BlueCross BlueShield
Association

An Association of Independent
Blue Cross and Blue Shield Plans

June 22, 2020

Commissioner Marie L. Ganim, Ph. D
Chair of Health Innovations (B) Working Group
National Association of Insurance Commissioners
444 North Capitol Street, NW
Suite 700
Washington, D.C. 20001-1512

Submitted via email to Joseph Touschner (jtouschner@naic.org)

RE: Health Innovations Working Group Discussion on Telemedicine

Dear Commissioner Ganim:

The Blue Cross Blue Shield Association (BCBSA) understands the NAIC Innovations Working Group is interested in telehealth coverage issues related to the COVID-19 public health emergency. BCBSA appreciates the opportunity to share a set of guiding principles to inform the discussion and development of these policy proposals. We recognize the pandemic has changed the way healthcare is delivered and that many of the policies implemented during the pandemic may be under consideration for permanent adoption. As states consider how telehealth can be used in a post-pandemic world, BCBSA strongly encourages policymakers to promote appropriate access, administrative efficiency, maximum flexibility and consumer trust.

BCBSA is a national federation of 36 independent, community-based and locally operated Blue Cross and Blue Shield companies (Plans) that collectively provide healthcare coverage for one in three Americans. As a representative of Plans with deep experience in the transformative powers of technology in healthcare, BCBSA recognizes the promise of telehealth and how appropriate remote care presents the possibility to improve healthcare access[1], bend the cost curve[2] and promote positive health outcomes.[3] In March, Blue Cross and Blue Shield companies announced a new policy to cover telehealth services at no cost to members to encourage social distancing and promote public health for 90 days during the pandemic.[4]

As the nation has grappled with the pandemic, policymakers, providers and Plans have taken extraordinary steps to expand access to telehealth. Federal and state policies have greatly

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[1] https://www.healthaffairs.org/doi/full/10.1377/hlthaff.2018.05089

[2] https://www.ajemjournal.com/article/S0735-6757(18)30653-3/fulltext

[3] https://effectivehealthcare.ahrq.gov/sites/default/files/pdf/cer-216-telehealth-final-report.pdf

[4] https://www.bcbs.com/press-releases/media-statement-blue-cross-and-blue-shield-companies-announce-coverage-of-telehealth-services-for-members

relaxed existing restrictions on the use and reimbursement of telehealth in the United States. Historically, telehealth utilization has been greatly limited by statutes and regulations, including restrictions on technology, patient location, existing provider relationship or type, and allowable services. Telehealth serves a distinct purpose during the public health emergency by mitigating the spread of disease by infected individuals and limiting the risk of infection for others. Moving forward, policymakers will be faced with the dilemma of how to regulate telehealth. BCBSA strongly recommends that policymakers incorporate the following set of principles as a guiding framework while considering new laws and regulations around telehealth.

Access and Efficiency: Improved access to care for patients and increased efficiency for providers and plans should be an underlying goal of all telehealth policies.

- *Expansion of Coverage* - Plans should be empowered and encouraged—not mandated—to use technologies like telehealth to expand access to their members. Specific coverage and reimbursement needs may differ across communities and states, so policies should not specify nor limit services in a way that restricts patients' access to care.

- *Administrative Burden* - Access to care through telehealth has been possible because of lawmakers' waiving certain administrative barriers during the pandemic. Moving forward, the regulatory framework should not add additional administrative burdens and requirements to telehealth services that are not also expected for in-person care. Administrative burdens can stifle provider efficiency, and additional requirements that do not correlate to improved patient care should not be unnecessarily mandated for remote care. Policies should balance effectiveness with patient access and ensure additional burdens that ultimately limit care and efficiency are removed. For example, site restrictions, patient/provider relationship requirements, out-of-state licensure and modality limitations should not be legislated.

Flexibility: Telehealth and other healthcare policies should remove arbitrary restrictions, limitations and mandates in order to empower plans, providers and patients to make the ultimate decision around appropriate care.

- *Arbitrary Restrictions* - The regulatory framework should remove arbitrary restrictions that dictate how, when and where a provider can treat his or her patient. For example, geographic and originating site requirements are not evidence-based and should not be included in state laws or regulations. While telehealth is often seen as a promising tool for expanding access to care in underserved rural areas, there is no evidence that telehealth works better in rural areas than urban ones. In fact, the Centers for Medicare & Medicaid Services has stated that urban beneficiaries experience some of the same barriers to care as their rural counterparts and that telehealth can help overcome these barriers for both patient populations.[5] As such, neither federal nor state policies should restrict the provision of care based on arbitrary criteria such as a patient's geographic location.

- *Maximum Flexibility and Cost Efficiency* - Flexibility around coverage and payment policies allows for meaningful cost savings that could be achieved through the use of telehealth. While some health plans have provided payment at parity with in-person visits during the COVID-19 emergency to support healthcare providers who cannot

[5] https://www.cms.gov/About-CMS/Agency-Information/OMH/Downloads/Information-on-Medicare-Telehealth-Report.pdf

practice from their normal place of business, opportunities exist to leverage technology to drive cost efficiencies (i.e., less overhead for office space, staff, etc.) once the public health emergency is lifted. Competition to provide better quality and more efficient care through the use of telehealth should be encouraged to bend the cost curve.

The regulatory framework should also recognize the unique needs and perspectives of providers, plans and patients in different communities and states and not assume a one-size-fits-all approach. Instead, lawmakers should advance laws and regulations that promote flexibility and choice, not those that add restrictions and tie health insurers' hands. Health plans, not government, should be empowered to determine the needs and benefits of the communities they serve. Further, policies that include too-specific limitations on services, payment decisions, care modalities or technologies do not take into account the speed of innovation and could inadvertently stifle the evolution of care delivery. For example, mandating payment parity could create a market disincentive to offering telehealth and ultimately limit access for many consumers. This could be especially damaging for underserved populations and those seeking specialty care. For telehealth to succeed as a reliable, safe and appropriate tool for healthcare delivery after the public health emergency, policymakers must remove regulatory barriers that limit free market practices.

Consumer Trust: The regulatory framework for telehealth must assure patient privacy and avoid fraud and abuse.

- *Privacy and Security* - The patient-provider relationship and associated communication must remain private regardless of care modality. As telehealth becomes more commonplace, it will be essential to maintain consumer trust by ensuring innovative tools are secure and private. Privacy experts have raised concerns over the use of non-HIPAA-compliant telehealth communication tools, especially since these tools often use audio and visual data that transmit or exchange patients' protected health information without HIPAA protections.[6] To safeguard against potential privacy and security concerns, regulatory policy should seek to align HIPAA standards on all telehealth communication tools.

- *Control Fraud and Abuse* - Policymakers must strike a balance between care utilization, improved access and the risk of fraud and abuse. Removing restrictions and expanding reimbursement for telehealth services could invite bad actors who take advantage of a new opportunity to defraud payers at the cost of patients.[7] To safeguard patients, plans and providers, regulatory policies must recognize the opportunity for fraud and abuse and ensure innovation is incentivized, but program integrity is maintained. Health plans need the ability to conduct claims analyses of telehealth providers and implement utilization management programs in order to promote appropriate services and examine potential fraud and abuse.

As our nation enters this new normal, policy debates around the future of telehealth will continue. As such, the above policy framework should guide decision-makers to ensure new laws and regulations expand access to care, remove administrative burdens and arbitrary restrictions, empower the private market to make coverage decisions, and maintain consumer

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[6] https://www.natlawreview.com/article/ocr-s-relaxed-enforcement-hipaa-during-covid-19-paves-way-increase-telehealth

[7] https://khn.org/news/coronavirus-fuels-explosive-growth-in-telehealth-—-and-concern-about-fraud/

trust. We appreciate your consideration of our comments as NAIC looks to identify best practices and principles for the regulation of telehealth during and after the current public health emergency.

If you have questions or want additional information, please contact Lauren Choi, Managing Director of Health Data and Technology Policy at lauren.choi@bcbsa.com.

Sincerely,

Clay S. McClure
Executive Director, State Relations
Blue Cross Blue Shield Association

Cc:
Commissioner Andrew R. Stolfi, Vice Chair
Mr. Martin Swanson, Vice Chair
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