



June 29, 2023

Chiquita Brooks-LaSure
Administrator
Centers for Medicare & Medicaid Services
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

RE: ATA Action Comments in Response to CMS–2439–P

On behalf of ATA Action, the ATA’s affiliated trade association focused on advocacy, we appreciate the opportunity to provide feedback on the [Medicaid and Children’s Health Insurance Program \(CHIP\) Managed Care Access, Finance, and Quality](#) proposed rule. During the pandemic, telehealth has proven to be a lifeline for many underserved populations. The highest rates of telehealth visits were among those with Medicaid (29.3%) and Medicare (27.4%), Black individuals (26.8%), and those earning less than \$25,000 (26.7%).¹ We applaud CMS for acting swiftly during the COVID-19 pandemic to ensure patients across the United States had access to care where and when they needed it. It is imperative that CMS continues to ensure telehealth is maintained as an option for all Americans into the future. ATA Action provides comments below on how to further integrate telehealth into network adequacy requirements for managed care delivery systems.

Utilizing Telehealth to Meet Network Adequacy Standards

Under current federal law, each state must establish and enforce their own network adequacy standards for managed care delivery systems. Network adequacy standards ensure health plans are able to provide their enrollees with a sufficient number and type of in-network providers. States have flexibility to define these standards, but there is a list of items that CMS requires states to consider when developing their network adequacy standards which includes the use of telemedicine, e-visits, and/or other evolving and innovative technological solutions. We applaud CMS for recognizing the value of telehealth and ensuring that states consider these critical tools when establishing network adequacy standards.

Further, CMS requires that at a minimum a state must develop a quantitative network adequacy standard for certain provider types under contract such as primary care, OB/GYN, behavioral health, specialists, hospital, pharmacy, and pediatric dental. In 2020, CMS’s Medicaid managed care final rule removed the requirement that states use time and distance standards to ensure provider network adequacy and instead allowed states to choose any quantitative standard such as minimum provider-to-enrollee ratios, maximum travel time or distance to providers, minimum percentage of contracting providers accepting new patients, maximum wait times for an appointment, or hours of operation requirements.²

¹ [telehealth-hps-ib.pdf \(hhs.gov\)](#)

² [Federal Register :: Medicaid Program: Medicaid and Children's Health Insurance Program \(CHIP\) Managed Care](#)



Within this new proposed rule, CMS is proposing to enact standards for maximum appointment wait times for certain appointment types, in addition to the quantitative access requirements that already apply. State developed appointment wait times must be no longer than 10 business days for routine outpatient mental health and substance use disorder appointments and no longer than 15 business days for routine primary care. Appointments offered via telehealth could only be counted towards compliance with appointment wait time standards if the provider also offers in-person appointments. ATA Action urges CMS to reconsider this proposal as it leaves behind telehealth-only providers and ultimately limits access to care. Telehealth is a critical tool in our evolving healthcare system that expands access to care, helps alleviate appointment wait times, relieves provider burnout, and assists with the provider shortage our country faces. There are times when a telehealth visit is the only visit clinically necessary to diagnose and treat a patient. Plus, allowing for telehealth to count towards compliance allows more in-person appointments for those who need to be physically seen in-person and can decrease wait times overall.

CMS should allow states to utilize telehealth and virtual technologies to meet network adequacy requirements like Medicare Advantage. Plans offered by Medicare Advantage have the ability 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 in certain specialties.³ We recommend that CMS adopt a similar strategy for Medicaid managed care. Specifically, we ask that CMS allow states to incorporate a 10% telehealth credit to any time and distance standards, and that CMS work with states to incorporate other telehealth credits as applicable into any alternative quantitative metrics that they use. As noted above, we also ask that CMS allow telehealth appointments to count towards the proposed wait time requirements, even if the telehealth provider is not also offering in-person appointments.

Expanding Managed Care Provider Directories to Include Telehealth

Additionally, CMS proposes that managed care plan provider directories include information that would allow enrollees to see when a provider offers covered services via telehealth. ATA Action believes this is a step in the right direction. This would provide increased transparency and clarity for patients and allow states and CMS to collect more information on providers who offer telehealth services.

We look forward to continuing to work with CMS on these important issues. If you have any questions or would like to further discuss the telehealth industry's perspective, please contact me at kzebley@ataaction.org.

A handwritten signature in black ink, appearing to read "Kyle Zebley".

Kyle Zebley
Executive Director
ATA Action

³ [Medicare-Advantage-Informational-One-Pager-7.22.pdf \(americantelemed.org\)](#)