CHUCK WICHGERS

STATE REPRESENTATIVE • 83rd ASSEMBLY DISTRICT

Assembly Committee on Insurance
August 10, 2021
Assembly Bill 259
State Representative Chuck Wichgers, 83rd Assembly District

Chairman Steffen and Committee Members,

Thank you for hearing my testimony today on Assembly Bill 259 relating to coverage of telehealth services.

I am co-authoring this legislation with Sen. Jacque to provide certainty and access to a relatively new form of healthcare delivery; telehealth medicine. This legislation is a follow-up to 2019 Wisconsin Act 56. The aforementioned law requires the coverage and reimbursement for certain telehealth services under the Medical Assistance program.

This legislation prohibits a private insurer or a self-insured health plan of the state or a county, city, village, town, or school district from denying coverage or refusing to reimburse a health care provider for treatment or service provided through telehealth services. In addition, AB 259 specifies the Department of Health Services must consider mental health therapy conducted over audio-only telephone communications as interactive telehealth that is eligible for coverage and reimbursement under the Medical Assistance program.

This bill continues the efforts of previous laws to allow more citizens of Wisconsin to access telehealth medicine services.

Thank you for your consideration of my testimony.

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ANDRÉ JACQUE
STATE SENATOR • 1ST SENATE DISTRICT

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Testimony before the Assembly Committee on Insurance
State Senator André Jacque
August 10, 2021

Chairman Steffen and Committee Members,

Thank you very much for holding this hearing on Assembly Bill 259, bi-partisan legislation relating to coverage of telehealth services.

The effects of the COVID-19 pandemic response have exposed significant additional barriers to individuals receiving healthcare, including treatment for their mental health with diminished ability for in-person treatment at a time when the shortage of licensed psychiatrists and psychologists is already acute. While 2019 Wisconsin Act 56 was enacted last session to require coverage and reimbursement for certain telehealth services under the Medical Assistance program, Act 56 excluded from the definition of telehealth audio-only telephone communications unless the Department of Health Services specified by rule that those communications are considered telehealth reimbursable by the Medical Assistance program. This legislation was subsequently introduced at the end of the last session as 2019 SB 913 after the pandemic hit, and was implemented in part by the Evers administration.

As we seek to mitigate a concurrent spike in mental health episodes and substance abuse, it is vital that we increase access to care, including allowing therapists to hold counseling sessions over the phone. AB 259 specifies that DHS must consider mental health therapy over audio-only telephone communications as interactive telehealth that is eligible for coverage and reimbursement under the Medical Assistance program. Over the past year and a half, audio-only visits have provided a lifeline to patients who are unable to attend visits in person or participate in telehealth visits due to lack of broadband access or necessary equipment to facilitate the visits. The need for these services will not disappear, but the ability to deliver them could without legislative action. Patients should not be penalized for living far away from healthcare facilities or living in areas with inadequate Internet access. With its enactment, AB 259 would create longer-term certainty about the ability to continue mental health services. Should it choose to join, AB 259 would also allow Wisconsin to take greater advantage of the Psychology Interjurisdictional Compact (PSYPACT) that is currently circulating for co-sponsors, as we would join more than 20 other states in doing so.

AB 259 also requires insurers to reimburse health care providers for a treatment or service through telehealth, including audio-only telephone and interactive video options, if that treatment or service is covered under the policy or plan when provided in person by a health care provider. Under the bill a definition of "Telehealth" is provided to mean "a practice of health care delivery, diagnosis, consultation, treatment, or transfer of medically relevant data by means of audio, video, or data communications that are used during either a patient visit or a consultation or are used to transfer medically relevant data about a patient."

AB 259 is supported by the American Association for Marriage and Family Therapy and Gundersen Health System.

We have also introduced an amendment to address a concern that was raised by the National Association of Social Workers. It provides parity so that telehealth services would be covered at the same rate.

Thank you for your consideration of Assembly Bill 259.

AHI
ALLIANCE OF HEALTH INSURERS

Providing quality coverage to nearly 3 million Medicaid and private sector enrollees in Wisconsin.

To: Chairperson David Steffen
Members, Assembly Committee on Insurance
From: R.J. Pirlot, Executive Director
Date: August 10, 2021
Re: Please Oppose Assembly Bill 259

The Alliance of Health Insurers (AHI) is a nonprofit state advocacy organization created to preserve and improve upon consumer access to affordable health insurance in Wisconsin, both via the private sector and public programs.

On behalf of the health plans we represent, we respectfully request you *not* support Assembly Bill 259. The bill would broadly mandate that health plans cover services provided via telehealth, even though health plans have undertaken significant efforts to expand access to telehealth during the COVID-19 public health emergency. When the pandemic began, health plans worked quickly to implement new flexibilities offered by the federal government to ensure patients have quick and convenient access to health care services safely and conveniently.

All this was done *without* being required to do so by inflexible or a one-size-fits-all state fiat. A Wisconsin telehealth coverage mandate was proposed and not adopted in the spring of 2020, yet access to telehealth in Wisconsin skyrocketed. ***Simply put, Wisconsinites have enjoyed sustained access to telehealth, all which happened without new state mandates***. In fact, health insurance providers have been able to respond to patients' telehealth needs because there has been *less* regulation of telehealth, not more. State mandates were not needed and remain unneeded to ensure timely access to care via telehealth.

We respectfully urge the committee – if it chooses to recommend AB 259 for passage – that Assembly Amendment 1 *not* be recommended for adoption. Assembly Amendment 1 would require a health plan to reimburse a behavioral health service provider for a service provided for a mental health or substance use condition, illness, or disease that is provided through telehealth on the same basis and *at the same rate* as the health plan reimburses the behavioral health service provider if the service is provided in person. In short, under Assembly Amendment 1, if a behavioral health service provider can provide services via telehealth at a lower price than via in person, under AA 1 the provider would *not* be able to charge less than for in-person services.

Please do not hesitate to contact me at 608-258-9506 if you would like to discuss AB 259.

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Children's Wisconsin

TO: **Assembly Committee on Insurance**
FROM: **Mark Rakowski, Chief Operating Officer, Children's Community Health Plan**
DATE: **Tuesday, August 10, 2021**
RE: **Opposition to AB 212 – short term health insurance plans**

Children's Community Health Plan (CCHP), an affiliate of Children's Wisconsin, provides access to high quality health care for more than 140,000 individuals and families across eastern Wisconsin. We offer the second largest BadgerCare plan in the state, as well as offer Together with CCHP, our marketplace plan, and Care4Kids, a partnership with DCF and DHS to provide coverage for kids in out-of-home care. We are proud to offer comprehensive health benefits and innovative services including case management for individuals with complex needs, a 24/7 nurse line and virtual urgent care visits. CCHP also provides health programs to support our members with asthma, depression, pregnant women, new moms, and many other wellness initiatives.

As the chief operating officer of CCHP, I have witnessed many changes in the health insurance industry over the last several years. While the goal of the authors of AB 212 to expand access to health insurance for those in need of short-term health care coverage is laudable, I am concerned the bill could create a gap in access to quality health care. Codifying the 36 month renewal or extension of these type of plans in state law may provide some access, but falls short on access to the type of comprehensive coverage consumers have come to rely on such as access to prescription drugs, wellness check-ups, preventative services like mammograms, mental and behavioral health services and maternity care. Moreover, these plans generally will not cover you if you have a pre-existing condition.

Healthcare reforms have traditionally rested on a foundation often described as a "three-legged stool." The first leg is made up of insurance reforms to ensure that coverage is meaningful. In the context of today's health marketplace, that means essential health benefits are covered and exclusionary practices like lifetime limits and restrictions on pre-existing conditions are ended. The second leg consists of mandates that everyone — young and old, healthy and sick — purchase insurance so that the shared risk of all consumers is as broad and diverse as possible. This contains cost and premium growth. Finally, the third leg of the stool helps bring premiums within reach for people with low incomes including offering subsidies.

Each leg of the stool reinforces the others. The insurance must be useful, the risk pool must be close to universal, and the coverage must be affordable. However, we are now seeing an expansion of short term, limited duration insurance plans. Such plans tend to feature lower premiums but also sparser benefits and fewer consumer protections. These short term plans result in essentially reduced coverage for some and higher premiums for everyone else. Short term plans weaken all three legs of the stool at once, and start to erode the marketplace.

Short term plans were first created to do exactly what the name implies — offer some insurance benefits for a short period of time. HHS defined them as "designed to fill temporary gaps in coverage that may occur when an individual is transitioning from one plan or coverage to another plan or coverage." These plans were originally intended to be temporary stopgaps, not a substitute for coverage.

This proposed legislation would change short term plans from a stopgap into what seems like permanent coverage to individuals because of how they are marketed.

Short term plans undermine some of the most popular recent insurance reforms — including those popular on both sides of the aisle. Short term plans, for instance, can exclude people on the basis of pre-existing conditions. Again, they need not cover essential health benefits, like maternity care or treatment for substance abuse. And short term plans often have deductibles of up to $20,000 for three months of coverage. Some also have annual coverage limits of $1 million.

Not only do short term plans *not* cover pre-existing conditions, but what was covered when you bought the plan can be excluded later when you try to renew the plan. Rescissions are rampant in the short term market, leading to retroactive cancellation of policies that stick patients with enormous medical bills.

Just a couple of examples of the real-world consequences of these plans include:

– A woman in Illinois went to the hospital with heavy vaginal bleeding resulting in a five-day hospital stay and a hysterectomy, only to be denied coverage under her short-term plan on the ground that her menstrual cycle constituted a pre-existing condition.

-A husband and wife in Arizona who purchased a short-term plan believing it was comprehensive coverage were left with over $200,000 in medical bills after the husband suffered a heart attack. The listed maximum total payout of $750,000 was misleading after the deductible was paid. It instead meant they could have a number of procedures totaling up to $750,000, but only covered up to $5,000 maximum per procedure.

Short term plans are inadequate as health insurance but are still being marketed as an alternative to actual health insurance plans – that is, Qualified Health Plans in the Marketplace. State regulators have been receiving increased complaints about these plans related to their marketing and coverage. The Federal Trade Commission has received numerous cases of customers buying health insurance they believed was comprehensive, then having their claims rejected or barely paid out. We thought we had solved the problem of insurance companies pocketing premium rather than spending it on medical care for their members. Short term plans bring that problem back—in a big way. Some don't spend even half their premiums on medical care.

Short-term plans also do not have to meet market-wide standards such as ensuring most premium dollars are used for health benefits or that sufficient doctors and hospitals are in the plan's network. Short term plans are not subject to rules around mental health parity, or other non-discrimination rules that protect people with conditions like HIV/AIDS.

These plans can be effective stopgaps. But that is all they should be. Short term plans are not functional as full-time health coverage products and Wisconsin would be wise not to allow the extension of these up to three years.

Children's Community Health Plan is glad to serve as a resource. If you have any questions, comments or concerns, please contact me mrakowski@chw.org, 414-266-6328.

Wisconsin Association of Health Plans

The Voice of Wisconsin's Community-Based Health Plans

Assembly Bill 259
Assembly Committee on Insurance
August 10, 2021

My name is John Nygren and I am the Executive Director of the Wisconsin Association of Health Plans. The Association is the voice of 12 Wisconsin community-based health plans that serve employers, individuals, and government programs across the state in a variety of health insurance markets.

It is widely recognized that the COVID-19 pandemic substantially accelerated innovation in telehealth service delivery, as well as telehealth adoption by patients, employers, providers, and health plans. At the beginning of the pandemic, Wisconsin's community-based health plans quickly undertook significant efforts to expand access to telehealth so patients could receive the health care they needed safely and conveniently. This rapid pivot in service delivery was facilitated in no small part by unprecedented, temporary flexibilities in federal and state regulation of telehealth services and provider licensure.

Wisconsin's community-based health plans understand and support the important role telehealth will continue to play in health care service delivery going forward. **However, the Association opposes Assembly Bill 259 because it establishes broad, inappropriate, and harmful mandates on health plan coverage and reimbursement for telehealth services.**

Mandates on Insurance Coverage of Telehealth Services

Health plans and providers are still learning about what services are clinically effective and high-value when delivered via telehealth. Health plans need to be able to respond to changes in clinical evidence, costs, technology, and other factors that impact the effectiveness and value of telehealth services. The Association supports evidence- and value-based telehealth coverage decisions, as opposed to state mandates that dictate which telehealth services should be covered.

Telehealth is not appropriate for all kinds of health care and is situation dependent. To maintain the quality of care that a patient receives, a service provided via telehealth needs to be equivalent to when the service is provided in-person. There is positive evidence behind some telehealth services—for example, certain kinds of telehealth behavioral health services—but limited to no evidence yet on the outcomes of many other telehealth services. **It is not necessarily safe or effective for a service to be delivered via telehealth—especially audio-only telehealth—simply because the service is covered when it is delivered in person.**

The Legislature previously rejected a mandate-based approach to coverage of telehealth services when similar proposals were offered by Governor Tony Evers in his March 2020 COVID proposal, January 2021 COVID proposal, and proposed 2021-23 State Budget Bill. The Legislature also did not establish a similar coverage mandate for the state Medicaid program when it expanded reimbursable telehealth services under 2019 Wisconsin Act 56. Under that legislation, lawmakers recognized the need for careful evaluation of telehealth coverage to ensure services will be "functionally equivalent" to face-to-face contact. **We respectfully request legislators once again decline to adopt an inappropriate and harmful telehealth coverage mandate.**

Assembly Bill 259 also goes a step further than previously proposed legislation by requiring health plans to reimburse behavioral health services provided via telehealth at the same rate as when the service is provided in-person. The Association supports market-driven reimbursement for telehealth services, as opposed to a state mandate that dictates a specific telehealth reimbursement rate.

As with any other service, the cost of telehealth services should be negotiated based on the underlying cost, value, and market conditions. In certain circumstances, telehealth services can cost less to deliver than in-person services. Patients will benefit from telehealth's cost savings when insurers continue to have the latitude to pay less for a telehealth service than the in-person rate. **We respectfully request legislators reject a detrimental payment mandate that will prevent telehealth from realizing its potential to help lower the cost of care for Wisconsin patients.**

Medicaid Coverage of Audio-Only Mental Health Therapy

The Department of Health Services (DHS) is currently working with stakeholders to develop permanent telehealth policy under 2019 Wisconsin Act 56. The Department intends to implement this new permanent policy effective January 1, 2022. In the meantime, DHS will maintain its current temporary telehealth policy adopted in response to the COVID-19 pandemic.

At this time, through both administrative rulemaking and ForwardHealth coverage policy, the Department plans to expand Medicaid coverage and reimbursement to include a number of interactive audio-only telehealth mental health services. If Assembly Bill 259 were to become law, the new statutory language could lead to duplication and/or complication of ongoing efforts to finalize the new Medicaid telehealth coverage policy. **We respectfully request legislators consider whether Assembly Bill 259 is necessary given the expected direction of Medicaid telehealth coverage policy under 2019 Wisconsin Act 56.**

APTA Wisconsin
A Chapter of the American Physical Therapy Association

August 10th, 2021

To: Chairman Steffen and Members of the Assembly Committee on Insurance

RE: Maintaining Access to Telehealth Post COVID-19

As the American Physical Therapy Association of Wisconsin (APTA- WI) we respectfully request consideration on AB259 permanently adopting payment policies implemented during the COVID-19 public health emergency to ensure that patients continue to have real-time access to physical therapists without barriers when a patient is unable or chooses not to receive onsite care, and as a means by which face-to-face sessions can be reinforced and augmented based on patient and/or caregiver needs.

The coronavirus pandemic resulted in a need for patients, health systems, payers, and providers to pivot and rapidly adopt or expand models and modes of care delivery that minimized disruptions in care and the risks associated with those disruptions. The expansion of telehealth payment and practice policies during this Public Health Emergency demonstrated that many needs can be effectively met via the use of technology and that patients can have improved access to care by leveraging these resources. Providers who had to rapidly deploy telehealth services in less-than-ideal situations were still able to support patients and positively impact outcomes. The sudden termination of these options and resources would not make sense, nor would it demonstrate a commitment to supporting patients when and where their needs exist.

At the same time APTA-WI recognizes that policies established during a public health emergency may need to be modified for long-term sustainability. We look forward to the opportunity to work with you to ensure the development of policies that will support your members and ensure the ongoing utilization of technology and telehealth while minimizing the risk for over- or inappropriate utilization. APTA-WI has long supported the use of telehealth by physical therapists and physical therapist assistants and has many resources developed to support providers. There are also many models and studies that demonstrate the effectiveness of telehealth when used in a clinically appropriate manner.

Physical therapist interventions delivered through an electronic or digital medium have the potential to prevent falls, functional decline, costly emergency room visits, and hospital admissions and readmissions. Further, the very nature of physical therapy services makes them well-suited to telehealth. Telehealth helps to overcome access barriers caused by distance, lack

of availability of specialists and/or subspecialists, and impaired mobility; and can prevent unnecessary exposure during a pandemic or epidemic. Education and home exercise programs, including those focused on falls prevention, also function particularly well with telehealth. For patients who have difficulty leaving their homes without assistance, lack transportation, or need to travel long distances, the ability to supplement or replace some in-clinic sessions with those furnished via telehealth greatly reduces the burden on the patient and family when accessing care.

Patient and caregiver self-efficacy are inherent goals of care provided by physical therapists. A patient's and/or caregiver's ability to interact with a physical therapist in their own environment when they are facing a challenge, rather than waiting for the next appointment, can be invaluable in supporting the adoption of effective strategies to improve function, enhance safety, and promote engagement.

Physical therapists can use telehealth as a supplement to in-person therapy to treat a variety of conditions. Examples of physical therapists using telehealth technologies include the following:

- Physical therapists use telehealth to provide quick screening, assessment, and referrals that improve care coordination.
- Physical therapists can use telehealth to perform evaluations of patients to determine the need for services, the urgency, the format- in person OR telehealth or some combination of the two.
- Physical therapists provide interventions using telehealth by observing how patients move and perform exercises and activities. Physical therapists then provide verbal and visual instructions and cues to modify how patients perform various activities. They also may change the environment to encourage optimal outcomes.
- Physical therapists can apply telehealth in the patient's home or other living situation to work specifically on functional activities that keep patients safe and independent at home!
- Physical therapists provide consultative services by working with other physical therapists, physical therapist assistants, and other health care providers to share expertise in specific movement-related activities to optimize the patient's participation.
- Physical therapists use telehealth for quick check-ins with established patients, for which a full in-person visit may not be necessary.

APTA has compiled research studies on telehealth and testimonials from APTA members on how they have balanced in-person and telehealth visits.

Physical therapists often describe telehealth as a "game changer" that provides access to their services in remote, particularly rural, areas and during inclement weather. Telehealth improves access to physical therapy for patients who have mobility issues. Telehealth is also a great way to get specialists and sub-specialists into communities that would otherwise lack access. Telehealth has been shown to improve access to care for rural populations, as well as outcomes for a variety of health problems, including PTSD, chronic pain, stroke recovery, and joint replacement.

The Department of Veterans Affairs has shown numerous successful outcomes for telehealth, improving access to medical specialists for veterans who visit community outpatient clinics far removed from the nearest VA Medical Center. The VA found telehealth yielded significant per-

patient cost savings over traditional methods of care delivery (https://www.research.va.gov/topics/healthcare_delivery.cfm). Improved outcomes can lead to long-term cost savings. Proper application of tele rehabilitation can have a dramatic impact on improving care, by reducing negative consequences and costs of care, and ensuring access to specialized care in geographic areas that face difficulties in maintaining and staffing full-service hospitals.

Recommendation

While rehabilitative services furnished via telehealth would not replace traditional clinical care, telehealth has proven to be a valuable resource for physical therapists and physical therapist assistants in expanding their reach to meet the needs of patients when and where those needs arise.

The permanent adoption of telehealth policies will provide greater flexibility to providers and patients and increase access to care, especially to those living in rural or medically underserved areas or individuals living with impaired mobility. Maintaining coverage to include the delivery of telehealth by physical therapists will lead to reduced health care expenditures, increased patient access to care, and improved management of chronic disease and quality of life, particularly in rural and underserved areas. Patient geography no longer would be a barrier to receiving timely, appropriate medical care.

The APTA-WI is also actively working with our educational resources to continue to develop the skills and expertise of our members in meeting patients' needs with telehealth.

If you have any questions or would like to contact me, I can be reached at 414-587-0374 or steffbiz@gmail.com

Thank you for your consideration.

Sincerely,

Lynn Steffes, PT, DPT
APTA-WI Payment Specialist

WISCONSIN HOSPITAL ASSOCIATION

ADVOCATE. ADVANCE. LEAD.

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TO: **Members of the Assembly Committee on Insurance**

FROM: **Jon Hoelter, Vice President Federal & State Relations**

DATE: **August 10, 2021**

RE: **WHA Written Testimony on AB 259 – Coverage of telehealth services**

WHA has been pleased to work in a bipartisan fashion with the Legislature and the Evers Administration on advancing telehealth policy at the state level. In 2019, WHA worked with Representatives Loudenbeck and Kolste, Senators Kooyenga and Bewley, and the Evers Administration on bipartisan Medicaid telehealth legislation. That legislation, which became 2019 Act 56 in March 2020, was governed by a simple premise: telehealth is health care.

That public policy approach to telehealth has served Wisconsin extremely well and helped Wisconsin's Medicaid providers quickly transition from in-person care to care delivered via telehealth during the COVID pandemic. And based on very favorable patient satisfaction and quality data, it's clear that patient demand for telehealth will continue well beyond the pandemic.

Thanks to 2019 Act 56, telehealth is here to stay in the Medicaid program even after this pandemic and the federal public health emergencies that have enabled waivers allowing for expanding telehealth end. WHA and our members have largely observed commercial health plans following suit with Medicaid and Medicare in expanding and maintaining access to telehealth services during this pandemic. Yet, unlike with Medicaid, there is still uncertainty in both Medicare and the commercial sector about what telehealth services will continue to be available to patients once the pandemic ends.

WHA has long advocated at the federal level to remove the statutory restrictions that prevent Medicare from reimbursing for telehealth services in most settings apart from the current waivers enabled by the public health emergency. AB 259 provides additional assurances for patients with commercial health insurance plans that telehealth they've depended on will not go away after the COVID pandemic ends.

Additionally, the bill would ensure that Medicaid continues covering audio-only services even after the state and federal waivers enabled by the public health emergency conclude. This would provide certainty for the many Wisconsinites that have inadequate broadband, problems accessing or operating video technology, or simply prefer using the telephone over a video visit.

We look forward to continuing working with the Legislature and the Governor to preserve and strengthen access to telehealth in Wisconsin.