December 20, 2018

*Submitted electronically via: [http://regulations.gov/](http://regulations.gov/)*

Seema Verma
Administrator
Centers for Medicare & Medicaid Services
U.S. Department of Health and Human Services
Hubert H. Humphrey Building, Room 445-G
200 Independence Avenue, SW
Washington, D.C. 20201

**Re: Comment on Policy and Technical Changes to the Medicare Advantage, Medicare Prescription Drug Benefit, Program of All-Inclusive Care for the Elderly, Medicaid Fee-for-Service, and Medicaid Managed Care Programs for Years 2020 and 2021 (CMS-4185-P)**

Dear Administrator Verma:

The Alliance for Connected Care ("the Alliance") welcomes the opportunity to provide feedback on the Centers for Medicare & Medicaid Services' (CMS') Medicare Advantage (MA) proposed rule, which promotes flexibility beginning in Contract Year 2020 and includes several important reforms with respect to telemedicine. We are grateful for your continued leadership in championing policies that help make virtual care an option for seniors, their caregivers and clinical providers.

The Alliance is a 501(c)(6) organization dedicated to creating a statutory and regulatory environment in which insurers and providers can deliver, and be adequately compensated for providing, safe, high quality care using connected care technology. Our members are leading health care and technology companies from across the health care spectrum, representing insurers, health systems and technology innovators. The Alliance works in partnership with an Advisory Board of more than 20 patient and provider groups, including groups representing patients with chronic disease.

As reflected in the comments below, the Alliance applauds CMS' inclusion of additional telehealth benefits as basic benefits in MA. The Alliance is committed to leveraging telemedicine and remote patient monitoring to improve the quality of care while also lowering costs and improving efficiency, and we believe this inclusion in Part C will serve all three of those aims.

## I. Proposed Definitions

### a. "Additional Telehealth Benefits"

CMS is proposing a new regulation at § 422.135(a) to define "additional telehealth benefits" as services that are furnished by an MA plan for which benefits are available under Medicare Part B, but which are not payable under section 1834(m) of the Social Security Act ("the Act") and have been identified by the MA plan for the applicable year as clinically appropriate to furnish through electronic exchange.

The Alliance supports this definition offered by CMS. Defining "additional telehealth benefits" as services which are available under Part B but are not payable under section 1834(m) will allow MA plans to incorporate a vast array of telehealth services that are not currently payable under Medicare Fee-for-Service (FFS) as basic benefits. Rather than naming specific services to be included under the umbrella term of "additional telehealth benefits," CMS is allowing MA plans to choose from a large pool of telehealth services that they believe will best serve their plans' beneficiaries.

### b. "Electronic Exchange"

CMS proposes to define "electronic exchange" as "electronic information and telecommunications technology." Appropriately, the agency is not proposing specific regulation text that defines or provides examples of electronic information and telecommunications technology because the technology needed and used to provide additional telehealth benefits will vary based on the service being offered.

The Alliance also applauds CMS for keeping the definition of "electronic exchange" broad. The ever-evolving technological landscape frequently brings new innovations into the world of telehealth, and being too prescriptive about the types of technology that could be used to deliver telehealth services to MA plan beneficiaries would have the potential to limit the growth, development, and adoption of such innovations.

### c. "Clinical Appropriateness"

In the proposed rule, CMS notes that it is not proposing specific regulation text to define "clinically appropriate." Instead, the agency is proposing to implement the statutory requirement for additional telehealth benefits to be provided only when "clinically appropriate" to align with existing regulations for contract provisions at § 422.504(a)(3)(iii), which requires each MA organization to agree to provide all benefits covered by Medicare "in a matter consistent with professionally recognized standards of care."

The Alliance is very supportive of this proposal by CMS. Allowing MA plans to determine the clinical appropriateness of additional telehealth benefits allows for such plans to treat the new benefits as they would any other Medicare benefit that they choose to offer in their plans. This proposal not only gives MA plans the ability to offer benefit plans that are tailored to their beneficiaries, but it also treats telehealth for what it is – solely a different modality of delivering care, not an entirely separate benefit.

## II. Inclusion and Disclosure of Benefits

The Bipartisan Budget Act of 2018 (P.L. 115-123) does not specify who or what entity shall identify which services MA plans should include for the year. Thus, CMS is proposing to interpret this provision broadly by allowing MA plans to independently determine which services each year are clinically appropriate to furnish via electronic exchange. In the proposed rule, CMS notes that it believes "that

MA plans are in the best position to identify each year whether additional telehealth benefits are clinically appropriate to furnish through electronic exchange."

The Alliance agrees. MA plans already have a keen understanding of which benefits best serve their beneficiary populations. They can continue to employ this understanding when it comes to additional telehealth benefits without restriction from CMS.

The Alliance applauds CMS' commitment to keeping the MA program flexible. In the proposed rule, CMS notes that they considered whether they should use the list of Medicare telehealth services payable by original Medicare under section 1834(m) of the Act as the list of services that are clinically appropriate, but noted that this approach would have limited the additional telehealth benefits that would be available for MA plans to include as basic benefits. The Alliance agrees that limiting MA plans' selection of additional telehealth benefits to the list of telehealth services under 1834(m) of the Act would be restrictive of their ability to make cutting edge telehealth health services widely available to MA enrollees.

CMS currently requires MA plans to annually disclose the benefits offered under a plan, including conditions and limitations, premiums and cost sharing, and other conditions associated with receipt or use of benefits. This requirement is satisfied through the Evidence of Coverage ("EOC") document that is provided to plan beneficiaries each year. CMS proposes to continue this standard of disclosure with additional telehealth benefits. The Alliance is supportive of this proposal.

## III. Types of Items and Services

In the proposed rule, CMS solicits comment on which types of items and services should be considered additional telehealth benefits and on whether the agency should place any limitations on the types of Part B items and services that can be additional telehealth benefits.

The Alliance does not believe that CMS should place any limitations on which types of Part B items and services should be considered additional telehealth benefits in MA. Limiting the items and services that MA plans can offer would restrict plans' ability to develop innovative and forward-thinking benefit plan designs to help deliver care to seniors effectively and efficiently.

## IV. Enrollee Choice and Network Adequacy

CMS is proposing to codify regulation text at § 422.135(c)(1) that would require that the enrollee must have the option to receive a service that the MA plan would cover as an additional telehealth benefit either through an in-person visit or through electronic exchange, meaning that it must always be available through both modes of delivery.

The Alliance believes that telehealth services can fill in gaps in areas where there are workforce shortages. In the proposed rule, CMS notes that additional telehealth services can be especially useful in providing behavioral health services to those affected by the opioid crisis.

This proposal, as it pertains to enrollee choice, would serve to limit MA plans' ability to expand access to treatments like tele-behavioral therapy due to the requirement that the service must also be available in person. Many individuals reside in mental health professional shortage areas where it is not possible for such treatments to be furnished in person.

Further, the December 3, 2018 report released jointly by the Departments of Heath and Human Services, Labor, and the Treasury entitled "Reforming America's Healthcare System Through Choice and Competition" notes that "states and the federal government should explore legislative and administrative proposals modifying reimbursement policies that prohibit or impede alternatives to in-person services, including covering telehealth services when they are an appropriate form of care delivery." In some cases, CMS' proposed 1:1 ratio of telehealth services to in-person services could prove to be an impediment to virtual care.

**V. Differential Cost Sharing**

CMS proposes to allow MA plans to maintain differential cost sharing for the specified Part B services furnished through an in-person visit and the specified Part B services furnished through electronic exchange.

Again, the Alliance supports CMS' vision for MA plans to maintain flexibility. In the proposed cost sharing arrangement, MA plans would have the option of offering additional telehealth services at no charge to the enrollee. This would lower a barrier to adoption and expand access to care for many beneficiaries, regardless of whether they live in urban or rural areas.

**VI. Contracted Providers**

CMS is proposing to require that MA plans furnishing additional telehealth benefits may only do so using contracted providers and that plans must have written policies and procedures for the selection and evaluation of providers who furnish additional telehealth benefits. Additionally, CMS is proposing that additional telehealth benefits furnished by non-contracted providers could only be covered as supplemental benefits. The agency solicits comment on whether the contracted provider requirement be extended to all MA plans, or just to specific plan types such as preferred provider organizations (PPOs).

The Alliance encourages CMS to allow MA plans as much flexibility as possible when considering regulation with respect to additional telehealth benefits in MA. Limiting additional telehealth benefits to contracted providers has the potential to impose an administrative burden on MA plans, as it would place the responsibility of provider eligibility determination on the plan.

**VII. Data Sharing**

CMS is proposing to require MA plans to make information about coverage of additional telehealth benefits available to CMS upon request. This information may include, but is not limited to, statistics on use or cost of additional telehealth benefits, manner or method of electronic

exchange, evaluations of effectiveness, and demonstration of compliance with requirements in proposed regulation text.

The Alliance acknowledges that sharing data on additional telehealth benefits between MA plans and CMS would be highly beneficial in building an evidence base for the quality and efficiency of telehealth services, possibly leading to expansion of coverage in other public insurance programs, such as Medicare fee-for-service. However, we encourage CMS to be mindful of the burden that a data collection methodology may place on MA plans, and to be mindful of proprietary and sensitive data when publishing reports and evaluations on additional telehealth benefits in the MA program.

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The Alliance greatly appreciates CMS' leadership and dedication to ensuring that all seniors are able to realize the benefits of telehealth and remote patient monitoring. The telehealth provisions included in the Bipartisan Budget Act of 2018 will usher in a new era of care in MA by allowing for meaningful alternatives to the cumbersome restrictions of Section 1834(m) of the Social Security Act.

We appreciate the opportunity to provide feedback on the inclusion of telehealth in MA, and look forward to continuing to work with CMS to increase access to high quality connected care for Medicare beneficiaries. If you have any additional questions, please do not hesitate to contact us. I can be reached at krista.drobac@connectwithcare.org.

Sincerely,

Krista Drobac

Krista Drobac
Executive Director
Alliance for Connected Care