



Care and Choice at the End of Life

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March 21, 2020

The Honorable Nancy Pelosi
Speaker of the House
U. S. House of Representatives
1236 Longworth House Office Building

The Honorable Mitch McConnell
Majority Leader
U.S. Senate
317 Russell Senate Office Building

The Honorable Kevin McCarthy
Minority Leader
U.S. House of Representatives
2421 Rayburn House Office Building

The Honorable Charles Schumer
Minority Leader
U.S. Senate
322 Hart Senate Office Building

Dear Speaker Pelosi, Leader McCarthy, Leader McConnell, and Leader Schumer:

On behalf of Compassion & Choices, thank you for your leadership in developing bipartisan legislation in response to COVID-19. We appreciate your efforts to provide access to clinical care for all patients using virtual care services. We identify below key provisions that will be essential to not only aid in efforts to manage community spread and to reduce surge of this dangerous disease, but also ensure that vulnerable patient populations do not lose access to clinical care. Compassion & Choices is the nation's oldest and largest nonprofit organization working to improve care, expand healthcare options and empower everyone to chart their own end-of-life journey. This includes ensuring that individuals with a terminal diagnosis continue to have access to hospice and palliative care.

Estimates vary about the length of the COVID-19 national and public health emergency, ranging from months to over one year. In all instances, individuals already facing a terminal illness from other diseases, such as cancer, will continue to need end-of-life care options, including palliative and hospice care. And individuals with a terminal condition will be at greater risk of dying painfully and prematurely if they are exposed to COVID-19. Furthermore, without expanded access to virtual clinical care services, individuals who require palliative care to reduce pain and suffering will face insurmountable barriers to treatment. These obstacles could drive them to seek care in already-crowded and infectious emergency departments that would increase their risk of a premature death. Instead, they should be provided quality and safer care virtually in-home.

We appreciate that you have already waived the restriction on Medicare coverage of interactive, two-way audio, visual communications to allow patients to access these services from their homes, and to allow certain clinicians in any geographic area to bill for telehealth services. We ask that you ensure increased access through a number of additional provisions in the Coronavirus Aid, Relief, and Economic Security (CARES) Act, as outlined below.

Expand Medicare Coverage to Include Qualified Non-Physician Healthcare Professionals to Provide Virtual Services during Emergency Response. The legislation should allow qualified non-physician healthcare professionals to conduct and bill for Medicare telehealth visits, remote physiologic management/monitoring, and virtual check-ins. Coverage should include, at a minimum, Advanced Practice Registered Nurses, Registered Nurses, Nurse Assistants, and Licensed Vocational Nurses. These professionals are absolutely critical to providing effective healthcare and are relied upon heavily for in-person settings. The COVID-19 crisis has revealed the benefits of care that can be delivered, without needlessly exposing patients and healthcare workers to the virus. Accordingly, these professionals should play an expanded role in providing all clinical care provided with the aid of communication technologies.

Expand Access to Underserved Communities. We support the Senate’s proposal in the CARES Act to require the Department of Health and Human Services (HHS) to pay for Medicare telehealth services furnished by Federal Qualified Health Centers (FQHCs) and Rural Health Clinics (RHCs). Patients with terminal conditions in underserved communities need to be able to access care from clinicians quickly and efficiently, especially during the COVID-19 crisis.

Ensure Patients Receive Equipment and Cellular Access that Enable Connectivity. As clinicians undertake remote physiologic management/monitoring of patients at home, there is a lingering concern that any equipment or access to software platforms provided without charge may inadvertently trigger liability under the Anti-Kickback Statute (AKS). The operative definition for “remuneration” in this statutory provision, at 42 U.S.C. 1320a–7a(i)(6), is broad. For these reasons, we recommend directing the HHS Office of Inspector General (OIG) to enable the delivery of remote physiologic management/monitoring, telehealth, and other tech-driven healthcare tools, without triggering AKS liability during the national emergency.

Ensure Patients Access Virtual Services Without Financial Barriers. Another hurdle to the use of remote physiologic management/monitoring and telehealth for Medicare patients is the mandatory 20 percent co-pays. Some healthcare providers may determine that the co-pay would be a barrier to care for underserved patients and communities; therefore, we urge you to direct HHS OIG to provide flexibility to healthcare providers, so that they can choose to waive or reduce copay charges for telehealth and remote physiological management/monitoring services.

Clarify Remote Patient Physiologic Management/Monitoring Coverage. The Centers for Medicare and Medicaid Services (CMS) took a significant and important step when it covered payment for remote physiologic management/monitoring for Medicare patients in need of clinical care. Now more than ever, healthcare providers should clearly understand that the coverage includes remote physiologic management/monitoring of both acute and chronic conditions. Therefore, we urge you to require CMS to clarify that these codes cover the monitoring of patients with acute conditions. We do not seek a change to CMS’ policy on remote management/monitoring codes; we are specifically asking for Congress to ensure that CMS provides clear guidance that the codes cover the monitoring of acute conditions.

Permit Use of Widely Available Consumer Technology to Deliver Virtual Healthcare Services, While Preserving Key Safeguards. Recently, HHS’ Office of Civil Rights (OCR) announced enforcement discretion on the Health Insurance Portability and Accountability Act (HIPAA) and its implementing regulations. Importantly, the enforcement discretion clarifies that the use of private, secure telehealth tools that are not part of the healthcare provider’s official offerings will not draw a penalty, as long as

the healthcare provider alerts the patients to the risks. The CARES Act should direct OCR to continue this enforcement discretion until the national emergency and the national public health emergency have lapsed. However, we also urge you to direct OCR to issue guidance clarifying that the healthcare providers of such telehealth services should only store data about the patient for a period of time necessary to support the service. The use of this information by a third party for any purpose other than supporting the patient-client relationship would be a violation of HIPAA and subject to penalties.

Reauthorize Telehealth Network and Telehealth Resource Centers Grant Program. We support provisions in the Senate CARES Act that would reauthorize the Health Resources and Services Administration (HRSA) grant programs that promote the use of telehealth technologies for health care delivery, education, and health information services. Clinicians providing palliative and hospice care will need support to quickly adopt virtual care modalities to continue to provide care to their patients, given the significant risks to care to individuals with terminal conditions posed by COVID-19 exposure and the barriers to access due to likely virus surges.

We thank you for your leadership. Compassion & Choices would appreciate the opportunity to represent the needs of terminally ill Americans, by participating in meetings with healthcare stakeholders on this topic. If you have questions, please contact Sylvia Trujillo, Policy Director/Senior Legislative Counsel, (971) 219-6135 or strujillo@compassionandchoices.org.

Sincerely,



Kimberly Callinan
President and Chief Executive Officer