We also believe that CMS should not limit which services can be provided and instead let each MA plan decide what works best for their plan and the population that they serve.

Additionally, ABHW does not anticipate that indicating which providers offer telehealth services in the provider directory will be overly burdensome. Nor do we believe that it is onerous to identify in the Evidence of Coverage (EOC) the services that are covered as additional telehealth benefits provided through electronic exchange.

The inclusion of telehealth providers in a plan’s network and the provision of additional telehealth benefits will improve access to treatment in rural as well as urban areas. We urge CMS to recognize telehealth providers, and the services

they offer, in their assessment of network adequacy in both rural and urban areas. Telehealth is seen as a vehicle to deliver care to individuals who may not have a provider easily accessible to them or may not be able to leave their home to access services. In many cases telehealth is replacing some of the in person care an individual is receiving and therefore the availability of these providers should be considered when evaluating a plan's network adequacy. This is especially true for areas where there are provider shortages. Although not in person, telehealth providers are treating consumers; therefore, their inclusion in networks should be considered in the assessment of network adequacy.

ABHW does not believe it is necessary to impose additional requirements on telehealth providers; we support using existing Medicare requirements. In order to effectively increase access to services we recommend CMS include specific language in the final rule allowing Medicare beneficiaries to be served by credentialed providers with licensure under different states (i.e., the provider is licensed in the state in which the provider resides), versus requiring they live, work, and are credentialed and licensed in the state in which the beneficiary resides. This will allow providers to practice across state lines and will increase consumer access to services.

42 CFR Part 2

A topic not mentioned in the proposed rule that would also improve access to treatment under the Medicare program is alignment of 42 CFR Part 2 (Part 2) with the Health Insurance Portability and Accountability Act (HIPAA). Part 2 is an outdated 1970s regulation that limits the use and disclosure of patients' substance use records from certain substance use treatment programs. This can prohibit payers from sharing substance use disorder (SUD) information with the health care providers on the front line caring for patients suffering from opioid and other SUDs. Access to a patient's full medical record (included SUD information) will be critical for telehealth providers. The outdated regulation severely constrains the health care community's efforts to coordinate care for persons with SUDs and ABHW members say Part 2 is one of the biggest – if not the biggest – barrier to fighting the opioid crisis. We urge the Department of Health and Human Services to issue regulations that align Part 2 with HIPAA for the purposes of treatment, payment, and health care operations.

Thank you for the opportunity to comment on this proposed rule. Please feel free to contact me at greenberg@abhw.org or (202) 449-7660 with any questions.

Sincerely,

A handwritten signature in black ink that reads "Pamela Greenberg". The signature is written in a cursive style with a large initial "P".

Pamela Greenberg, MPP
President and CEO
Association for Behavioral Health and Wellness