HSS Center for Advancement of Value in Musculoskeletal Care
HOSPITAL FOR SPECIAL SURGERY

September 11, 2023

The Honorable Chiquita Brooks-LaSure
Centers for Medicare and Medicaid Services
Department of Health and Human Services
Attention: CMS-1784-P
P.O. Box 8016
Baltimore, MD 21244-8016

Submitted electronically at https://www.regulations.gov.

RE: CMS-1784-P
Response to Medicare and Medicaid Programs: CY 2024 Payment Policies under the Physician Fee Schedule and Other Changes to Part B Payment Policies; Medicare Shared Savings Program Requirements; Provider Enrollment Regulation Updates; Provider and Supplier Prepayment and Post-payment Medical Review Requirements.

Dear Administrator Brooks-LaSure,

We are pleased to have the opportunity to comment on CMS proposed rule CMS-1784-P. Our institution, Hospital for Special Surgery (HSS) is the world's leading academic medical center focused on musculoskeletal health and the oldest orthopedic hospital in the United States. HSS has been ranked number 1 for orthopedics for 14 consecutive years by U.S. News & World Report and has been among the top-ranked hospitals for both orthopedics and rheumatology for 31 consecutive years.

Our comments are focused on the continuation of Medicare telehealth flexibilities beyond the December 31, 2024 extension of telehealth flexibilities established by the 2023 Omnibus legislation, the proposed changes from numerical categories to permanent and provisional categories, as well as the transition of physical therapy services from being covered as telehealth services provisionally to being a permanent addition to the Medicare telehealth services list.

In 2018, HSS launched a post-acute telehealth program, HSS@Home, in response to CMS's Comprehensive Care for Joint Replacement program. The program grew rapidly, with over 1,400 tele PT visits performed in 2019 compared to 54 visits in 2018. With the increase in telehealth popularity due to the pandemic, HSS@Home grew to over 6,000 visits in 2020, 2021 and 2022 and is on pace for more than 5,500 in 2023.

HSS also successfully transitioned a significant amount of ambulatory outpatient physical therapy care to telehealth during the COVID-19 pandemic. In 2020, 35% of all visits provided were tele PT with 62,000 tele PT visits, compared with 114,000 in-person visits. As the pandemic slowed and the public health emergency ended, telehealth has decreased to 9%, 5% and 4% of total visits in 2021-2023, respectively. Even with the ability to

perform tele PT, a high majority of care has returned to in-person visits. However, tele PT should still be an option for use cases that best meet patients' needs.

During the six weeks following total hip (THA) or total knee arthroplasty (TKA), patients undergo 'post-acute' PT which has traditionally been delivered either in-home or at an ambulatory therapy center. HSS@Home is a post-acute care tele PT program for THA and TKA designed to be used in lieu of in-person care[1]. Based on our experience with this tele-physical therapy program, we are pleased to demonstrate that these services (Table 1) meet CMS Categories 1 and/or 2 criteria for permanent addition to the Medicare telehealth services list as follows:

Category 1

The proposed rule states that CMS has "determined that [physical therapy] services did not meet the criteria for permanent addition to the Medicare telehealth services in Category 1 because they are therapeutic in nature and in many instances involve direct physical contact between the practitioner and the patient." This broad statement seems to reference the codes listed in Table 1. Based on our experience, a subset of these codes for physical therapy (codes 97161-97164) are evaluative and do not require direct physical contact. Physical therapy evaluation can be performed safely and effectively via real-time two-way video conferencing. To perform tele PT, physical therapists use "strong subjective questioning, clear communication, a sound understanding of functional movement patterns – and a systemic process that can differential diagnose, treat or refer as needed[2]." This process allows physical therapists to evaluate patient status effectively as if the patient were in person. For these reasons, codes 97161-97164 should be transitioned from Category 3 to Category 1. We strongly encourage CMS to move forward with these changes.

Category 2

Evaluation of HSS@Home has demonstrated that patients treated with telehealth-based post-acute rehabilitation had statistically indistinguishable rates of 90-day ER-visits, readmissions, and complications compared to home health after THA and TKA[3]. A subset analysis of patients who underwent TKA demonstrated similar patient-reported outcomes and complication rates including manipulation under anesthesia, and when compared to conventional PT patients, suggesting that telerehab is an equally effective alternative to conventional physical therapy[4]. Other research has shown tele-PT to provide care at decreased cost with equivalent outcomes and patient satisfaction[5]. For these reasons, codes 97110, 97112, and 97116 should be transitioned from Category 3 to Category 2. We strongly encourage CMS to move forward with these changes.

Timeframe for Continuation of Medicare Telehealth Flexibilities

In the CY 2023 final rule, CMS stated that the specific Category 3 therapy services listed would remain on the Medicare telehealth services list for 151 days after the end of the public health emergency as mandated by the Consolidated Appropriations Act of 2022. The 2023 Omnibus legislation has since overridden this timeframe by continuing these flexibilities through 2024 and in the CY 2024 proposed rule, CMS has recommended reconsidering the recategorization of these services or an extension of the timeframe of specific Category 3 services remaining on the list in future rulemaking. We believe there is already enough evidence to move the therapy codes mentioned above into Categories 1 or 2, but if CMS proceeds with the proposal to keep these services in Category 3 while they are evaluated for appropriateness to be permanently included on the Medicare telehealth list, we recommend an extension of the review period for at least one year to ensure CMS is able to collect all necessary data and patients are not prematurely cut off from vital care.

Proposed Changes to Medicare Telehealth List Categories

In the CY 2024 proposed rule, CMS is considering removing numerical categories for permanent and temporary codes and replacing them with the simplified permanent or provisional categories with the previous Categories 1 and 2 codes being permanent and Category 3 codes being provisional. CMS stated that as more research is collected, a code with provisional status could be assigned permanent status in future rulemaking or could be removed from the list altogether, but such a code would only be removed from the list in future rulemaking if the service is endangering patient safety based on ongoing CMS analysis or publicly available information. Research has shown that therapy services associated with current Category 3 codes mentioned above can be performed safely. As patient safety for these specific clinical circumstances is not endangered, the codes associated with these services should be transitioned from provisional to permanent. Should CMS feel that further analysis is needed with regard to current Category 3 therapy codes, we urge the agency to allow these codes to remain on the provisional list in future rulemaking until satisfactory confirmation of their benefits has been established.

We appreciate your consideration of our comments and are happy to provide clarification. For any questions regarding the HSS experience please contact me directly at macleanc@hss.edu.

Best regards,

Catherine MacLean, MD, PhD
Chief Value Medical Officer

References

1. MacLean CH, Titmuss M, Lee J, Russell L, Padget DE. The clinical, operational and financial components of a successful bundled payment program for lower extremity total joint replacement. In press for *NEJM Catalyst Innovations in Care Delivery.*
2. Noel, Kimberly and Fabus, Renee. Telehealth, 1st Edition. Incorporating Interprofessional Practice for Healthcare Professionals in the 21st Century. 2023. Elsevier
3. Fontana MA, So M, Titmuss M, Biehl E, Fisher C, MacLean CH. Telehealth Versus Home Health Post-Acute Physical Therapy after Total Joint Arthroplasty**.** *Under review.*
4. LeBrun DG, Martino B, Krell EC, Biehl E, Fisher CM, Zhang Y, Do H, Chiu YF, Gonzalez Della Valle A, Ast MP. Telerehabilitation is non-inferior to traditional rehab following TKA: A matched cohort study. Poster presentation at: American Association of Hip & Knee Surgeons Annual Meeting. Dallas, TX, USA. November 2021.
5. McKeon, John F. MD; Alvarez, Paul M. MD; Vajapey, Anuhya S. MS; Sarac, Nikolas MD; Spitzer, Andrew I. MD; Vajapey, Sravya P. MD, MBA. Expanding Role of Technology in Rehabilitation After Lower-Extremity Joint Replacement: A Systematic Review. JBJS Reviews 9(9):e21.00016, September 2021.

Table 1. Codes for physical therapy services proposed to be included in CMS telehealth services list.

Service Type	HCPCS	Long Descriptor
Therapy Procedures	97110	Therapeutic procedure, 1 or more areas, each 15 minutes; therapeutic exercises to develop strength and endurance, range of motion and flexibility
	97112	Therapeutic procedure, 1 or more areas, each 15 minutes; neuromuscular reeducation of movement, balance, coordination, kinesthetic sense, posture, and/or proprioception for sitting and/or standing activities
	97116	Therapeutic procedure, 1 or more areas, each 15 minutes; gait training (includes stair climbing)
Physical Therapy Evaluations	97161	Physical therapy evaluation: low complexity, requiring these components: A history with no personal factors and/or comorbidities that impact the plan of care; An examination of body system(s) using standardized tests and measures addressing 1-2 elements from any of the following: body structures and functions, activity limitations, and/or participation restrictions; A clinical presentation with stable and/or uncomplicated characteristics; and Clinical decision making of low complexity using standardized patient assessment instrument and/or measurable assessment of functional outcome. Typically, 20 minutes are spent face-to-face with the patient and/or family.
	97162	Physical therapy evaluation: moderate complexity, requiring these components: A history of present problem with 1-2 personal factors and/or comorbidities that impact the plan of care; An examination of body systems using standardized tests and measures in addressing a total of 3 or more elements from any of the following: body structures and functions, activity limitations, and/or participation restrictions; An evolving clinical presentation with changing characteristics; and Clinical decision making of moderate complexity using standardized patient assessment instrument and/or measurable assessment of functional outcome. Typically, 30 minutes are spent face-to-face with the patient and/or family.
	97163	Physical therapy evaluation: high complexity, requiring these components: A history of present problem with 3 or more personal factors and/or comorbidities that impact the plan of care; An examination of body systems using standardized tests and measures addressing a total of 4 or more elements from any of the following: body structures and functions, activity limitations, and/or participation restrictions; A clinical presentation with unstable and unpredictable characteristics; and Clinical decision making of high complexity using standardized patient assessment instrument and/or measurable assessment of functional outcome. Typically, 45 minutes are spent face-to-face with the patient and/or family.
	97164	Re-evaluation of physical therapy established plan of care, requiring these components: An examination including a review of history and use of standardized tests and measures is required; and Revised plan of care using a standardized patient assessment instrument and/or measurable assessment of functional outcome Typically, 20 minutes are spent face-to-face with the patient and/or family.