



August 12, 2021

Ms. Jane Beyer
Senior Health Policy Advisor
Office of the Insurance Commissioner
Via email

Dear Jane:

Thank you for the opportunity to comment on the R2021-06 Stakeholder Draft. My comments are submitted on behalf of ZoomCare, which generally supports the Stakeholder draft with three suggested clarifications.

In (3)(b), dealing with communication disruptions:

We would suggest language to more directly address the issues intended. We would recommend adding at the end of (3)(b):

“A carrier may not deny, reduce, terminate, or fail to make payment for the delivery of health care services using audio and visual technology solely because the patient-provider communication during the encounter shifted to audio-only due to unanticipated circumstances. In such an instance, a carrier may not require a provider to obtain consent from the patient to continue the communication.”

We also would suggest adding a new (3)(c) and renumber/letter remaining subparagraphs:

“(3)(c) Nothing in this rule shall be construed to require a carrier to pay for both an audio-visual and an audio-only service when both means of communication are used in the course of the same encounter due to unforeseen circumstances.”

Our second recommended clarification is in (13)(b), dealing with referrals as they relate to the definition of an “established patient.” The intention of the referral language in the definition was to enable a patient to have an audio-only telehealth visit with the second provider without having to first have an in-person visit or have the referring provider present. The first sentence of (13)(b) does that.

The second sentence, which allows for a second provider to participate in a joint telehealth visit and be compensated (which Zoom Care supports, to expedite care for the convenience of patients), unfortunately could make the first sentence less clear. We therefore would recommend inserting in the first sentence, following the words “another provider who” the words “who is not participating in the discussion and.”

With this edit, (13)(b) would read as follows:

(b) The covered person was referred to the provider providing audio-only telemedicine by another provider who is not participating in the conversation and *[emphasis to highlight the added phrase]* who has had at least one in-person appointment with the covered person within the past year and has

provided relevant medical information to the provider providing audio-only telemedicine. A referral includes circumstances in which the provider who has had at least one in-person appointment with the covered person participates in the discussion with the provider with whom the covered person has been referred.”

Finally, we would strongly recommend clarifying how “consent” may be documented, to give flexibility to providers in how it is done, and to ensure there is a record, including by leveraging passive technology tools. In general, providers should be able to maximize their time delivering care rather than engaging in administrative tasks. This could be achieved by adding a sentence to the definition of consent in (31) as follows:

“Consent to billing for an audio-only telemedicine visit may be obtained and documented as part of the process of making an appointment for an audio-only telehealth visit, recorded verbally as part of the encounter record, or otherwise documented in the patient record.”

Thank you for your consideration of these comments. As always, please contact me if you have any questions or concerns.

Best regards,

A handwritten signature in blue ink that reads "Tom Holt". The signature is fluid and cursive, with a long horizontal stroke extending to the left of the name.

Tom Holt

for ZoomCare