



June 1, 2020

Seema Verma
Administrator
Centers for Medicare & Medicaid Services
U.S. Department of Health and Human Services
7500 Security Boulevard
Baltimore, MD 21244

Re: Medicare and Medicaid Programs: Policy and Regulatory Revisions in Response to the COVID-19 Public Health Emergency CMS 1744 IFC

Dear Administrator Verma,

The American Academy of PAs (AAPA), on behalf of the more than 140,000 PAs (physician assistants) throughout the United States, appreciates the opportunity to provide comments on the COVID-19 Public Health Emergency interim final rule. In response to COVID-19, CMS has authorized numerous regulatory flexibilities in order to increase patient access to care. Some of these regulatory relief measures are identified as temporary, lasting only through the duration of the public health emergency (PHE). However, as the COVID-19 crisis accentuates the importance of America's healthcare work force being able to practice to the full extent of their education and experience, we are pleased that several of the policies increasing practice flexibility are now permanent.

Telehealth Services

AAPA appreciates the Agency extending numerous regulatory flexibilities surrounding the provision of care to Medicare beneficiaries via telehealth. At a time when patients would otherwise risk exposure to the COVID-19 virus when seeking necessary medical care in person, it is essential that health professionals be authorized to provide medical services to patients through telecommunications technology. Increasing the range of services that may be performed via telehealth, expanding the locations in which patients receive and health professionals deliver those services and authorizing certain telehealth visits to be reimbursed at the same rate as in-person visits are important incentives that will encourage and expand the use of telehealth.

Ensuring adequate access to medical care has been an ongoing concern in this country. That concern is exasperated for those who: 1) live in rural and other underserved communities; 2) lack physical mobility or reliable transportation; 3) are limited in the amount of time that can be taken away from work; and, 4) have suppressed immune systems making contact with the general public an additional risk to their health. For

these individuals, telehealth may be the only viable option to safeguard their timely access to needed medical care.

Growth in the use of telehealth has dramatically increased due to COVID-19. However, many of the recent telehealth regulatory expansions will cease when the PHE declaration ends. In order for our country to be truly committed to maintaining and promoting the effective utilization of telehealth, those temporary regulatory relief policies must be made permanent through statutory changes or regulatory avenues.

Certifying Home Health

We welcome language in the interim final rule addressing the prior lack of authorization under Medicare for PAs and advanced practice registered nurses (APRNs) to order home health services and establish the home health plan of care. The CARES Act, signed into law on March 27, included a legislative change authorizing PAs to certify home health and establish the plan of care for Medicare beneficiaries, and to require the Medicaid program to implement policies that mirror Medicare. CMS had six months to officially implement the legislation. In this interim final rule, CMS provided immediate flexibility by temporarily allowing PAs to certify home health under the Medicaid program.

Subsequently, a different CMS interim final rule formally codified the ability for PAs to immediately certify home health and establish the plan of care for both Medicare and Medicaid. AAPA expresses its appreciation both for CMS beginning to address the issue in this final rule, and for implementing an accelerated implementation process under both the Medicare and Medicaid programs.

Waiving Medicare Licensure Requirements

While authorized by a waiver and not this interim rule, AAPA fully supports the temporary waiving of the Medicare requirement that out-of-state health professionals be licensed in the state where they are providing services, if they are properly licensed in another state. During the PHE, CMS will waive licensing requirements for PAs and other professionals if they: 1) are enrolled as such in the Medicare program; 2) possess a valid license to practice in the state which relates to his or her Medicare enrollment; 3) furnish services in person or via telehealth in a state in which the emergency is occurring in order to contribute to relief efforts in his or her professional capacity; and, 4) are not excluded from practice in the state or any other state that is part of the 1135 emergency area.

This policy successfully enables health professionals to deliver care in states most heavily impacted by COVID-19. Making this Medicare licensure waiver policy permanent will allow for the most efficient and flexible utilization of our healthcare workforce during the COVID-19 crisis, for future disasters or similar crises and for the healthcare delivery system in general.

We know the federal government does not control the medical licensing process in states. However, we believe it would be wise for the federal government to encourage states to significantly streamline the licensing process for health professionals who want to practice in multiple states by offering a voluntary,

expedited pathway to licensure. This type of expedited process would have a uniquely positive impact on the ability to expand the use of telehealth.

Progress Notes in Psychiatric Hospitals

AAPA thanks CMS for clarifying the language surrounding the documentation and recording of progress notes in psychiatric hospitals. We also appreciate CMS' comment regarding this issue that PAs and certain other health professionals "when acting in accordance with State law, their scope of practice, and hospital policy, should have the authority to practice more broadly and to the highest level of their education, training, and qualifications as allowed under their respective state requirements and laws in this area."

We recognize that CMS, in its Patients Over Paperwork rule last fall, made regulatory modifications to 42 CFR 482.61 in order to permit PAs to record progress notes in psychiatric hospitals. However, when CMS changed the regulatory language through its Patients Over Paperwork rule, it extended the ability to record progress notes to "licensed independent practitioners." Subsequently, CMS recognized that some may view this term as not including PAs, and consequently removed the language from 42 CFR 482.61. This change in the CFR makes it clear that PAs are authorized to document/record progress notes in psychiatric hospitals.

Ensuring Continued Access to Care After the Public Health Emergency

AAPA believes the need for increased flexibilities, efficiencies and more robust utilization of all health professionals will not end with the conclusion of the PHE. In addition to our comments on making telehealth regulatory relief permanent, AAPA has identified other temporary flexibilities the agency implemented during the PHE that, if made permanent, would produce significant benefit to patients.

One example is the PHE waiver authorizing PAs to supervise technicians and other trained personnel who assist in the performance of diagnostic tests. Another example is the removal of unnecessary requirements as to who may provide services in skilled nursing facilities (SNFs). During the PHE, CMS authorized the delegation of "physician-only" tasks in SNFs to PAs, if there is no conflict with state law or facility policy. AAPA sees little justification for re-instituting these arbitrary practice restrictions after the PHE ends. PAs are clinically prepared and competent to deliver this care. In addition, patient access to care is improved, especially in rural and underserved communities, when PAs are able to provide these services.

CMS has demonstrated through these and other recent policy changes a willingness and ability to adapt policies to meet the changing dynamics in our healthcare delivery system. This regulatory flexibility benefits patients by reducing access burdens and ensuring health professionals are available to deliver timely care. With this in mind, AAPA requests that CMS consider addressing other regulatory barriers to optimize efficient practice. One such barrier is confusion over the need for a physician to co-sign a patient's hospital admission order when the order and admission are personally performed by a PA. Other examples of unnecessary regulatory burdens placed on PAs revolve around hospice, including the restriction on PAs ordering medications for hospice patients if the PA is employed by a hospice organization, as well as the

inability for a hospice-employed PA to be chosen to serve as an attending physician for a patient, if an attending physician had not been selected by the patient upon commencement of the hospice benefit.

Thank you again for your efforts to reduce the regulatory burdens placed on PAs which hinder our ability to provide efficient, coordinated care to patients. AAPA welcomes further discussion with CMS regarding these issues. For any questions you may have please do not hesitate to contact Michael Powe, AAPA Vice President of Reimbursement & Professional Advocacy, at 571-319-4345 or michael@aapa.org.

Sincerely,

A handwritten signature in blue ink, appearing to read "D. Mittman", with a long horizontal flourish extending to the right.

David E. Mittman, PA, DFAAPA
President and Chair of the Board