Health. Virtually. Everywhere.

November 12, 2021

The Honorable Ron Wyden
Chair
Senate Finance Committee
Washington, DC 20515

The Honorable Mike Crapo
Ranking Member
Senate Finance Committee
Washington, DC 20515

RE: Telehealth Recommendations for Senate Finance Request for Information (RFI) – Addressing Barriers to Mental Health Care

Dear Chairman Wyden and Ranking Member Crapo,

On behalf of the American Telemedicine Association (ATA), the only national organization completely focused on advancing telehealth, we want to thank you for giving us the opportunity to help inform mental health policies and for seeking input from stakeholders across the health care industry to better understand how Congress can permanently address the behavioral and mental health needs of millions of Americans. As you and your staff are well aware, the impacts of the pandemic have touched just about every American. Nationwide we're seeing alarming increases in rates of anxiety, depression, and substance use disorders. During this uncertain time - telehealth flexibilities - like the ability to serve a patient in their home and provide audio-only services - have been an effective lifeline for many individuals and families. We know that even as the pandemic subsides, the mental health needs of our communities are not going to lessen. As a result, there is clear urgency for decisive policy solutions that will enable mental and behavioral health providers to deliver care when and where consumers need it most. The ATA recommends the following:

1. **Advance Health Equity Using Telehealth:** Telehealth helps reduce the stigma around seeking mental health or substance use disorder treatment for those who want to seek care confidentially. The ability to access care through telehealth broadens access to services to patients without childcare or transportation. Furthermore, audio-only telehealth, which has been a digital equalizer for those who lack access to broadband internet or video-enabled devices and for those who cannot utilize dual audio-video devices, is a critical flexibility. The ability to communicate between patients and behavioral health providers according to individuals' own needs is crucial to eliminating artificial barriers to care and advancing health equity. The following policy solutions seek to address health access disparities and advance health equity:

- **Pass the Telemental Health Care Access Act (S.2061) to remove in-person requirements for telemental health:** At the end of 2020, Congress passed a provision in the Consolidated Appropriations Act, 2021, Pub.L. 116–260, intended to increase access to telemental health services by permanently waiving historical Medicare restrictions like the geographic requirement for these services. However, the provision also included an unexpected and unnecessary in-person requirement. (e.g. Section 123 establishes coverage and reimbursement of a telemental

health service only if the practitioner has conducted an in-person examination of the patient in the prior six months and subsequently continues to conduct in-person exams at such a frequency to be determined by HHS). The ATA strongly opposes in-person requirements[1] and believes putting service restrictions on telehealth access through arbitrary in-person requirements undercuts the very tenets around flexibility and access afforded by telehealth and other virtual care modalities. There is no clinical evidence for an arbitrary in-person requirement before a patient can access telehealth services. In fact, evidence has demonstrated that telemental services like telepsychology are just as effective as in-person visits.[2] Additionally, requirements such as these could negatively impact those in underserved communities who may not be able to procure an in-person exam due to provider shortages, work, lack of childcare, and/or other resources. As such, the in-person requirements, which would go into place after the PHE concludes, would place unnecessary burdens on patients and providers alike. Furthermore, Section 123's mandate for an in-person visit applies only to mental health treatment, whereas Medicare beneficiaries seeking other medical services via telehealth are not subject to this requirement. It is our recommendation that these in-person requirements be removed by enacting the Telemental Health Care Access Act.

Demand for mental health care has increased in recent years, but the pandemic has only exacerbated these needs. Recent SAMHSA data reported among adults 18 or older in 2020, 1.2 million attempted suicide in the past 12 months and 3.2 million made a suicide plan in the past year. Among adolescents aged 12 to 17 in 2020, 3.0 million had serious thoughts of suicide, 1.3 million made a suicide plan, and 629,000 attempted suicide in the past year. Trends in suicide attempts and deaths by suicide have been increasing among adolscents each year, becoming a major public health concern in the U.S. The ATA urges Congress to address this public health concern and elimiate barriers, such as the in-person requirement, that could prevent adults and adolescents from attempting to receive telemental health services. We must ensure that patients can receive care where and when they need it especially when they are in their most vulnerable state.

- **Allow telephonic (audio-only) services for mental health and substance use disorder services after the PHE concludes:** In 2019, the Federal Communications Commission (FCC) reported that between 21.3 and 42 million Americans lacked access to broadband. Many older adults and people with disabilities lack access to video-enabled devices or struggle to use the more complex video-enabled devices even if they have access to them. Likewise, many in racial/ethnic and low-income communities lack access to broadband or video-enabled devices. Given the significant increase in demand for behavioral health services and the role audio-only plays as a digital equalizer, we recommend making permanent this flexibility for the provision of mental health and substance use disorder services. Moreover, this recommendation is consistent with the Medicare Payment Advisory Commission's (MedPac) March 2021 report to congress.[3] During this time, regulators may evaluate data to better understand which behavioral health modalities should be considered for audio-only on a permanent basis.

[1] ATA-Overview-of-In-Person-Requirements-1.pdf (americantelemed.org)
[2] Clinically Based Policy Decisions: In-Person Requirements for Telehealth Create Unnecessary Barriers (psychiatrictimes.com)
[3] http://medpac.gov/docs/default-source/reports/mar21_medpac_report_to_the_congress_sec.pdf?sfvrsn=0&source=emai

- **Maintain a technology neutraul approach and allow for asynchronous chat/text-based services for mental health:** As the need for mental health services continues to climb and there is dire shortage of providers, Congress should pursue a technology neutral approach and allow eligible practitioners to determine appropriate technologies based on provider preference and patient choice so long as the standard of care is upheld, and the treating provider can meet the regulatory requirements for the provision of telehealth in the state in which the patient is located. Virtual care, especially telemental health services, should not have clinically unsubstantiated barriers to technologies if it is safe, effective, appropriate, and complies with HIPAA and all related state privacy requirements. For example, secure asynchronous chat and text-based services that meet the requirements of HIPAA and delivered by a licensed clinician, are a clinically appropriate entry into care for many patients.

  Moving forward we encourage Committee members to avoid an overly prescriptive approach that would limit the types of technologies that a provider may use for the purposes of payment and coverage under Medicare, especially when these modalities have already been authorized under state law and regulation.

- **Support funding for behavioral health IT programs:** In order to meet this growing demand for mental health care and substance use disorder services, behavioral health providers are being pressed to make significant technological advances. Telehealth software, which is critical for auditing telehealth appointments and meeting interoperability requirements with existing Electronic Health Record (EHR) systems, can add significant costs. Additionally, many providers are making further investments in cybersecurity to protect PHI as well as other infrastructure costs such as telehealth rooms and/or bringing on more technical support staff. These costs are significant and currently not reimbursed.

  Moreover, most behavioral health providers were carved out of the $30 billion investment (HITECH Act, passed as part of the American Recovery and Reinvestment Act of 2009, P.L. 111-5) given to hospitals and other healthcare entities to adopt EHRs and learn how to successfully exchange patient information using certified electronic health record technology. Although behavioral health providers were excluded from this initiative, we understand that Congress is dedicated to promoting interoperability and supporting the access, exchange, and use of electronic health information across the care continuum in order to improve the cost and quality of care. With the growing demand for mental and behavioral health care services, this policy goal can only be achieved with behavioral health providers being provided the necessary financial and administrative support to adopt and implement interoperable technology, such as with financing for new behavioral health IT grant programs.

2. Take actions to address significant behavioral health workforce shortages: Prior to the pandemic, the behavioral health sector already was experiencing significant workforce shortages. For example, more than 60 percent of all counties in the United States—including 80 percent of all rural counties—do not have a single psychiatrist.[4]

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[4] http://research.newamericaneconomy.org/wp-content/uploads/2017/10/NAE_PsychiatristShortage_V6-1.pdf
[5] https://www.npr.org/sections/coronavirus-live-updates/2020/10/02/919517914/enough-already-multiple-demands-causing-women-to-abandon-workforce
[6] Treating mental illness in the ED | AAMC

Additionally, given that behavioral health is a female-dominated workforce and that an increasing number of women are leaving the workforce to help with caregiving in the backdrop of the pandemic, the behavioral workforce is increasingly strained.[5] As a result of the behavioral health workforce shortages, psychiatry practices across the U.S. have long waits for appointments and some times even turn away new patients. According to one study of psychiatrists' availability in Boston, Massachusetts; Houston, Texas; and Chicago, Illinois, the average wait time was 25 days for a first visit. About one in five psychiatrists were not accepting new patients.[6] Telehealth enables providers to most efficiently utilize their limited workforce to meet the growing demand for mental health and substance use disorder services. Additional barriers still remain as the workforce seeks to keep pace with demand.

3. Support the Removal of the In-Person Requirement for Prescribing Controlled Substances: Prior to the pandemic, due to the Ryan Haight Act, a patient must have had an in-person visit before a provider could prescribe controlled substances by the means of the internet. During COVID-19, the Drug Enforcement Agency (DEA), in partnership with the Substance Abuse and Mental Health Services Administration (SAMHSA), used the Ryan Haight Act's "public health" emergency exception to temporarily waive the in-person requirement. Thus far, there has been no evidence that the flexibility allowed during the PHE has resulted in an increase in illegal drug diversion, inappropriate prescribing, or the prevalence of opioid dependency. On the contrary, having easier access to critical care is helping to combat the spikes in mental health and substance use.

The ATA believes the ultimate choice about a patient's care plan, including the modality of care and clinically valid services, should be the decision of an empowered patient and their provider in accordance with the standard of care. Understanding this is not in the Senate Finance Committee's jurisdiction, we are urging all U.S. policymakers to ensure patients continue to have access to certain controlled substances prescribed via telemedicine once the PHE ends by supporting legislation (TREATS Act, S.340/H.R.1647) that would permanently remove this in-person exam requirement.

4. Ensuring Affordable Virtual Mental Health Services for the Commercially Insured: Telehealth has served as an essential lifeline during the pandemic especially for those seeking behavioral and mental health services. Section 3701 of the CARES Act established a safe harbor allowing those with Health Savings Account (HSA)-eligible High Deductible Health Plans (HDHPs) to have telehealth services covered on a first-dollar basis. This ensures important telehealth services are covered without the patient first having to meet their deductible—ensuring that millions of Americans with employer-based health coverage have access to important virtual mental health services during the COVID-19 pandemic.

As the US healthcare system emerges from the pandemic, permanently extending the HDHP/HSA telehealth safe harbor would allow half of American workers to continue accessing a range of clinically appropriate virtual mental health services without the burden of first meeting a deductible. This policy will expire at the end of the year if Congress does not act to extend it. The ATA urges the Committee to ensure the continuation of this critical policy.

In conclusion, by passing legislation that removes the in-person requirement for telemental health services, addresses worker shortages, expands access to telehealth, takes a modality neutral approach, and increases funding for behavioral health programs – Congress can provide additional tools to increase access, break down stigma, and advance health equity across the nation.

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Again, we thank the you for giving us the opportunity to provide guidance on the bipartisan RFI under consideration within the Committee, and we especially appreciate your recognizing the need to expand access to telehealth services for behavioral health care as a focus of the RFI. We appreciate your leadership advancing policies to address mental and behavorial health. If you have any questions or would like to discuss our recommendations further, please contact Kyle Zebley, Vice President, Public Policy at kzebley@americantelemed.org.

Kind regards,

Ann Mond Johnson
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