



September 6, 2011

Dr. Donald Berwick, Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Room 445-G, Hubert H. Humphrey Building
200 Independence Avenue S.W.
Washington, DC 20201

RE: RIN 0938-AQ36: Medicaid Program; Face-to-Face Requirements for Home Health Services; Policy Changes and Clarifications Related to Home Health

Dear Dr. Berwick,

Continua Health Alliance (“Continua”) is pleased to offer comments to the Centers for Medicare & Medicaid Services (“CMS”) on the recently published Notice of Proposed Rulemaking for the Medicaid Program; Face-to-Face Requirements for Home Health Services; Policy Changes and Clarifications Related to Home Health.¹ Continua is a non-profit, open industry coalition of healthcare, technology, and medical device companies joining together in collaboration to improve the quality of healthcare through the use of technologies such as telehealth, remote patient monitoring (“RPM”), electronic care (“eCare”), mobile health (“mHealth”), and other health information technologies.² Continua’s comments focus on CMS’s proposals for implementing the statutory requirement that a certification for home health services under Medicaid follows a face-to-face encounter, which may occur using telehealth.

¹ Medicaid Program; Face-to-Face Requirements for Home Health Services; Policy Changes and Clarifications Related to Home Health, 76 Fed. Reg. 41,032 (July 12, 2011).

² “Telehealth” is defined in statute, and currently it includes professional consultations, office visits, and additional services. 42 U.S.C. § 1395m(m)(4)(F). Though not defined in statutes or regulations, “RPM” is recognized widely to mean wireless devices and sensors that monitor patients’ conditions from home or someplace other than health care providers’ offices and report the data to health care providers and/or EHR systems, permitting patients to be full partners in their care. “eCare” and “mHealth” appear as explained terms in the March 2010 Federal Communications Commission document, “National Broadband Plan: Connecting America,” *available at* <http://www.broadband.gov/download-plan/>. “eCare” is the electronic exchange of information—data, images and video—to aid in the practice of medicine and advanced analytics, encompassing technologies that enable video consultation, remote monitoring and image transmission (“store-and-forward”) over fixed or mobile networks. “mHealth” is the use of mobile networks and devices in supporting e-Care, leveraging health-focused applications on general-purpose tools such as smart-phones and Short Message Service (SMS) messaging to drive active health participation by consumers and clinicians.

Statutory Background

Section 6407(a) of the Patient Protection and Affordable Care Act (“Affordable Care Act”),³ as amended by Sec. 10605 of the Affordable Care Act, requires that a physician or non-physician practitioner document a face-to-face encounter with an individual prior to certifying that home health services are required under the Medicare home health benefit. That section states that such a face-to-face encounter may occur by means of telehealth. Section 6407(d) of the Affordable Care Act specifies that the same requirements for face-to-face encounters “apply in the case of physicians making certifications for home health services under [Medicaid] in the same manner and to the same extent as such requirements apply in the case of physicians making such certifications under [Medicare].”

CMS proposes to add a new regulation at 42 C.F.R. § 440.70(f)(5) to specify that “the face-to-face encounter may occur through telehealth, as implemented by the State.”⁴

General Comments

Continua is encouraged that CMS says States should “implement [the telehealth] provision in a way that does not result in barriers to service delivery” and that States should “work with the home health provider community to incorporate these face-to-face visits in creative and flexible ways to account for individual circumstances.”⁵ We also are pleased that CMS is ready to offer technical assistance to State Medicaid agencies to use telehealth as an alternative so that the requirement may be implemented in a way that protects continuity of services.

As CMS recognizes, State Medicaid agencies’ telehealth policies sometimes do not align with Medicare telehealth requirements, which may lead to “duplication and fragmentation of services,” especially for individuals who are dually-eligible for Medicare and Medicaid.⁶ Continua has several specific recommendations for CMS regarding approaches to telehealth policy that would minimize this problem for dual-eligibles and for those needing home health services who may move in and out of one or multiple State Medicaid programs.

First, CMS should monitor and make known which State Medicaid agencies permit face-to-face encounters via telehealth for certification of home health services under Medicaid. The proposed regulation states that face-to-face encounters *may* occur through telehealth, but it does not mandate that States must permit the use of telehealth in any particular circumstances. Historically, the Federal government has not mandated reimbursement for telehealth services under Medicaid, and some States still do not permit any reimbursement for services conducted via telehealth. We understand the reluctance to require that certain Medicaid services be made available via telehealth (as well as in person). We do recommend, however, that CMS develop and implement a mechanism to track which States permit the face-to-face encounter to occur

³ Pub. L. 111-148 (March 23, 2010).

⁴ 76 Fed. Reg. 41,039.

⁵ 76 Fed. Reg. 41,036.

⁶ *Id.*

through telehealth. Especially as the use of telehealth becomes more widespread, CMS should know whether and to what extent Medicaid recipients have access to services via telehealth. This is particularly important as some states seek state plan amendments related to both Medicaid beneficiaries and dual eligible and seek to be innovative in how care is provided in a cost-effective manner.

Second, for those State Medicaid programs that do not permit the face-to-face encounter prior to certification for home health services to occur via telehealth, CMS should endeavor to learn what barriers exist to prevent the use of telehealth and assist States to overcome those barriers. While it is helpful that CMS proposes to permit face-to-face encounters to occur via telehealth, and some States will take advantage of this permission, it may not be sufficient to overcome whatever hurdles States have – or perceive that they have. CMS says it is available to provide technical assistance to States, and it should be proactive in determining what States need in order to realize the goal of expanding the use of telehealth services. CMS can offer models, guidance, and case studies from other State Medicaid agencies to those agencies struggling to integrate telehealth into their health care delivery systems. Continua hopes that CMS’s support for the agencies’ use of telehealth services for the face-to-face pre-certification encounter will encourage States to expand the use of telehealth to even more contexts.

While CMS can and should support State Medicaid agencies and provide them with the tools they need to integrate telehealth into service delivery, CMS also should encourage the State Medicaid agencies to take advantage of the relative flexibility they enjoy regarding implementing and paying for telehealth services under Medicaid. Through the years, States oftentimes have been the laboratories of flexible and innovative payment models. Telehealth is an apt tool for Medicaid agencies to use to “help individuals attain or retain capability for independence or self-care.”⁷ Additionally, when possible, CMS should adopt the innovative and cost-saving telehealth systems, as developed and implemented by the States, into Medicare regulations and policy for telehealth services.

Finally, CMS should hold State Medicaid agencies accountable for dual-eligibles’ access to telehealth services in general and the face-to-face pre-certification encounter in particular. One complication that State Medicaid agencies are likely to face is aligning current State telehealth policies with Medicare’s policies, when considering services furnished to dually-eligible individuals. If benefits are misaligned, dual-eligibles in particular likely will lose some access to services that otherwise ought to be available to them via telehealth. CMS recently proposed a State-level review strategy for compliance with Medicaid’s access requirements.⁸ As part of this strategy, CMS should consider measuring dual-eligibles’ ability to use telehealth services under each State’s Medicaid program. CMS also should strive to understand how many States pay for telehealth services furnished to dual-eligibles that the Medicare program does not cover and to what extent they cover such services.

⁷ 42 U.S.C. § 1396-1.

⁸ See Medicaid Program; Methods for Assuring Access to Covered Medicaid Services, 76 Fed. Reg. 26,342 (May 6, 2011).

Continua appreciates the opportunity to comment on the Proposed Rule and hopes that CMS will incorporate Continua's suggestions in the Final Rule. Thank you for your consideration of our recommendations.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles Parker". The signature is fluid and cursive, with a long horizontal stroke at the end.

Charles Parker

Executive Director

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