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August 30, 2022

Administrator Chiquita Brooks-LaSure
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-4203-NC
P.O. Box 8013, Baltimore, MD 21244-8013

RE: Comments on CMS' Request for Information on Medicare Advantage (CMS-4203-NC)

Submitted electronically on regulations.gov

Dear Administrator Brooks-LaSure:

On behalf of the American Telemedicine Association (ATA), the only organization exclusively devoted to advancing telehealth, and ATA Action, the ATA's affiliated trade association focused on advocacy, we applaud CMS' ongoing work to expand access to telehealth services within the Medicare Advantage (MA) program and appreciate the opportunity to provide feedback on this request for information.

As of May 2022, 46% of Medicare beneficiaries choose to participate in MA plans and it is expected by 2026 that enrollment is projected to reach 50%.[1] MA plans serve a higher proportion of lower income beneficiaries relative to Medicare Fee for Service (FFS); 52.7% of MA beneficiaries have annual incomes below 200% of the Federal Poverty Level (approx. $25,000 annually), compared to 38.3% in FFS.[2] Therefore, it is critical that these beneficiaries continue to have the option to access telehealth services and that MA plans are incentivized to provide telehealth services to their beneficiaries including those in rural and underserved areas. The ATA and ATA Action would like to comment on few of the questions specific to telehealth within the RFI.

What role does telehealth play in providing access to care in MA?

Telehealth has proven to be a safe and effective tool to deliver care and allows Medicare Advantage beneficiaries to access care when they need it regardless of their location. During the first year of the COVID-19 pandemic, 49% of Medicare Advantage enrollees used telehealth services.[3] This year, 98% of MA plans offered a telehealth benefit.[4] Telehealth and virtual care services play a critical role in expanding access to care in the Medicare Advantage program and we applaud CMS for their historical regulatory actions that have incentivized plans to offer telehealth services.

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[1] API MA Changing Demographics August 2022
[2] Ibid
[3] KFF - FAQs on Medicare Coverage of Telehealth
[4] Ibid

An important action that CMS has taken to encourage the use of telehealth in MA is to include telehealth providers in network adequacy requirements. Under network adequacy requirements, CMS required that MA plans contract with a sufficient number of providers and facilities to ensure that at least 90 percent of beneficiaries within a county can access care within specific travel time and distance maximums. Under the Medicare Advantage and Part D Flexibility Final Rule (CMS-4185-F) for plan year 2021, CMS reduced the percentage of beneficiaries that must reside within the maximum time and distance standards in non-urban counties (Micro, Rural, and Counties with Extreme Access Considerations (CEAC) county type designations) from 90 percent to 85 percent in order for an MA plan to comply with network adequacy standards. This expanded access for rural MA plans where network development can be challenging.

Additionally, CMS updated its network adequacy criteria to include telehealth as an exception.[5] Generally, organizations use the exception process to identify when the supply of providers/facilities is such that the organization can't obtain contracts that satisfy CMS's network adequacy criteria. As a result of the CY2021 final rule, CMS allowed MA plans to receive a 10-percentage point credit towards the percentage of beneficiaries residing within published time and distance standards when they contract with telehealth providers in the following provider specialty types: Dermatology, Psychiatry, Cardiology, Otolaryngology, Neurology, Ophthalmology, Allergy and Immunology, Nephrology, Primary Care, Gynecology/OB/GYN, Endocrinology, and Infectious Diseases. Thus, telehealth is allowed to be offered in areas where full network adequacy requirements cannot be met. We applaud CMS for taking these necessary actions to allow and incentivize MA plans to contract with telehealth networks to expand access to care in all locations but specifically in rural areas where providers may be limited as well as underserved communities where beneficiaries face financial and transportation barriers.

How could CMS advance equitable access to telehealth in MA?

MA plans and beneficiaries recognize the value of telehealth, and it is critical that CMS continues to support plans' abilities to include telehealth services in their offerings in the future. The ATA and ATA Action have a few recommendations for CMS's consideration to advance equitable access to telehealth in MA and ensure beneficiaries can continue to get access to care where and when they need it[6]:

- **Convene Likeminded Stakeholders to Share Insights and Compile Recommendations:** We recommend that CMS convenes stakeholders to discuss how telehealth is evolving/being utilized within MA plans and what else should be done to ensure these plans can meet the needs of their members.

[5] Federal Register :: Medicare Program; Contract Year 2021 Policy and Technical Changes to the Medicare Advantage Program, Medicare Prescription Drug Benefit Program, and Medicare Cost Plan Program
[6] ATA's Telehealth Recommendations within Medicare Advantage - ATA (americantelemed.org)

- **Expand Access to Telehealth Providers:** We support the ability of MA plans to receive a 10% credit towards the percentage of beneficiaries that must reside within required time and distance standards when they contract with telehealth providers. We also urge CMS to consider expanding the list of specialty types for which the additional telehealth benefits credit applies. The ATA and ATA Action are neutral concerning the modalities, services, and providers, meaning all providers should be able to see their patients via telehealth (any modality) as long as the visit meets the standard of care.

- **Apply Outcomes and Learnings from MA to Medicare FFS:** We urge CMS to collect and understand the outcomes of how telehealth is being utilized within MA and cross over flexibilities to Medicare FFS. For example, telehealth services under Medicare fee for service (outside of the Public Health Emergency) are still subject to antiquated and arbitrary 1834m geographic and originating site restrictions. Understanding how MA plans utilize telehealth without these restrictions could be insightful and push FFS to alter its restrictions.

What policies within CMS' statutory or administrative authority could address access issues related to limited broadband access?

Limited access to broadband or internet services is a barrier to care for millions of beneficiaries. As noted earlier, the ATA and ATA Action support modality neutral policies, meaning the type of technology used to deliver care should be determined by the clinician, in consultation with the patient, so long as it meets the standard of care. Various challenges such as limited broadband access, lack of experience utilizing certain technologies, and financial constraints may limit the use of audio-visual technologies for many vulnerable MA beneficiaries. It is imperative that CMS implements policies that allow and encourage MA plans to offer audio-only services. Since July 2020, MA beneficiaries reported greater access to telehealth than Medicare FFS beneficiaries despite less access to internet and/or internet-connected devices. Ninety-four percent of Medicare Advantage beneficiaries with telehealth access and without a smartphone or computer reported access to phone-based, audio-only telehealth, or both video and audio-only telehealth.[7] This shows the importance of allowing beneficiaries to have phone visits with their physicians when clinically appropriate.

CMS should implement policies that address access issues related to limited broadband but must also recognize that solving for internet access is just the tip of the iceberg and many other layers including, but not limited to, historical racism, trust, digital literacy, and affordability must be solved for. The ATA and ATA Action believe that telehealth, when utilized in accordance with health equity principles, can eliminate disparities and inequities in health. See here for the ATA's Framework for Eliminating Health Disparities Using Telehealth.

[7] Medicare Advantage Sees Fewer Covid-19 Hospitalizations In Beneficiaries And Offers Greater Access To In-Person And Telehealth Non-Covid Care During Pandemic

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Thank you for the opportunity to respond to this timely and important request for information. If you have any questions, please contact Kyle Zebley at kzebley@americantelemed.org.

Kind regards,

Kyle Zebley
Executive Director
ATA Action