March 15, 2022

VIA ELECTRONIC SUBMISSION

Department of Health Care Services
1501 Capitol Ave
Sacramento, CA 95814

RE: Proposed Trailer Bill Language (TBL) for Telehealth Post-Pandemic - AB 32 Co-Sponsor Feedback

To The California Department of Health Care Services (DHCS):

On behalf of the undersigned groups, we thank the Department of Health Care Service (DHCS) for its ongoing engagement with stakeholders to shape its post-COVID-19 Public Health Emergency (PHE) telehealth policies. We appreciate the progress that has been made to incorporate feedback from providers and consumer advocates to help ensure telehealth remains a viable and equitable method for Californians to receive health care services. As we begin to review the proposed trailer bill language (TBL) for Telehealth Post-Pandemic, we would like to take this opportunity to provide preliminary feedback on specific subsections. We respectfully submit the following comments for consideration:

Maintaining Payment Parity [page 4(A)(i) and (ii); page 16, subsection (f)(1) and (2)]

We applaud the administration's decision to maintain payment parity, including payment parity for FQHC/RHC settings, for all synchronous services. This represents a huge step forward in guaranteeing access to care for patients in the Medi-Cal program. It also ensures that the investments of time and money that physicians, FQHCs and health centers, and healthcare delivery systems have made over the past two years will continue to pay dividends for their practices and their patients. We urge that the department clarify whether it contemplates any privacy and confidentiality requirements above and beyond HIPAA, CMIA, and other privacy laws and regulations with which Medi-Cal providers must already comply. Conditioning payment for telehealth services on telehealth specific privacy rules above and beyond what is required for any other health care service will act as a barrier to providing this care. Finally, we ask that you clarify that asynchronous store and forward will be paid at parity and welcome additional dialog with the Administration to confirm the payment methodology for other types of asynchronous modalities.

Establish New Patients via Telehealth [page 5-6, subsection (4)(a)(i), (ii), (iii), and (iv); page 15, subsection (4) and (5)]

We strongly recommend continuing to allow new patients to be established via audio-only and asynchronous telehealth. We are grateful to see allowances to establish patients via video synchronous care, and the virtual dental home model, but believe the Administration must go further. While we understand the Department intends to support consumer protections, we believe the proposed limitation would primarily harm patient choice and equitable access to health care services. Placing limitations on how new patients can access care would undermine recent improvements for patients who have historically faced barriers to accessing in-person services and who have limited access to the technology and high-speed data necessary for a synchronous video visit. Additionally, patients seeking sensitive services, who are protected by freedom of choice to access care outside of their network with a preferred provider, would have their choice restricted by this policy if they do not have access to an in-person or video-based telehealth visit. Patients may also have safety and confidentiality concerns causing them to not want to appear on video with their provider. We urge DHCS to consider using other methods to verify a patient's identity without restricting their safety, choice, and access to health care providers.

Patient Consent [page 6, subsection (B)(iii); page 15, subsection (d)]

We support policies that help ensure patients can make informed choices when accessing health care services and request clarification regarding the Department's intent to impose additional disclosure and consent requirements pertaining to telehealth services. The issue of consent has been a topic considered by the Legislature in past telehealth legislation and we question whether using frequent consent and documentation requirements to justify the use of the telehealth modality – a requirement that would not apply to in-person visits - are the best mechanism for effectively ensuring patient choice. We encourage the Department to align its policies with generally accepted practices in place for health care systems outside of Medi-Cal. We also urge the Department to ensure that its policies align with existing law – including Business & Professions Code 2290.5(b) and Welfare & Institutions Code 14132.72(d) – while taking into consideration the impacts on patient preferences as well as provider workflow and resources. The way that this proposal is constructed could inadvertently feed into a narrative that telehealth is substandard care. In addition, it is unclear from the TBL how often providers are expected to obtain this consent. Specifically, we request clarification on the intent of the phrase: "*at least once prior to initiating the delivery of applicable services via telehealth*." We read this to mean that, if a provider treats a patient on a regular basis, they would only need to provide the explanation before the ***first*** time the patient receives telehealth services. If the department agrees, we ask that it be clarified in the TBL.

Utilization Review

We request additional details regarding how the Department intends to expand its telehealth utilization monitoring and targeted review of providers and urge additional clarification in the TBL. We support the Department's intent to ensure the integrity of the Medi-Cal program, but caution against imposing requirements that would cause telehealth services to become unduly scrutinized when compared to in-person services. We urge the Department to take into consideration existing policies and requirements that are already effective at ensuring program integrity for both in-person and telehealth services. As currently written, the TBL is vague on what types of utilization management policies would be imposed by the Department, particularly in the section applicable to FQHCs. We urge the Department to clarify in the TBL that these policies would be consistent with and no more restrictive than current protocols for in-person services.

FQHC Issues

We request additional changes and clarification pertaining to FQHCs. Specifically, there are a number of areas throughout the TBL that don't acknowledge FQHC practices prior to the public health emergency or could create additional limitations to how FQHCs provide care. HRSA requirements generally state that a certain percentage of patients should be within the FQHC service area and it has always been contemplated that some percentage of patients may come from outside the service area. We request updated TBL language to reflect current practice.

The language specifying a future effective date on page 7, subsection (D), is also a concern as it does not account for what FQHCs were allowed to do prior to the public health emergency. We additionally request clarification whether FQHCs can receive PPS for asynchronous store and forward telehealth visits (pages 5-6, subsection (4)(A)). We request that these are made clear in the TBL as the DHCS policy proposal indicated that the state would "continue parity in reimbursement levels between in-person services and select telehealth modalities," which included asynchronous store and forward, as applicable. Finally, the TBL should clearly reflect the provisions Section 14132.725 that would not apply to FQHCs. Those of us representing FQHCs will be happy to follow up with additional details.

Patient Choice of Telehealth Modality [page 6, subsection (B)(c)(i); page 14, subsection (c)(1)]

We strongly recommend amending the 2024 modalities requirements to address increased ramp-up time, funding for infrastructure costs, and exceptions for providers who may not have internet service capable of supporting video. We acknowledge that the intent of this requirement is to ensure that patients have the choice of the telehealth modality they feel best meets their needs and that physicians are progressing toward being able to offer multiple modalities. We are concerned about creating a requirement to adopt both video and audio without any funding for providers to get that infrastructure or any acknowledgment of the limitations in technology that may make it difficult for providers to be fully video capable in many areas of our state without sufficient connectivity. Although some providers were able to quickly adopt telehealth during the PHE, many other providers have not been able to adopt any or both modalities due to the necessary costs and infrastructure. We appreciate efforts by the State to invest in broadband infrastructure while also recognizing that it will take time to complete those investments - newly funded projects will not be completed before January 1, 2024. However, many providers in rural and/or underserved areas where the broadband internet infrastructure may not support video visits.

We urge the Department to ensure providers who lack the connectivity or financial capital to offer video telehealth are still able to offer audio-only or asynchronous telehealth to patients who may otherwise not have sufficient access to health care services. To accommodate these challenges, we ask that the TBL be amended to exempt any provider practicing in an area where they cannot access broadband service of at least 100 Mbps downstream and 20 Mbps upstream. These speeds were selected as they are the minimum standard for projects to be funded through Senate Bill (SB) 4, passed by the Legislature last year[i].

Network Adequacy and Oversight [page 20-22, subsection (f)(1)-(6)]

We urge the Department to include measures that will ensure Medi-Cal Managed Care Plans continue to invest locally. We are cautiously supportive of video synchronous visits being incorporated into network adequacy standards. We ask that legislative language include measures to clearly monitor this allowance and understand its impact on MCO investments to community-based providers. Additionally, TBL fails to acknowledge a commitment stated in DHCS' recent policy paper with regards to aligning policy approaches in Medi-Cal to AB 457 (Chaptered, 2021). The concern about third-party corporate telehealth providers takes on added importance, given the proposal to allow plans to utilize telehealth providers as a means of demonstrating compliance with time and distance standards. Without the proper safeguards, this proposal could create an incentive for plans to utilize third-party entities, in lieu of community providers. This would create fragmented and substandard care for Medi-Cal recipients. We request the TBL be amended to remove Health and Safety Code §1374.14(f), which exempts Medi-Cal managed care plans from the requirements of AB 457. This would put Medi-Cal on a level playing field with commercial health plans.

In addition, we request that DHCS update the language in the section to allow for other methods of "telecommunication technology" that were previously allowed. By limiting the authorization to "synchronous interactions" this provision forecloses the ability of providers to demonstrate network adequacy compliance through other forms of technology.

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Thank you in advance for taking our comments under consideration. Please contact kelby.lind@ppacca.org if you have any questions or would like additional information or resources on any of our feedback above.

We look forward to continuing to work with the Department toward a goal of building upon the expanded use of telehealth during the public health emergency to craft policy that will ensure equitable access to quality health care for the almost 14 million Californians who rely on Medi-Cal programs for their care.

Sincerely,

California Association of Public Hospitals and Health Systems
CaliforniaHealth+ Advocates
California Medical Association
Essential Access Health
Planned Parenthood Affiliates of California

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[i] Public Utilities Code §281(5)