MEDICARE RIGHTS CENTER
Getting Medicare right

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September 13, 2021

Chiquita Brooks-LaSure
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-1751-P
P.O. Box 8016
Baltimore, MD 21244-8016

RE: CMS-1751-P: RIN 0938-AU42: Medicare Program; CY 2022 Payment Policies under the Physician Fee Schedule and Other Changes to Part B Payment Policies; Medicare Shared Savings Program Requirements; Provider Enrollment Regulation Updates; Provider and Supplier Prepayment and Post-payment Medical Review Requirements

Dear Administrator Brooks-LaSure:

The Medicare Rights Center (Medicare Rights) appreciates the opportunity to comment on this proposed rule from the Centers for Medicare & Medicaid Services (CMS). Medicare Rights is a national, nonprofit organization that works to ensure access to affordable health care for older adults and people with disabilities through counseling and advocacy, educational programs, and public policy initiatives. Each year, Medicare Rights provides services and resources to nearly three million people with Medicare, family caregivers, and professionals.

II.D.1.c. Revised Timeframe for Consideration of Services Added to the Telehealth List on a Temporary Basis

In the early days of the COVID-19 public health emergency (PHE) CMS added many services to the list of reimbursable telehealth services through a new "Category 3" pathway. We supported this temporary expansion of telehealth flexibilities.[1] Now CMS proposes to retain all services added to the Medicare

[1] Medicare Rights Center, "Comments on 2021 Physician Fee Schedule" (October 5, 2020).

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telehealth services list on a Category 3 basis until the end of CY 2023. We support such an extension, as it would allow a glidepath for beneficiaries and providers. We continue to have concerns that an abrupt cessation of PHE-related flexibilities could lead to a sudden lack of access to care for people with Medicare.[2] We appreciate actions to reduce or eliminate this risk.

II.D.1.e. Payment for Medicare Telehealth Services Furnished Using Audio-Only Communication Technology

CMS proposes to define interactive telecommunications system to include audio-only communications technology when used for telehealth services for the diagnosis, evaluation, or treatment of mental health disorders furnished to established patients when the originating site is the patient's home. We strongly support this proposal. The use of audio-only communications technology has been extremely important for the health and safety of people with suspected or diagnosed mental health disorders. We applaud efforts to lower barriers for this population and allow them to access high-quality care safely and swiftly. Because audio-only telehealth services are not without risks, we urge rigorous and ongoing oversight and data collection.[3]

II.J.2. Payment for COVID-19 Vaccine Administration in the Home

CMS requests feedback on whether the same barriers that could prevent a beneficiary from obtaining a COVID-19 vaccine may also prevent them from obtaining other preventive vaccines, and whether Medicare should make a similar add-on vaccine administration payment in those circumstances. We support this proposal. Many of the barriers that may make it difficult for a beneficiary to obtain the COVID-19 vaccine outside of the home are specific to the individual and their circumstances, not the shot itself. These beneficiaries are therefore likely to face similar access challenges with other vaccines. Applying add-on vaccine administration payments to other preventive vaccines would help people with Medicare who may have difficulty leaving their homes, including those who may still interact with numerous people in the wider world, obtain protection from preventable illness.

III.B.1.c. Revising the definition of an RHC and FQHC Mental Health Visit

CMS proposes to allow Rural Health Clinics and Federally Qualified Health Centers to furnish mental health visits using audio-only interactions in cases where beneficiaries are not capable of, or do not

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[2] *See, e.g.*, Medicare Rights Center, "Letter to Congress" (July 20, 2020), https://www.medicarerights.org/pdf/072920-covid-letter.pdf; Medicare Rights Center, "Testimony of Frederic Riccardi: The Future of Telehealth: How COVID-19 is Changing the Delivery of Virtual Care" (March 2, 2021), https://www.medicarerights.org/pdf/030221-house-testimony-telehealth-hearing.pdf; Medicare Rights Center, "Policy Recommendations for the Biden Administration" (January 20, 2021), https://www.medicarerights.org/pdf/012021-biden-harris-transition-memo.pdf.

[3] Lori Uscher-Pines, *et al*., "Telehealth Use Among Safety-Net Organizations in California During the COVID-19 Pandemic" JAMA (February 2, 2021), https://jamanetwork.com/journals/jama/fullarticle/2776166; The U.S. Department of Health and Human Services Office of Inspector General, "2020 National Health Care Fraud Takedown" (last accessed February 26, 2021), https://oig.hhs.gov/documents/root/230/2020HealthCareTakedown_FactSheet_9dtIhW4.pdf.

consent to, the use of devices that permit a two-way, audio/video interaction. This change would allow beneficiaries who receive services from such providers the same access to mental health care delivered via telecommunications technology as beneficiaries receiving services from practitioners paid under the Physician Fee Schedule. We support this proposal, as it could expand access to mental health services and reduce inequities that result from disparate access to technology, including broadband.[4] We again urge rigorous oversight and evaluation to ensure this care is being delivered as intended.

III.O. 4. Counseling and therapy furnished via audio-only telephone

CMS proposes to allow Opioid Treatment Programs to continue to furnish the therapy and counseling using audio-only telephone calls rather than via two-way interactive audio/video communication technology following the end of the PHE for COVID-19 in cases where audio/video communication technology is not available to the beneficiary, including where the beneficiary does not consent to use of video communication. As with the above audio-only access, we support this proposal and urge strong oversight. Implemented appropriately, it could better ensure access to appropriate care for individuals who have substance use disorders.

IV.A.1.d. Closing the Health Equity Gap in CMS Clinician Quality Programs—Request for Information (RFI)

As we have expressed previously,[5] the Medicare Rights Center strongly supports addressing health equity gaps, reducing disparities, and better serving all Medicare beneficiaries. To that end, we support efforts to stratify quality measures by race and ethnicity. Doing so in a meaningful way would allow CMS and the public to better identify where those pernicious gaps remain and learn how interventions may, or may not, be working to close them. While we appreciate CMS's efforts to advance this goal, we are concerned with the agency's proposed approach.

In the absence of high-quality self-reported sociodemographic data, CMS proposes to develop an algorithm to indirectly estimate race and ethnicity to enable the stratification of quality measures until more accurate data sets become available. We continue to have grave concerns with this proposal.[6] Overlaying the sensitive and complex topics of race and ethnicity with algorithms that cannot, by their very nature, capture how people self-identify, may encode and exacerbate existing disparities rather than reveal them and allow them to be remedied. All algorithms are built on the assumptions of those doing the designing, making decisions based solely on algorithms suspect. While timely response to inequity and disparities is important, it cannot be at the expense of accuracy.

We also encourage CMS to include other demographic information that addresses heterogeneity within race and ethnicity including sub-groups for Asian, American Indian and Alaska Native, and Native

[4] Yohualli Balderas-Medina Anaya, *et al.*, "Telehealth & COVID-19: Policy Considerations to Improve Access to Care" (May 2020), https://latino.ucla.edu/wp-content/uploads/2020/05/Telehealth-COVID-19-Report.pdf.
[5] Medicare Rights Center, "Comments on 2022 IPPS Proposed Rule" (June 28, 2021), https://www.medicarerights.org/policy-documents/comments-on-2022-ipps-proposed-rule.
[6] *Id.*

Hawaiian and Other Pacific Islander beneficiaries, and beneficiaries who identify as two or more races. Additionally, in its efforts to achieve health equity, including LGBTQ identification, social, nutritional, and financial need, and mental health challenges.

Conclusion

Thank you again for this opportunity to provide comments on this proposed rule. For further information, please contact Lindsey Copeland, Federal Policy Director at LCopeland@medicarerights.org or 202-637-0961 and Julie Carter, Senior Federal Policy Associate at JCarter@medicarerights.org or 202-637-0962.

Sincerely,

Fred Riccardi
President
Medicare Rights Center