

January 26, 2023

Chiquita Brooks-LaSure  
Administrator  
Centers for Medicare & Medicaid Services  
Department of Health and Human Services  
7500 Security Boulevard  
Baltimore, MD 21244

Dear Administrator Brooks-LaSure:

On behalf of the beneficiaries, physicians, and other health care practitioners that our organizations represent, we request that the Centers for Medicare & Medicaid Services (CMS) issue an interim final rule (IFR) as soon as possible to align the date that certain telehealth policies will expire with the new timeline established by the *Consolidated Appropriations Act, 2023* (Pub. L. 117-328, December 29, 2022). This will ensure CMS' policy is aligned with Congress' intent under the Act of ensuring continued flexibility and payment for vital telehealth services.

In the Calendar Year (CY) 2023 Physician Fee Schedule (PFS) and Quality Payment Program (QPP) Final Rule,<sup>1</sup> CMS finalized policies temporarily extending payment for certain telehealth services. First, the rule allowed certain telehealth services, which would otherwise not be available via telehealth after the expiration of the COVID-19 public health emergency (PHE), to remain on the Medicare Telehealth Services List for 151 days after the expiration of the PHE. The rationale behind this policy was to align the availability of these services with the flexibilities that were extended under the *Consolidated Appropriations Act, 2022* (Pub. L. 117-103, March 15, 2022). That law had extended a number of flexibilities that have been in place during the PHE for COVID-19 for 151 days after the end of the PHE. Second, the CY 2023 PFS and QPP Final Rule continued CMS' policy to keep other codes on the list of telehealth services on a Category 3 basis through the end of CY 2023.

The *Consolidated Appropriations Act, 2023* extended the telehealth flexibilities that were previously extended 151 days after the expiration of the PHE until the end of CY 2024. ***Using the precedent of the policy finalized in the CY 2023 PFS and QPP Final Rule, CMS should keep all available codes (including Category 3 codes and all other codes currently set to expire 151 days after the expiration of the PHE) on the Medicare Telehealth Services List until the end of CY 2024.*** That way, CMS could continue its policy objective of aligning the availability of the flexibilities granted by Congress with the availability of codes that are on the Medicare Telehealth Services List. This extension would also provide additional time for our organizations to gather data from our members to make the case for some of these services to remain on the Medicare Telehealth Services List permanently on a Category 2 basis.

We also urge you to issue an IFR rather than wait until the CY 2024 PFS and QPP rulemaking cycle to extend the availability of these codes on the Medicare Telehealth Services List until the end of CY 2024. As stated previously, the current policy, as established in the CY 2023 PFS and QPP Final Rule, is for certain codes to be removed from the list 151 days after the expiration of

---

<sup>1</sup> 87 FR. 69404 (November 18, 2022).

the PHE. The PHE is currently set to expire on April 11, 2023, and 151 days after that date is September 9, 2023. If CMS were to wait until the CY 2024 PFS rulemaking cycle to modify the current policy, there would be a gap between that date of September 9, 2023, and the effective date of the CY 2024 PFS and QPP Final Rule, January 1, 2024 (60 days after the publication of the Final Rule, on or around November 1, 2023). During this gap period, certain codes would be, at least temporarily, removed from the Medicare Telehealth Services List—creating an unintended barrier to vital health care services, as well as potential confusion among providers and beneficiaries. Many Medicare beneficiaries who have been dependent on receiving care virtually would have trouble finding suitable alternatives to meet their needs. Thus, to ensure continuity of care, CMS must issue an IFR in the next several months.

Thank you for your consideration of the release of an IFR to extend these important telehealth policies.

Sincerely,

American College of Emergency Physicians  
Alliance for Connected Care  
ALS Association  
American Academy of Family Physicians  
American Academy of Neurology  
American Academy of Physical Medicine and Rehabilitation  
American Academy of Physician Associates  
American Association of Nurse Practitioners  
American College of Obstetricians and Gynecologists  
American College of Physicians  
American Medical Association  
American Osteopathic Association  
American Physical Therapy Association  
American Podiatric Medical Association  
American Psychological Association  
American Speech-Language-Hearing Association  
American Urological Association  
Association of Behavioral Health and Wellness  
Cancer Support Community  
Chronic Lymphocytic Leukemia (CLL) Society  
CIPROMS Medical Billing, Inc.  
Coalition for Headache and Migraine Patients (CHAMP)  
Convenient Care Association  
Cromford Health  
Emergency Department Practice Management Association (EDPMA)  
EPOWERdoc  
Farmington Emergency Medicine Associates  
Gerontological Advanced Practice Nurses Association (GAPNA)  
LeadingAge  
Monterey Bay Emergency Physicians  
National Council for Mental Wellbeing

Partnership to Advance Virtual Care (PAVC)  
Piedmont Urgent Care  
Preventive Medicine Research Institute  
Pritikin ICR, LLC  
Recora Health  
REDC Consortium  
Telehealth Alliance of Oregon  
Texas Medical Association  
University of California Irvine Health  
UCHealth University of Colorado Hospital  
University of California Los Angeles Health System  
University of California Health System  
University of California San Diego Health  
University of California San Francisco  
Washington University in St. Louis