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MEMORANDUM

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TO: Tribal Health Clients

FROM: Hobbs, Straus, Dean & Walker, LLP

RE: *Senate HELP Committee Holds Hearing on Telehealth Lessons from the COVID-19 Pandemic*

Yesterday, on June 17, the Senate Committee on Health, Education, Labor and Pensions (HELP) held a hearing on "Telehealth: Lessons from the COVID-19 Pandemic." Chairman Lamar Alexander (R-TN) stated the purpose of the hearing was, in part, to discuss whether the temporary telehealth flexibilities that have been authorized in response to the public health emergency should be made permanent and, if so, which one(s).

As we have reported previously, the Department of Health and Human Services has approved important changes to temporarily allow for increased access to telehealth services during the pandemic. These flexibilities include, for example, allowing Medicaid and Medicare to reimburse for new types of telehealth services (such as telephonic healthcare visits, remote monitoring, and specialty care) and allowing a patient's home to qualify as an "originating site" for the purposes of telehealth billing. These policy changes have played a critical role in expanding the availability of and access to telehealth and telemedicine services in the Indian health system.

The hearing featured testimony from medical professionals across the country who described how telehealth and telemedicine technologies have been effectively deployed to meet patient and provider needs and who shared their recommendations for strengthening telehealth systems going forward. The panel of witnesses included: (1) Dr. Karen Rheuban, Director of the University of Virginia Center for Telehealth; (2) Dr. Joseph Kvedar, President of the American Telemedicine Association; (3) Dr. Sanjeev Arora, Founder and Director of Project ECHO; and (4) Dr. Andrea Willis, Chief Medical Officer of BlueCross BlueShield of Tennessee. A summary of the witness testimony and the major issues raised during the hearing's question and answer period follows.

Opening Remarks

Chairman Alexander opened the hearing with a set of anecdotes from hospitals nationwide on how telehealth use has dramatically increased during the pandemic. He shared his opinion that the three most important federal policy changes contributing to this

increase are the: (1) lifting of "originating site" restrictions; (2) expansion of reimbursable telehealth services under Medicaid and Medicare; and (3) relaxation of Health Insurance Portability and Accountability Act (HIPAA) privacy rules to allow virtual healthcare visits via landline calls and video applications, like Zoom or FaceTime. Of these, he recommended that the originating site and Medicaid/Medicare flexibilities be made permanent. He stated that further examination of the HIPAA privacy waivers is needed to assuage concerns that personal medical information can be properly protected by technology platform companies from hackers and other unauthorized disclosures.

Senator Tina Smith (D-MN), focused her opening remarks on the effects of intergenerational health disparities and the social determinants of health in exacerbating the impacts of COVID-19 on low-income and minority populations in the United States.¹ She described how the rapid transition to telehealth modalities for delivering acute and chronic care management has revealed glaring divides in access to broadband services, particularly in Indian Country, where she reported that almost 35% of tribal lands lack Internet capabilities.

Witness Testimony

Dr. Karen Rheuban stated that prior to the pandemic, originating site restrictions and other outdated policy barriers severely impaired the expansion and use of telehealth within the University of Virginia (UVA) Health network. Between February and May of 2020, however, the network has seen a *9000% increase* in telehealth use following the implementation of policy flexibilities by HHS. UVA Health has used the new authorities to expand remote patient monitoring programs, conduct virtual rounds to check patient vitals, provide virtual urgent care, support long-term care services, and provide technical assistance and e-consultations with peers. She urged Congress to authorize HHS to make these and other changes permanent "to fully utilize telehealth for the delivery of healthcare services for the benefit of millions of Americans."

Dr. Joseph Kvedar stated emphatically that "telehealth has saved lives, help flatten the curve, and fuel the rapid transformation in how [healthcare] services are delivered." He directly attributed this to the flexibilities that federal and state healthcare authorities have provided in response to the pandemic. He recommended that Congress provide HHS with the authority to amend the list of permitted telehealth services based on emerging data going forward. He also encouraged Congress to consider ways to streamline provider licensing requirements across state lines to ensure continuity of care and the maximize utilization of telehealth networks.

Dr. Sanjeev Arora focused his testimony on the work of Project ECHO (Extension for Community Healthcare Outcomes) in supporting frontline healthcare workers with COVID-19 patient care. Project ECHO is a telementoring program designed to facilitate

¹ Senator Patty Murray (D-WA) serves as the official Ranking Member on the Senate HELP Committee. Senator Smith, however, served in this role at Senator Murray's request for the purpose of this hearing.

continuing healthcare education using videoconferencing technology. Dr. Arora explained that the program using a hub-and-spoke model to connect area healthcare providers through a regional hub. During the pandemic, Project ECHO sites have provided technical assistance on personal protective equipment usage, best practices in ventilator usage, and other critical matters. He urged Congress to support Project ECHO capabilities in the next relief package to help expand access to care and specialized COVID-19 knowledge.

Dr. Andrea Willis testified on the ways the BlueCross BlueShield of Tennessee has amended its telehealth coverage options to better serve patient needs in the pandemic. Dr. Willis reported that her insurance company is the first in the nation to commit to covering expanded in-network telehealth services after the conclusion of the public health emergency. She stated the expanded coverage has resulted in greater access to specialty services while also reducing incidences of unnecessary urgent and emergency care visits. She acknowledged it is too soon to ascertain whether increased telehealth use has contributed to improved health outcomes, but she was firm in asserting "it has undoubtedly improved access to care."

Question and Answer Period

Due to the high level of Committee Member participation in the hearing, we provide a summary of the major topics discussed during the question and answer period rather than a chronological summary of the Senators' comments. If you would like additional information on any of the topics raised in this report, please let us know.

Making Permanent the Originating Site and Medicaid/Medicare Flexibilities. All of the witnesses agreed, when asked by the Committee Chairman, that the current flexibilities related to the originating site rule and Medicaid/Medicare telehealth billing authorities should be made permanent after the public health emergency is lifted. They also urged Congress, to the extent possible, to work with the private sector to facilitate greater synchronization of telehealth coverage and reimbursement standards. The witnesses stressed that reimbursement of telehealth services on a fair basis is critical to its effective deployment and for the maintenance of sustainable telehealth networks.

Telehealth in Rural and Underserved Communities. All of the panelists spoke to the promise of expanded telehealth networks to bring much needed specialty care, primary care, and condition management services into rural and underserved communities. Dr. Kvedar emphasized the need for purely audio landline connections in covered telehealth services to serve members of these communities who may not have Internet connections or wireless devices. Dr. Rheuban discussed how telehealth is effective at enhancing care management in rural communities by facilitating regular vital sign reporting and complex condition monitoring, particularly among the elderly and with new mothers. Dr. Arora cautioned that while expansion of telehealth access is important, it is critical that an increase in available providers also be supported. To that end, he stressed the need for investing in medical profession recruitment and retention, including in continuing

education opportunities for providers.

HIPAA Protections. Committee Members and witnesses discussed the challenges associated with using videoconferencing and applications for medical communications that may meet HIPAA patient confidentiality standards. All recognized HIPAA as the golden standard for protecting patient information. Dr. Kvedar recommended that industry suppliers providing medical communication platforms be encouraged to sign agreements subjecting them to HIPAA regulations.

DEA E-Prescribing Waivers. The witnesses discussed how temporary waivers by the Drug Enforcement Agency (DEA) to provide for e-prescribing of pharmaceutical drugs for behavioral and mental health care has been invaluable in maintaining critical patient care. Dr. Rheuban recommended that Congress make permanent the current waiver that allows for telehealth prescribing when a patient and provider are located in the same state. Dr. Arora reported the Project ECHO has been deployed to certify and mentor providers to meet DEA waiver eligibility requirements. Other witnesses also stressed the benefits of the e-prescribing waivers and urged them to be continued after the pandemic.

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If you have any questions or would like further information on the topics raised in this report, please do not hesitate to contact Elliott Milhollin (emilhollin@hobbsstrauss.com or 202-822-8282); Geoff Strommer (gstrommer@hobbsstrauss.com or 503-242-1745); or Lisa Meissner (lmeissner@hobbsstrauss.com or 202-822-8282).