



Charles N. Kahn III
President and CEO

July 13, 2020

Dear Taskforce on Telehealth Policy Members:

The Federation of American Hospitals (FAH) is the national representative for over 1,000 leading tax-paying hospitals and health systems throughout the United States. FAH members provide patients and communities with access to high-quality, affordable care in both urban and rural America. Our members include teaching and non-teaching, acute, inpatient rehabilitation, behavioral health, and long-term care hospitals and provide a wide range of inpatient, ambulatory, post-acute, emergency, children's, and cancer services. As a member of the ATA, the FAH looks forward to being an active participant in the Taskforce and working with stakeholders to bring forth a robust set of recommendations. Such recommendations should move us toward a sustainable regulatory and reimbursement framework that incorporates lessons learned and builds on the success that hospitals and health systems have had in the use of technology to deliver critical health care services to our patients during these unprecedented times.

The FAH appreciates the numerous regulatory waivers and the implementation of legislatively mandated waiver policies that have been critical in allowing hospitals to prepare for patient surge and to continue to address patient needs throughout this COVID-19 public health emergency (PHE). Many of the waivers have been transformational for our health care system in terms of utilizing technology to modernize and redesign how care is delivered. For example, many telehealth waivers have enabled hospitals and health systems to continue to care for patients who lack access to transportation or for whom visiting the hospital could put them at unnecessary risk. As such, we support the continuation of some of these waivers and flexibilities as permanent Medicare policy in a post-COVID-19 environment, including Congressional action where needed.

Attached is a list of the telehealth and virtual care waivers that the FAH recommends for permanent Medicare policy status. The FAH also recommends one waiver for expiration at the end of the current PHE; however, this waiver should automatically be activated under a blanket waiver in a future PHE.

An overarching principle that we urge the Taskforce to take into account when developing your recommendations is that payment for health care services provided remotely through the use of technology should reflect differences in the cost-structure of the entity providing the service. For example, Medicare payment for certain hospital outpatient department (HOPD) services furnished to patients in a remote location, such as their home or other setting, should be paid under the outpatient prospective payment system (OPPS) as if the service had been provided in the HOPD. This will help ensure that all patients have access to critical Medicare services that can be performed remotely while ensuring that elderly and other patients receive care safely in their home. This is particularly important as many HOPDs are the only provider of services in rural and other underserved communities. Further, some services, such as partial hospitalization services, are only paid for under the OPPS and have been successfully delivered to patients via electronic technologies, allowing patients much needed access to these services in their homes.

We look forward to working with the Taskforce to ensure that hospitals can continue to provide quality care to their patients during this pandemic and apply lessons learned during this time to transform and modernize Medicare policies. Please feel free to contact me or any member of my staff to discuss further these important matters at (202) 624-1534.

Sincerely,

A handwritten signature in black ink, appearing to be "Michael R. ...". The signature is fluid and cursive, with a large initial "M" and a long horizontal stroke at the end.

WAIVERS THAT SHOULD TRANSITION TO PERMANENT MEDICARE POLICY

- **At Home HOPD Services:** Allow Medicare payment for certain HOPD services provided in the patient home or other setting (*e.g.*, partial hospitalization program services (PHP); independent/group therapy; congestive heart failure clinic services), with payment under the outpatient prospective payment system as if the service had been furnished in the HOPD.
- **Geographic and Originating Site:** Eliminate the Medicare telehealth geographic and originating site restrictions to allow these services to be provided via urban hospitals, physician offices, and patient homes in any area of the country.
- **Eligible Practitioners:** Expand the list of eligible practitioners who may furnish clinically appropriate health care services via remote technology, including licensed professional counselors (LPCs).
- **Expanded Medicare Physician Fee Schedule (MPFS) Coverage/Payment:** Continue expanded coverage/payment under the MPFS, including:
 - **Physician or advanced practice practitioner (APP)** services (*e.g.*, physician/APP consults for patients in the emergency department, critical care services, therapy services, and initial and continuing intensive care services).
 - **Remote patient monitoring (RPM)** for new or established patients with any single chronic or acute conditions, including monitoring a patient in their home post-surgery to help avoid hospital readmissions.
 - **Virtual check-ins and e-visits** when furnished to new patients.
 - **Audio-only E/M services** for audio-only E/M (CPT 99441-99443), with an appropriate payment differential.
 - **Direct supervision** requirement is satisfied by the virtual presence of a physician (for purposes of “incident to” and “teaching physician” services) through audio/video real-time communications technology.
 - **Resident services under the primary care exception** allowed for an expanded list of services, including audio-only evaluation and management, e-visits, inter-professional consultations, transitional care management, virtual check-ins, and remote evaluations.
- **Telehealth Consent Process:** Eliminate the separate consent process for telehealth services and use the telehealth encounter as presumed consent.
- **Qualified Medical Personnel (QMP):** Permit QMPs to perform medical screening examinations (MSEs) via telehealth; permit the QMP to be on-campus or offsite (due to staffing shortages) but must be performing within the scope of their state scope of practice act and approved by the hospital’s governing body to perform MSEs.

- **Rural Health Clinics/Federally Qualified Health Centers:** Allow Medicare payment for telehealth services furnished in rural health clinics and federally qualified health centers, and work with stakeholders to support fair and appropriate payment for these safety net providers.
- **Waiver of Frequency Limits:** Allow subsequent hospital care services and critical care services to be furnished via telemedicine without limiting these telehealth services to once every three days, or once per day, respectively.
- **In-State Licensure Flexibility:** Allow licensed out-of-state physicians/non-physician practitioners (NPPs) to provide telehealth to patients across state lines without having to obtain licensure in the state where the patient is located (while recognizing that state waivers or licensure compacts also would be needed.)
- **Relaxation of Credentialing by Proxy Written Agreement Requirement:** Allow a spoke hospital to rely on the credentialing decisions (for a telehealth physician) of a distant site hub hospital, with no written agreement, to memorialize that the hub hospital fulfilled all the hospital conditions of participation (CoP) requirements for credentialing and privileging.

WAIVERS THAT SHOULD EXPIRE AFTER THE PHE

- **HIPAA Privacy and Technology Security Standards:** OCR enforcement waiver to permit use of non-HIPAA compliant technology for telehealth should expire (*e.g.*, no FaceTime and Skype). *While we recommend that this waiver expire at the end of the current PHE, it should be part of a blanket waiver for any future PHE as such flexibilities may again be needed on a temporary basis.*