



May 3, 2023

Carol Blackford
Director, Hospital and Ambulatory Policy Group
Centers for Medicare & Medicaid Services
U.S. Department of Health and Human Services

Dear Ms. Blackford:

Thank you for all your work helping to untangle Part B telehealth billing for physical therapists, occupational therapists, and speech-language pathologists. We are submitting this request on behalf of the American Speech-Language-Hearing Association (ASHA), the American Physical Therapy Association (APTA), and the American Occupational Therapy Association (AOTA).

As you are well aware, the ability to continue to provide telehealth services by therapists employed in facility settings has become a hot topic given recent guidance by CMS on at least two national provider calls, which seems to indicate that telehealth services cannot be reported on the UB04 claims form. This raises concerns about the ability of a variety of facility providers, including HOPDs, SNFs, and rehabilitation agencies to continue to bill for outpatient telehealth services provided by therapists under the physician fee schedule after May 11. We wanted to walk through the existing legal and regulatory guidance and see if we can identify a way to address this given the public health emergency (PHE) is expiring in about 2 weeks.

First, with regard to HOPD, as noted in Chapter 6 of the Medicare Benefit Policy Manual, physical and occupational therapy and speech-language pathology services are exempt from the OPSS and instead are paid under the physician fee schedule. We do recognize that these services are usually billed on the UB04 claim form rather than the 1500 claim form, but given how the services are paid, we are not sure the claim form itself should make a difference. We appreciate that the flexibility to register a patient's home as a temporary extension site and consider those services to be "in-person" rather than virtual may or may not be expiring, but that flexibility is separate from the ability of an HOPD to bill for telehealth services.

Additionally, we have been advised that HOPDs that bill Medicare on a 1500 claim form, rather than a UB04 will be able to continue to provide telehealth services for beneficiaries. This has led many to infer that the ability to perform telehealth post-PHE rests on the claim form a facility uses. This would mean that rehabilitation agencies, SNFs, and home health agencies that bill Medicare for Part B outpatient services would be prohibited from providing telehealth services. We note that rehab agencies are exclusively outpatient, are entirely governed by the fee schedule, but utilize the UB04 claim form.

Our organizations also interpret several sections of the Consolidated Appropriations Act of 2023 (CAA) in ways that give you the authority necessary to maintain access to telehealth services provided by facility-based therapists when paid for under the physician fee

schedule. For example, while section 4140 appears to focus on extending acute hospital care at home waivers and flexibilities, it lists the various waivers that are extended through 2024 to include (C), which states: "Waiver of the telehealth requirements under clause (i) of section 1834(m)(4)(C), as amended by section 4113(a) of the Health Extenders, Improving Access to Medicare, Medicaid, and CHIP, and Strengthening Public Health Act of 2022, such that the originating sites described in clause (ii) of such section shall include the home or temporary residence of the individual." This would seem to address telehealth services provided under the fee schedule by hospital-based therapists.

Further, the CAA extends the existing telehealth flexibilities through 2024 in section 4113 to include the following sites:

- (I) The office of a physician or practitioner.
- (II) A critical access hospital (as defined in section 1395x(mm)(1) of this title).
- (III) A rural health clinic (as defined in section 1395x(aa)(2) of this title).
- (IV) A Federally qualified health center (as defined in section 1395x(aa)(4) of this title).
- (V) A hospital (as defined in section 1395x(e) of this title).
- (VI) A hospital-based or critical access hospital-based renal dialysis center (including satellites).
- (VII) A skilled nursing facility (as defined in section 1395i-3(a) of this title).
- (VIII) A community mental health center (as defined in section 1395x(ff)(3)(B) of this title).
- (IX) A renal dialysis facility, but only for purposes of section 1395rr(b)(3)(B) of this title.
- (X) The home of an individual, but only for purposes of section 1395rr(b)(3)(B) of this title or telehealth services described in paragraph (7).
- (XI) A rural emergency hospital (as defined in section 1395x(kkk)(2) of this title).

Again, this seems to extend the ability to provide telehealth services by a variety of providers, including facility-based providers, when the services are billed under the fee schedule. And we all agree that occupational therapists, physical therapists, and speech-language pathologists are authorized telehealth providers through 2024 as a result of the CAA provisions.

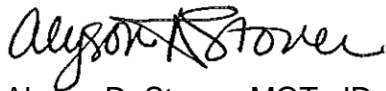
For these institutional providers and the Medicare beneficiaries they serve, removal of telehealth flexibilities in the next 2 weeks may be inappropriate and, without effective communication, will create significant access to care and quality of care concerns. Further, heightened administrative burden will ensue, including the need to make operational adjustments and immediately provide education to clinicians on the changes in advance of the end of the PHE. Ultimately, this policy creates significant risk for reduced beneficiary access to medically necessary therapy services, especially in rural and underserved areas where telehealth has been most effectively utilized during the pandemic with very little notice. Our organizations are not only hearing from our therapy members but their patients who are frustrated and concerned they might not be able to continue telehealth services.

Respectfully, it is the recommendation of AOTA, APTA and ASHA, that CMS utilize the statutory authority in Sec. 4113 and 4140 of the CAA that currently supports the provision of all outpatient therapy services via telehealth through 2024 **regardless of setting**. We would


appreciate confirmation that telehealth therapy services can continue to be delivered as they are today, through December 31, 2024, and ask that the therapy codes on the Category 3 list be extended in the CY 2024 MPFS proposed rule accordingly.

Thank you in advance for your consideration of this request and please let us know if you need additional information to help facilitate it. We would welcome an opportunity to discuss this issue further. If you have any questions, please contact Sarah Warren, MA, ASHA's director for health care policy for Medicare, at swarren@asha.org, Kate W. Gilliard, JD, APTA's director of health policy and payment, at kategilliard@apta.org, or Sharmila Sandhu, JD, AOTA's Vice President of Regulatory Affairs, at ssandhu@aota.org.

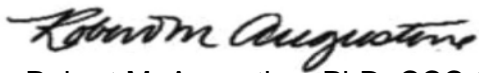
Sincerely,



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