



November 2, 2022

The Honorable Edward Markey  
U.S. Senate  
Washington, DC 20510

The Honorable Elizabeth Warren  
U.S. Senate  
Washington, DC 20510

*As delivered via electronic mail*

Dear Senators Markey and Warren:

On behalf of the Massachusetts Telemedicine Coalition (tMED), representing more than 50 healthcare provider organizations, consumer advocates, technology organizations and telecommunication associations, we would like to take this opportunity to express our gratitude for the flexibilities and enhancements that have been granted during the COVID-19 Public Health Emergency (PHE) and have accelerated the utilization of telehealth in the Medicare program across the United States. These policy changes have ensured that our patients maintain access to critical healthcare services while taking necessary precautions to limit exposure to COVID-19, reduce the stress and burden of traveling to appointments (including the cost of tolls and parking), allow continued social distancing, and preserve personal protective equipment for our healthcare workforce. Telehealth has become an indispensable tool to increase equitable access to high quality care and ensure continuity of care for all residents of the commonwealth, furthering the principles of health equity and health justice. In September, CMS released data that showed that 30% of Massachusetts Medicare Part B enrollees used telehealth at least once in the first quarter of 2022.<sup>1</sup> And the state's Health Policy Commission just released preliminary data reviewing telehealth utilization during 2020 and found that telehealth use does not increase total utilization or spending.<sup>2</sup>

As Congress is considering a permanent framework for Medicare coverage and reimbursement in a post-pandemic world, telehealth continues to be a critical tool to increase

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<sup>1</sup> Medicare Telehealth Trends, Quarter 1 2022 data, Centers for Medicare & Medicaid Services, <https://data.cms.gov/summary-statistics-on-use-and-payments/medicare-service-type-reports/medicare-telehealth-trends>

<sup>2</sup> Massachusetts Health Policy Commission, Market Oversight and Transparency Committee, *Research Presentation: Utilization of Telehealth in the Commonwealth*, October 12, 2022, <https://www.mass.gov/doc/presentation-10122022-moat-meeting/download>

access to care. It also has the potential to be a great equalizer by helping patients overcome traditional barriers to care that persist for the nation's historically marginalized communities. Policymakers should design telehealth policies that will be in effect beyond the PHE with the aim of addressing health equity, including bridging the digital divide and reducing health disparities. As such, all telehealth policies should be evaluated based on their ability to ensure access for underserved populations and bridge the digital divide. In that vein, **we would like to urge your support for H.R. 4040, The Advancing Telehealth Beyond COVID-19 Act of 2022, which has been passed by the House of Representatives.**

H.R. 4040 modifies the extension of certain Medicare telehealth flexibilities after the end of the COVID-19 public health emergency. Specifically, the bill provides that certain flexibilities continue to apply until December 31, 2024, if the public health emergency period ends before that date. The bill allows:

- Medicare beneficiaries to continue to receive telehealth services at any site, regardless of type or location – including the beneficiary's home;
- for occupational therapists, physical therapists, speech-language pathologists, and audiologists to continue to furnish telehealth services to Medicare patients;
- federally qualified health centers and rural health clinics to continue to serve as the distant site (i.e., the location of the health care practitioner providing services via telehealth) – directly addressing issues surrounding the aforementioned digital divide;
- evaluation and management and behavioral health services to continue to be provided via audio-only technology – a provision that will have profound impact for those communities that do not have access to broadband services, devices, and digital literacy; and
- hospice physicians and nurse practitioners to continue to complete certain requirements relating to patient recertifications via telehealth.

The bill also delays implementation of certain in-person evaluation requirements for mental health telehealth services until January 1, 2025, or the first day after the end of the emergency period, whichever is later. The tMED Coalition is in support of not only a delay in the implementation of these in-person evaluation requirements, but in prior letters, has also expressed its support for the repeal of these in-person evaluations which CMS does not require for any other telehealth service for medical specialties.

Finally, under the Controlled Substances Act (CSA) and its implementing regulations, providers may not prescribe controlled substances without first conducting an in-person examination of the patient, unless an exception applies. One such exception allows providers to satisfy the in-person examination requirement via synchronous, audio-visual telehealth interactions during a public health emergency, as determined by the Secretary of the Department of Health and Human Services (HHS). In response to the PHE, the Drug Enforcement Administration (DEA) adopted policies to allow DEA-registered practitioners to prescribe controlled substances without having to interact in-person with their patients. In March 2020, the DEA also issued guidance waiving the requirement for separate registration requirements in each state where a provider prescribes. Pursuant to this guidance, for the duration of the PHE, providers with a DEA registration in one state have been able to prescribe controlled substances

in other states where they are licensed or otherwise authorized to practice with prescriptive authority, without having to obtain multiple DEA registrations. Together, these DEA flexibilities have allowed telehealth providers to significantly expand the scope and geographic reach of their practices. For underserved patients, and especially in the area of mental health, this expansion has provided patients access to much needed care. However, without further action by Congress or the DEA, both of these flexibilities will expire upon the conclusion of the PHE. Therefore, we would encourage you to consider making these flexibilities permanent as you review potential flexibilities to extend beyond the end of the PHE.

Thank you for your time and your consideration of this matter. Should you have any questions or concerns, please do not hesitate to reach out to Adam Delmolino, Director of Virtual Care & Clinical Affairs at the Massachusetts Health & Hospital Association at [adelmolino@mhalink.org](mailto:adelmolino@mhalink.org) or Leda Anderson, Director, Advocacy & Government Relations at the Massachusetts Medical Society at [landerson@mms.org](mailto:landerson@mms.org).

Sincerely,

tMED – The Massachusetts Telemedicine Coalition

- Massachusetts Health & Hospital Association
- Massachusetts Medical Society
- Massachusetts League of Community Health Centers
- Conference of Boston Teaching Hospitals
- Massachusetts Council of Community Hospitals
- Hospice & Palliative Care Federation of Massachusetts
- American College of Physicians – Massachusetts Chapter
- Highland Healthcare Associates IPA
- Health Care For All
- Organization of Nurse Leaders
- HealthPoint Plus Foundation
- Massachusetts Association of Behavioral Health Systems
- Massachusetts Academy of Family Physicians
- Seven Hills Foundation & Affiliates
- Case Management Society of New England
- Massachusetts Association for Occupational Therapy
- Atrius Health
- New England Cable & Telecommunications Association
- Association for Behavioral Healthcare
- National Association of Social Workers – Massachusetts Chapter
- Massachusetts Psychiatric Society
- Massachusetts Early Intervention Consortium
- Digital Diagnostics
- American College of Cardiology – Massachusetts Chapter

- Zipnosis
- Perspectives Health Services
- Bayada Pediatrics
- Planned Parenthood League of Massachusetts
- Mass. Family Planning Association
- BL Healthcare
- Phillips
- Maven Project
- Upstream USA
- Cambridge Health Alliance
- Heywood Healthcare
- Franciscan Children’s Hospital
- American Physical Therapy Association – Massachusetts
- Community Care Cooperative
- Fertility Within Reach
- Virtudent
- Resolve New England
- Massachusetts Association of Mental Health
- AMD Global Telemedicine
- hims | hers
- Asian Women for Health
- Massachusetts Society of Clinical Oncologists
- Reproductive Equity Now
- Recovery Centers of America
- Massachusetts Chapter, American Academy of Pediatrics
- Massachusetts Speech and Hearing Association
- Southcoast Health
- Massachusetts Orthopedic Association