PLEASE NOTE: THIS RESOLUTION WILL BE DEBATED AT THE 2020 COUNCIL MEETING. RESOLUTIONS ARE NOT OFFICIAL UNTIL ADOPTED BY THE COUNCIL AND THE BOARD OF DIRECTORS (AS APPLICABLE).

RESOLUTION: 37(20)

SUBMITTED BY: Government Services Chapter
Illinois College of Emergency Physicians
Minnesota Chapter
Missouri College of Emergency Physicians Ohio Chapter
Pennsylvania College of Emergency Physicians
Emergency Telehealth Section

SUBJECT: Telehealth Implementation, Reimbursement, and Coverage

PURPOSE: 1) advance the responsible implementation of telehealth practices that are consistent with established policies and guidelines; 2) advocate for state and federal legislation that supports Medicaid, Medicare, and private payer reimbursement and coverage parity telehealth visits; and 3) oppose restrictions to telehealth care unless those restrictions are consistent with established best practices, confidentiality, or patient safety protections.

FISCAL IMPACT: Budgeted staff resources.

1 WHEREAS, There is a shortage of primary care and specialty physicians relative to need in large portions of
2 the United States; and
3
4 WHEREAS, Limited access to primary, emergency, and specialty healthcare leads to delays in care with
5 significant associated negative impact on health outcomes; and
6
7 WHEREAS, Transportation limitations and geographical location of healthcare practitioners pose barriers to
8 seeing a healthcare provider for millions of Americans; and
9
10 WHEREAS, Coordinating occupational, social, and family obligations with scheduling in-person healthcare
11 visits places significant burden on many Americans, particularly on individuals with elevated baseline risks related to
12 diminished socioeconomic status and social determinants of health; and
13
14 WHEREAS, Patients in rural areas have greater difficulty accessing care, elevated mortality rates from
15 common diseases, and higher percentages of unintentional drug overdose deaths; and
16
17 WHEREAS, In 2018, 21% of individuals with substance use disorders who perceived a need for treatment did
18 not know where to go to get treatment; and
19
20 WHEREAS, Limitations in the availability of primary and specialty care including post-acute care leads to
21 costly utilization of acute care and hospital-based services; and
22
23 WHEREAS, The COVID-19 pandemic has prompted rapid expansion of telehealth services to ensure ongoing
24 delivery of care and maintenance of physician practices while limiting in-person healthcare visits for the protection of
25 patients and healthcare facility staff; and
26
27 WHEREAS, Published evidence of telehealth outcomes has been encouraging in relation to improved access
28 to care, patient satisfaction, and outcomes; but, ongoing investigation of benefits and potential risks to guide definitive
29 recommendations of best practice is needed; and
30

31 WHEREAS, The American Medical Association (AMA), American College of Emergency Physicians
32 (ACEP), and other specialty organizations have developed guidelines regarding the ethical and responsible
33 implementation of telehealth practice, confidentiality, and patient safety standards; and
34
35 WHEREAS, The Centers for Medicare and Medicaid Services (CMS) have expanded reimbursement for
36 telehealth services including live video telemedicine visits, store and forward technology, remote patient monitoring,
37 email/phone/fax communication, and eConsults; and
38
39 WHEREAS, Forty-two states and the District of Columbia have passed private payer reimbursement
40 regulation or legislation including mandated parity for telehealth and in person medical visits in 5 states, but there
41 remains significant variability in state legislation guiding the reimbursement of telehealth; and
42
43 WHEREAS, Proposed telehealth legislation in some states has sought to apply restrictions to the care
44 delivered via telemedicine for reasons other than patient safety; therefore, be it
45
46 RESOLVED, That ACEP advance the responsible implementation of telehealth practice consistent with
47 policies and guidelines previously developed by ACEP, the American Medical Association, and specialty-specific
48 best practices as well as ongoing assessment of patient outcomes, physician-patient relationship, and cost; and be it
49 further
50
51 RESOLVED, That ACEP, in collaboration with other medical organizations, advocate for state and federal
52 legislation that supports Medicaid, Medicare, and private payer reimbursement and coverage parity for live video
53 physician telehealth visits as well as fair reimbursement of ancillary telehealth services such as remote patient
54 monitoring, eConsults, and store and forward technology; and be it further
55
56 RESOLVED, That ACEP oppose restrictions to telehealth care unless those restrictions are consistent with
57 established best practices, confidentiality, or patient safety protections.

References

1. Shaheen E, et al. Review of Telehealth Literature Whitepaper. American College of Emergency Physicians. Emergency Telehealth Section. https://www.acep.org/globalassets/sites/acep/blocks/section-blocks/telemd/final-whitepaper---sans-definition-8-7-19.pdf. 2018.
2. AMA Telemedicine Policy. American Medical Association Advocacy Resource Center. 2017. Available at: https://www.ama-assn.org/media/22056/download. Accessed 6/10/2020.
3. Substance Abuse and Mental Health Services Administration. (2019). Key substance use and mental health indicators in the United States: Results from the 2018 National Survey on Drug Use and Health (HHS Publication No. PEP19-5068, NSDUH Series H-54). Rockville, MD: Center for Behavioral Health Statistics and Quality, Substance Abuse and Mental Health Services Administration. Retrieved from https://www.samhsa.gov/data/
4. Ethical Use of Telemedicine in Emergency Care. American College of Emergency Physicians Policy Statement. Approved June 2016.
5. State Telehealth Laws & Reimbursement Policies-A Comprehensive Scan of the 50 States & the District of Columbia. Public Health Institute Center for Connected Health Policy. Spring 2020. Available at: https://www.cchpca.org/sites/default/files/2020-05/CCHP_%2050_STATE_REPORT_SPRING_2020_FINAL.pdf Accessed on 6/10/2020.

Background

This resolution calls on ACEP to: 1) advance the responsible implementation of telehealth practices that are consistent with established policies and guidelines; 2) advocate for state and federal legislation that supports Medicaid, Medicare, and private payer reimbursement and coverage parity telehealth visits; and 3) oppose restrictions to telehealth care unless those restrictions are consistent with established best practices, confidentiality, or patient safety protections.

ACEP is actively engaged in advocacy efforts aimed at advancing the use of telehealth in emergency medicine.

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. From an advocacy perspective, ACEP has pushed for both regulatory and legislative changes to advance the use of telehealth in emergency medicine and implement more consistent payment policies. 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, all of which were endorsed by ACEP. Specifically, CMS temporarily added many codes, including all five ED E/M codes, to the list of approved telehealth services and allowed emergency physicians to perform medical screening exams – a component of the Emergency Medical Treatment and Labor Act (EMTALA) – a via telehealth.

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. ACEP has submitted a letter to Congress calling for the permanent removal of these two restrictions. ACEP supports S.2741, the Creating Opportunities Now for Necessary and Effective Care Technologies (CONNECT) for Health Act, which 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.

The "Emergency Medicine Telehealth" policy statement previously mentioned discusses ACEP's position on reimbursement for emergency telehealth services. ACEP believes that "telehealth services, like other health care services, should be reimbursed at a fair market value for the services rendered." In addition, ACEP "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 policy 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 resolved calling on ACEP to "oppose restrictions to telehealth care unless those restrictions are consistent with established best practices, confidentiality, or patient safety protections," it is important to highlight CMS' telehealth proposals in the Calendar Year (CY) 2021 Physician Fee Schedule and Quality Payment Program proposed rule. In the proposed rule, CMS examines which of the codes that are temporarily on the list of approved Medicare telehealth services during the COVID-19 PHE should remain on the list permanently. Codes on this list are reimbursable under Medicare when delivered remotely via telehealth at the same rate as they are when the services are delivered in-person. CMS proposes to keep ED E/M code levels 1-3 (CPT codes 99281-99283) on the approved telehealth list for the remainder of the year after the PHE expires (i.e., if the PHE ends in January 2021, the codes would remain on the list until December 31, 2021). However, CMS did not propose to include ED E/M levels 4 and 5 (CPT codes 99284 and 99285) on the list of approved Medicare services past the duration of the PHE. CMS believes that ED E/M code levels 4 and 5 cannot truly be conducted via two-way, audio/video telecommunications technology, because of the characteristics of patients who receive the services, the clinical complexity involved, the urgency for care, and the need for complex decision-making. Given CMS' stance on the appropriateness of delivering telehealth in certain circumstances, the Council should consider which restrictions, if any, it believes should be in place regarding the use of telehealth services.

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.

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