Virtual Leadership Day, May 25-26, 2021

Expand Access to Telehealth Services and Promote Patient Safety/Privacy

Congress should pass legislation designed to increase the flexibility and use of telehealth services as needed during and beyond the public health emergency, as these services have become and will continue to be vital to patient care. Integral to that effort is the need for Congress to protect patient safety by ensuring that harmful barriers in law are removed that would otherwise help connect patients with their medical records and promote privacy by passing broader federal privacy protections for health information collected and used throughout the expanding digital health ecosystem, as described below in the "What is ACP Asking of Congress" section.

What's it all about?

Telemedicine is defined as the use of technology to deliver care at a distance while *telehealth* encompasses a broader set of services that includes not just delivery of health care services at a distance but patient and health professional education, public health, and public administration. The use of telehealth is rapidly growing and can expand access for patients, enhance patient–physician collaboration, improve health outcomes, and reduce medical costs. Telehealth can be most efficient and beneficial between a patient and physician with an established, ongoing relationship and can serve as a reasonable alternative for patients who lack regular access to relevant medical expertise in their geographic area, as outlined in ACP's position paper, *Policy Recommendations to Guide the Use of Telemedicine in Primary Care Settings*. However, barriers to the delivery of care through telehealth (and the need to address those long-term), such as geographic site restrictions, payment inequities, interstate licensing issues, and even access to basic broadband technology have come front and center in light of the COVID-19 pandemic.

Primary care physicians have had to convert in-person visits to virtual ones in response to the COVID-19 Public Health Emergency (PHE), and practices are experiencing huge reductions in revenue while still having to pay rent, meet payroll, and meet other expenses without patients coming into their practices. Routine health care in urban and rural areas alike has moved into the virtual realm of telehealth, in varying degrees, largely out of necessity, because of the need to social distance during the pandemic. In an October 2020 report from the Centers for Disease Control and Prevention (CDC), during the first quarter of that year, the number of telehealth visits increased by 50 percent, compared with the same period in 2019, with a 154 percent increase in visits noted in surveillance week 13 in 2020, compared with the same period in 2019.

During this pandemic, internal medicine specialists continue to deliver care to their patients with the expanded utilization of telehealth made possible by new policies enacted by Congress and implemented by the U.S. Department of Health and Human Services (HHS), as well as private payers (see details below). However, many of the telehealth flexibilities and policy changes made by Congress and HHS are due to expire at the conclusion of the PHE, wherein patients and physician practices would be expected to revert to primarily face-to-face services without any type of risk-based assessment for gradually reopening medical practices and health systems to care for non-COVID and non-acute patients. This quick reversal in policy does not take into account patients' comfort level in returning to physician offices to seek necessary care, as well as changes in office workflow and scheduling practices to mitigate spread of the virus within practices resulting in substantially lower volume of in-person visits for as long as the pandemic is with us. The College believes that the patient care and revenue opportunities afforded by telehealth functionality will continue to play a significant role within the U.S. healthcare system and care delivery models, even after the PHE is lifted.

It is important to note that with the expansion of virtual care and telehealth capabilities also comes a responsibility for the federal government and all stakeholders to protect patient safety and privacy, not only in how personal medical information is collected, accessed, stored, and transmitted but in how it can and should be accurately and appropriately tagged to a patient. Technology has changed significantly since the Health Insurance Portability and Accountability Act

(HIPAA) was signed into law in 1996, a law that regulates the confidentiality and security of protected health information (PHI) when it is transferred, received, handled, or shared. However, HIPAA addressed privacy of health information being exchanged directly between medical organizations such as physician offices, hospitals and insurance companies. Today, this health information is shared with numerous parties both within and outside of traditional health care. As digital health technologies become ubiquitous and efforts to improve access to and interoperability of personal health information continue, the privacy, security, disclosure, and use of that information should remain at the forefront of national debate.

What's the current status with Congress and the Administration and what improvements are needed?

Executive Branch: ACP supports and appreciates the efforts of the Biden and Trump administrations to provide greater flexibilities temporarily with regard to telehealth services ***during the COVID PHE***, including:

- Medicare coverage of some audio-only services and physician reimbursement for both telehealth services and audio-only services as if they were provided in person. These changes in payment policy address some of the biggest issues facing physicians as they struggle to make up for lost revenue and provide appropriate care to patients. ACP believes this policy should be continued after the PHE ends, allowing for further evaluation.
- Payment for services furnished to Medicare beneficiaries in any health care facility and in their home — allowing services to be provided in patients' homes and outside rural areas (e.g. waiving geographical and originating-site restrictions). ACP believes this policy should be made permanent.
- Flexibility allowing clinicians to reduce or waive cost-sharing for telehealth and audio-only telephone visits. ACP believes this flexibility should be continued after the PHE ends, allowing for further evaluation.
- A waiver allowing physicians to provide telehealth services across state lines, as long as physicians meet specific licensure requirements and conditions. ACP believes this policy should be continued after the PHE ends.

In April, the Biden Administration delivered its American Rescue Plan Act to Congress, which included an historic $100 billion investment to help bring affordable, high-speed broadband to all communities, a vital component in the effort to expand telehealth. ACP supports the ongoing commitment of federal funds to enhance the broadband infrastructure needed to support telehealth activities. Equitable access to broadband internet is critical to the promotion of health equity and quality of care outcomes through telehealth.

Legislative Branch: Interests in the growing need for expanded telehealth services coupled with patient safety and privacy issues have increased in Congress over the past several years but especially during the pandemic. Examples:

Hearings: The new 117th Congress, which began in January, has initiated a series of hearings in both the House Energy and Commerce (E&C) and Ways and Means (W&M) Committees and the Senate Health, Education, Labor and Pensions Committee (HELP) on examining the role of telehealth both during and after the pandemic. See ACP's March statement to the E&C Committee here. See joint letter to the HELP Committee here.

Legislation: Two bills have been introduced in the 117th Congress that ACP has endorsed, both of which address the growing need to expand telehealth services beyond the PHE.

- *The CONNECT for Health Act* (H.R. 2903/S. 1512) would permanently remove arbitrary geographic restrictions on where a patient must be located in order to utilize telehealth services; enable patients to continue to receive telehealth services in their homes; ensure federally qualified health centers and rural health centers can furnish telehealth services; and establish permanent waiver authority for the Secretary of Health & Human Services during future emergency periods.
- *The Temporary Reciprocity to Ensure Access to Treatment Act or the "TREAT Act"* (S. 168/H.R. 708) would provide temporary licensing reciprocity for telehealth and interstate health care treatment.

Patient Safety: For over two decades, a policy has been included in the annual Labor, Health and Human Services, and Education and Related Agencies (Labor-HHS) Appropriations bill that prohibits HHS from spending any federal dollars to promulgate or adopt a national unique health identifier standard. This policy has inhibited the ability of clinicians to correctly connect a patient with their medical record, and lives have been lost and medical errors have needlessly occurred.

These are situations that could have been avoided had patients been able to be accurately identified and matched with their records, which is critically important in the delivery of all care (including telehealth) especially during a pandemic. See joint letter to House appropriators.

Privacy: Both Congress and the Biden administration are facing mounting pressure to update privacy-related laws and regulations with respect to personal health information, as virtual care through telehealth becomes more mainstream. Technologic advancements, including expanded use of telehealth and virtual care modalities, and the evolving digital health landscape, have offered innovative solutions to several of our health care system's issues as well as increased the number of digital interactions and type of personal health information that is generated and collected, both within and outside of traditional health care. ACP's position paper published in April 2021 calls for improvements to the privacy framework in which physicians have practiced for decades and to expand similar federal privacy guardrails to entities not currently governed by privacy laws and regulations, as outlined by ACP in six key principles.

What is ACP asking of Congress?

- ✓ **Representatives and senators should cosponsor and pass *the CONNECT for Health Act* (H.R. 2903/S. 1512),** which would remove arbitrary barriers to telehealth services such as geographic and site of service restrictions.
- ✓ **Senators and Representatives should cosponsor and pass *the Temporary Reciprocity to Ensure Access to Treatment Act or the "TREAT Act"* (S. 168/H.R. 708),** which would ensure that telehealth services can be provided across states lines after the public health emergency ends.
- ✓ **Representatives and senators should urge appropriators to include adequate funding in FY2022 to support expansion of broadband capabilities nationwide**, especially to rural and underserved communities, and to remove the ban on adoption of a national unique health identifier standard.
- ✓ **Representatives and senators should develop comprehensive privacy legislation governing personal health information that builds on the HIPAA statute and that is consistent with the six principles outlined in ACP's 2021 position paper.**

Where can I go to learn more?

advocacy@acponline.org; Digital version of this issue brief can be found at: Policy Priority Issues | ACP Services