



RESOLUTION: 36(20)
SUBMITTED BY: Emergency Telehealth Section
Louisiana Chapter
SUBJECT: Telehealth Free Choice

PURPOSE: Support legislation that would: 1) make the CMS telehealth waivers that are allowed during the COVID-19 public health emergency permanent; 2) require insurers to allow enrollees to pick any physician and allow physicians to provide telehealth services for acute unscheduled care to any or all their insured patients; 3) require insurers to pay physicians and non-physician health providers for telehealth services at the same rate that the equivalent services are paid at when delivered in-person; 4) support penalties for insurers for any intentional actions that prevent access to necessary acute unscheduled care.

FISCAL IMPACT: Budgeted staff resources.

- 1 WHEREAS, Telehealth can provide effective and well needed care to patients from a remote location; and
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- 3 WHEREAS, Telehealth increase access to patients who may otherwise be unable to receive medical attention;
- 4 and
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- 6 WHEREAS, Telehealth is often an equivalent, sometimes superior, alternative to in-person care; and
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- 8 WHEREAS, Telehealth has been used at numerous emergency departments for years and is received by
- 9 patients and practitioners; and
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- 11 WHEREAS, Allowing patients to choose a physician or non-physician provider to provide healthcare services
- 12 to them is fair and would be well received; and
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- 14 WHEREAS, CMS allows and does not limit the number of licensed physicians to provide services to CMS
- 15 patients; and
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- 17 WHEREAS, CMS has realized the potential benefits offered to patients using telehealth; and
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- 19 WHEREAS, During the SARS-CoV-2/COVID-19 pandemic, CMS waived many restrictions on telehealth,
- 20 including cost-sharing requirements, requiring the patient to be located at certain locations, and not reimbursing at
- 21 parity, or reimbursing at all, for telehealth services; and
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- 23 WHEREAS, Some third-party payers restrict access by providing telehealth services but only to employed
- 24 non-physician providers or other employed health care workers; therefore be it
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- 26 RESOLVED, That ACEP support legislation to make the CMS waivers that were allowed during the COVID-
- 27 19-declared emergency related to telehealth permanent, i.e., allow patient to be at any location, allow provider to be at
- 28 any location, same or different than the patient, allow waiving of cost sharing, allow coding using any code that
- 29 reflects the service provided; and be it further
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- 31 RESOLVED, That ACEP support legislation mandating all payers to allow patients to select the physician of
- 32 their choice, whether employed, within the health insurer's network, or outside of insurer's network, without
- 33 restriction, to provide telehealth services for acute unscheduled care to any or all their insured patients; and be it
- 34 further

35 RESOLVED, That ACEP support legislation requiring all payers to pay parity to physician and non-physician
36 health providers for telehealth services as would be paid for in-person services for appropriate or equivalent care; and
37 be it further

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39 RESOLVED, That ACEP support penalties to insurers for intentional actions, rules or policy that limit,
40 restrict, delay, deny or prevent access to necessary acute unscheduled care or services from the physician or non-
41 physician provider of the patient’s choice in an appropriate time period as determined by physicians in that region, or
42 national determined standard or in the payment to the practitioner for the care or services provided.

Background

This resolution calls on ACEP to support legislation that would: 1) make the CMS telehealth waivers that are allowed during the COVID-19 public health emergency permanent; 2) require insurers to allow their enrollees to pick any physician they choose and allow physicians to provide telehealth services for acute unscheduled care to any or all their insured patients; 3) require insurers to pay physicians and non-physician health providers for telehealth services at the same rate that the equivalent services are paid at when delivered in-person; and 4) support penalties for insurers for any intentional actions that prevent access to necessary acute unscheduled care.

In accordance with ACEP’s policy statement “[Emergency Medicine Telehealth](#),” which was revised and approved in February 2020, ACEP has supported the delivery of emergency telehealth services by board-certified emergency physicians. Before the COVID-19 public health emergency (PHE) began, ACEP sent a letter to the Centers for Medicare & Medicaid Services (CMS) formally requesting that CMS add the five emergency department (ED) evaluation and management (E/M) codes to the list of approved Medicare services. During the PHE, CMS took numerous steps to expand the use of telehealth under Medicare. Specifically, CMS temporarily added many codes, including all five ED E/M codes, to the list of approved telehealth services. That means that these codes are reimbursable under Medicare when delivered remotely via telehealth at the same rate as they are when the services are delivered in-person. Further, CMS used its unique “1135” waiver authority that only exists during a national emergency to temporarily waive two existing telehealth restrictions in Medicare: the originating site requirement (which mandates that Medicare beneficiaries receive a telehealth service from a certain type of health care facility and not from any location like their home) and the geographic requirement (which restricts telehealth in Medicare to only rural areas). Waiving these requirements during the PHE allows clinicians to perform telehealth services regardless of where they or their patient are located, in both urban and rural areas.

Over the spring and summer, administration officials, including the CMS Administrator, Seema Verma, have been vocal in their support of making some of the telehealth flexibilities available during the PHE permanent. **However, CMS does not have the legal authority to permanently waive the originating site and geographic restrictions.** Eliminating these telehealth restrictions requires legislation from Congress. ACEP sent a [letter](#) calling on Congress to take action immediately. Specifically, ACEP called on Congress to enact [S.2741, the Creating Opportunities Now for Necessary and Effective Care Technologies \(CONNECT\) for Health Act](#). This vital legislation sets the stage for permanent reforms to telehealth that would advance care delivery, improve preparedness and capacity, and improve patient outcomes. In the letter to Congress and in a [separate opinion article](#), ACEP also called on state Medicaid programs and health plans to embrace telehealth with the same enthusiasm as Medicare and align their telehealth policies with Medicare’s to ensure consistent regulation, licensure, billing, and coding for emergency telehealth services. Different billing rules and state regulations make reimbursement inconsistent and adds administrative challenges that hinder the sustainability of these new and vital telehealth programs.

ACEP’s policy statement “[Emergency Medicine Telehealth](#)” addresses two other key themes of this resolution – free choice of physicians and payment parity for telehealth services. With respect to patient choice of physicians providing telehealth services, ACEP “supports patient choices in the selection of a telemedicine provider, but with the understanding that by the nature of emergencies and hospital credentialing practices, a choice may not be available, as is also true of in-person staffing in emergency departments.” Further, with respect to reimbursement for telehealth services, ACEP believes that “telehealth services, like other health care services, should be reimbursed at a fair market value for the services rendered.” ACEP also “supports current efforts by the American Medical Association and other

stakeholders in advocating for appropriate billing and fair payment for services rendered by emergency physicians providing telehealth services.” The language in the statement builds off of Amended Resolution 28(14) Fair Payment for Telemedicine Services that directed ACEP to work with appropriate parties at the federal and state levels to advocate or legislation and regulation that will provide fair payment by all payers for appropriate services provided by telemedicine.

Finally, related to the last resolve, ACEP has historically pushed back against attempts from insurers to restrict access to care by narrowing their networks or limiting their benefit packages and has also supported penalties on insurers that have violated certain regulatory requirements. For example, ACEP [believes](#) that all insurance plans should cover all ten essential health benefits (EHBs), one of which is emergency services. Without such guaranteed coverage, consumers can be left with a narrow set of benefits that do not ensure access to the items and services they need to manage their health conditions. Further, in 2018, ACEP [endorsed](#) a CMS policy to impose civil monetary penalties and take other enforcement actions on Medicare Advantage Organizations (MAOs) that do not comply with provider directory requirements. Maintaining adequate networks is essential to ensuring that patients have access to the care they need. Finally, ACEP wrote a [letter](#) to CMS calling on the agency to add emergency physicians and other safety net providers in the list of specialty types that are subject to CMS network adequacy standards for Medicare Advantage plans. Currently, emergency medicine is not one of the specialty types that is subject to CMS’ standards. In that same letter, ACEP urged CMS to reward MA plans that choose to contract with telehealth providers who specialize in emergency medicine.

ACEP Strategic Plan Reference

Goal 1 – Improve the Delivery System for Acute Care

Objective B – Develop and promote delivery models that provide effective and efficient emergency medical care in different environments across the acute care continuum.

Fiscal Impact

Budgeted staff resources.

Prior Council Action

Amended Resolution 52(19) Telehealth Emergency Physician Inclusion adopted. Directed ACEP to develop a policy statement specifically indicating that its policies apply to all locations of emergency medicine practice whether provided remotely or in-person.

Amended Resolution 51(19) Stimulating Telemedicine Researchers and Programs adopted. Directed ACEP to advocate for telehealth research in emergency medicine.

Resolution 45(15) Telemedicine Appropriate Support and Controls adopted. Directed ACEP to investigate and evaluate the unintended consequences of telemedicine and develop policy that supports remote access to specialist care that also assures the establishment of an appropriate doctor-patient relationship.

Resolution 36(14) Development of a Telemedicine Policy for Emergency Medicine adopted. The resolution directed that a group of members with expertise in telemedicine be appointed to create a telemedicine policy specific to emergency medical practice.

Amended Resolution 28(14) Fair Payment for Telemedicine Services adopted. The amended resolution directed ACEP to work with appropriate parties at federal and state levels, to advocate for legislation or regulation that will provide fair payment by all payers, for appropriate services provided via telemedicine.

Prior Board Action

May 2020, reviewed the information paper “[COVID-19: Rapid Application of Technology for Emergency Department Tele-Triage.](#)”

February 2020, approved the revised policy statement “[Emergency Medicine Telehealth;](#)” originally approved June 2016.

Amended Resolution 52 (19) Telehealth Emergency Physician Inclusion adopted.

Amended Resolution 51 (19) Stimulating Telemedicine Researchers and Programs adopted.

June 2016, approved the policy statement ““[Ethical Use of Telemedicine in Emergency Care.](#)”

Amended Resolution 45(15) Telemedicine Appropriate Support and Control adopted.

June 2015, approved the revised policy statement “[Definition of Emergency Medicine;](#)” revised April 2008 and April 2001; reaffirmed October 1998; revised April 1994 with current title; originally approved March 1986 as “Definition of Emergency Medicine and the Emergency Physician.”

Amended Resolution 28(14) Fair Payment for Telemedicine Services adopted.

Resolution 36(14) Development of Telemedicine Policy for Emergency Medicine adopted.

Background Information Prepared by: Jeffrey Davis
Director of Regulatory Affairs

Reviewed by: Gary Katz, MD, MBA, FACEP, Speaker
Kelly Gray-Eurom, MD, MMM, FACEP, Vice Speaker
Susan Sedory, MA, CAE, Council Secretary and Executive Director