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May 18, 2022

Submitted electronically to doidocket.mailbox@mass.gov.

Gary D. Anderson
Commissioner
Massachusetts Division of Insurance
1000 Washington Street
Suite 810
Boston, MA 02118-6200

RE: Docket No. G2022-01, Proposed Amendments to 211 CMR 52.00, Managed Care Consumer Protections and Accreditation of Carriers

Dear Commissioner Anderson:

The Conference of Boston Teaching Hospitals (COBTH), on behalf of our 12 member hospitals, appreciates the opportunity to provide comments on Docket No. G2022-01, Proposed Amendments to 211 CMR 52.00. COBTH has greatly appreciated the opportunity to weigh in with the Division of Insurance (the Division or DOI) throughout the regulatory process, and is pleased to offer its recommendations to inform the final regulations. Additionally, COBTH is a member of the Massachusetts Telemedicine Coalition (*t*MED) and also strongly supports the detailed comments submitted by the Coalition.

Definitions

Behavioral Health Services. COBTH believes that strong, clear, and consistent definitions are critical to ensuring the long term success of telehealth in Massachusetts. We appreciate the Division's efforts to clearly define key terms throughout the regulations. First, in 52.02, the regulations define behavioral health services as being able to be provided by any health care professional for whom such services are within the scope of licensure. COBTH strongly supports this broad definition, which appropriately recognizes both the shift toward integrating primary care and behavioral health care, as well as the shortage of behavioral health services currently available to Massachusetts residents. Any attempt to limit the types of clinicians that can provide behavioral health services via telehealth will unnecessarily restrict access to critical services that we know can be safely and effectively provided using this modality. This is especially critical due to the statute's creation of permanent payment parity with in-person services for behavioral health, and will ensure that behavioral health service providers are all fairly paid for this work.

Chronic Disease Management. As underscored by numerous speakers during the May 11 hearing, COBTH has serious concerns about the Division's proposed definition of chronic disease management. The Centers for Medicare and Medicaid Services (CMS) list of chronic conditions is a

limited set of chronic conditions, and though it is a good start, it does not begin to encompass the burden of chronic disease on patients in Massachusetts. In particular, the list fails to account for chronic diseases affecting the non-Medicare age population, including pediatric conditions. We strongly urge the Division to use the authority in the regulations to further define chronic disease management, and to undertake a robust stakeholder process that ensures all chronic disease management services that are clinically appropriate can be provided and reimbursed via telehealth.

Indeed, our patients experiencing chronic disease are often those that stand to benefit most from access to telehealth services. Challenging travel or multiple visits with specialists can be alleviated with telehealth care that allows clinicians to monitor symptoms and adjust treatments as needed without an office visit. To that end, we would like to highlight the Centers for Disease Control and Prevention's definition of chronic disease, which states: "chronic diseases are defined broadly as conditions that last one year or more and require ongoing medical attention or limit activities of daily living, or both." Using a definition like this would ensure that all of the chronic disease patients across the Commonwealth have the option to access chronic disease management via telehealth.

Visit. We agree with the Division's proposed definition of "visit" as an "encounter" between a patient and a health care provider. However, we strongly encourage the Division to align the definition of a "visit" with the statutory definition of "telehealth." This would result in a definition of a "visit" as an encounter that includes not only treating or managing a medical or behavioral health condition, but rather, an encounter "to evaluate, diagnose, consult, treat, manage, or monitor a covered medical or behavioral health condition of a patient." This definition would ensure there is no confusion about what services can be covered and reimbursed as telehealth and ensure consumers have access to the full range of telehealth services.

We would also urge the division to reconsider the use of the term "within the health care professional's office" throughout the regulation. We believe the Division's intent was to ensure parity, where appropriate, between in-person and telehealth services, but not all in-person services are rendered in an "office" setting. To that end, simplifying the language to use the term "in-person" would be more appropriate.

Primary Care Services. COBTH has serious concerns about the proposed definition of primary care services that specifies what types of health care providers may offer primary care services via telehealth. The relevant statute does not define a primary care service provider, and primary care services are regularly provided by other clinicians that are often considered specialists. This is particularly apparent as it relates to obstetrician/gynecologists and reproductive health care services, but also holds true for other providers that may be providing other forms of primary care to patients. Especially for those managing chronic or complex medical conditions, primary care may be provided by the health care professional they see most frequently.

We believe that, like behavioral health care, primary care should be based on the service, rather than the type of professional, and reimbursed appropriately based on the service. We encourage the Division to revisit this proposed definition and ensure primary care can be reimbursed appropriately by all health care professionals who provide it.

Utilization Review

COBTH strongly opposes section 52.16 of the proposed regulation that would require health insurance carriers to conduct utilization reviews, including pre-authorization, to determine the appropriateness of telehealth as a modality for delivering a health care service. This contradicts the statutory language that allows, but does not require, utilization review to make these determinations. COBTH strongly believes this determination is a clinical decision, and telehealth visits should be treated the same as in-person visits in regard to the use of utilization review.

COBTH supports the language from DOI Bulletin 2020-04, which stated that "Carriers are directed not to impose any prior authorization barriers to obtain medically necessary health services via telehealth that would not apply to receipt of those same services on an in-person basis." This policy would protect patients from any unnecessary barriers preventing potential access to telehealth services.

Asynchronous Telehealth

Section 52.16 of the proposed regulations stipulates that the rate of payment for services delivered via synchronous audio-video or audio-only technology may be greater than the payment for the same service delivered by "other telehealth modalities," but declines to define these other modalities. Assuming the Division is referencing asynchronous telehealth, COBTH would encourage including a clear definition to avoid any potential confusion about what is included in "other modalities." We would propose the American Telemedicine Association (ATA) definition outlined in the *t*MED Coalition testimony for your consideration.

We also want to point out that some asynchronous telehealth services do not have an in-person equivalent. Further clarification is needed regarding asynchronous, online adaptive interview, and remote patient monitoring coverage to ensure patient access for these important telehealth services.

Facility Fees

The proposed regulations do not address facility fees for telehealth services. During the State of Emergency, health insurance carriers were required to pay facility fees for in-person visits conducted via telehealth when they were contractually required for in-person services. COBTH would appreciate explicit clarification from the Division that permits facility fees to be paid for telehealth services. Despite popular rhetoric, providing telehealth services has significant costs associated with it for health care providers, as the costs of labor, overhead, technology, liability, and other infrastructure remain for telehealth visits. Telehealth appointments also require the same or similar pre-appointment scheduling and post-appointment follow-up and referrals as in-person visits, necessitating facility fees to help meet these costs.

Payment Parity

COBTH acknowledges that Chapter 260 did not set forth requirements for telehealth payment parity beyond permanent behavioral health parity and primary care and chronic disease management parity through December 31, 2022. However, we believe that this timeline envisioned a reasonable glidepath for telehealth providers to test the feasibility of continuing virtual care in a post-pandemic environment while ensuring they receive adequate reimbursement for services. Further, as stated above, there is no evidence that telehealth services cost less to provide, and impending reductions to

reimbursement could leave providers with no choice but to reconsider offering telehealth services. To that end, COBTH will be joining the *t*MED Coalition in advocating for extended payment parity for primary care and chronic disease management services. We urge the Division to strike any references to parity expiration dates to ensure a full regulatory process is not required to implement any extensions of reimbursement parity.

Conclusion

We greatly appreciate the Division's time and attention to these important issues, which are critical to both health care providers and to patients across the Commonwealth who deserve access to the highest quality health care via the most effective modality. We reiterate our strong support for the detailed comments submitted by the *t*MED Coalition and are happy to answer any questions or provide additional information. Thank you again for the opportunity to provide comments.

Sincerely,

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