

To champion the prevention, diagnosis, and treatment of chest diseases through education, communication, and research.

Board of Regents

Doreen J. Addrizzo-Harris, MD, FCCP
President

John D. Buckley, MD, MPH, FCCP
President-Elect

David A. Schulman, MD, MPH, FCCP
Immediate Past President

John Howington, MD, MBA, FCCP
President-Designate

Regents

Douglas A. Arenberg, MD, FCCP
Christopher L. Carroll, MD, FCCP
Kevin M. Chan, MD, FCCP
Angel O. Coz, MD, FCCP
Aneesa M. Das, MD, FCCP
Vera A. De Palo, MD, FCCP
Neil S. Freedman, MD, FCCP
Sandhya Khurana, MD, FCCP
Lisa K. Moores, MD, FCCP
Michael E. Nelson, MD, FCCP
Alexander S. Niven, MD, FCCP
Nneka O. Sederstrom, PhD, MA, FCCP
Victor J. Test, MD, FCCP

Robert De Marco, MD, FCCP
CHEST Foundation Chair

Cassie C. Kennedy, MD, FCCP
Council of Networks Chair

Semra Bilaceroglu, MD, FCCP
Council of Global Governors Chair

Chief Executive Officer

Robert A. Musacchio, PhD

Honorable Xavier Becerra
Secretary
Department of Health and Human
Services
200 Independence Ave SW
Washington, DC 20201

Chiquita Brooks-LaSure
Administrator
Centers for Medicare & Medicaid
Services
7500 Security Blvd
Baltimore, MD 21244

February 28, 2023

Re: Ensuring Access to supplemental oxygen and respiratory therapies for Medicare beneficiaries upon conclusion of the Covid-19 Public Health Emergency (PHE)

Dear Secretary Becerra and Administrator Brooks-LaSure:

The American College of Chest Physicians (CHEST) appreciates the thoughtful planning surrounding the end of the Covid-19 public health emergency (PHE) that the Biden Administration has undertaken. We recognize that the US Department of Health and Human Services (HHS) and the Centers for Medicare & Medicaid Services (CMS) must make a multitude of policy decisions to ensure continued access to care for Medicare beneficiaries. We hope that HHS and CMS will continue an open dialogue with practitioners to implement policies designed to smooth the transition out of the PHE.

CHEST represents over 21,000 members who provide clinical respiratory, critical care, and sleep medicine care to patients in the United States and throughout the world. Our mission is to champion the prevention, diagnosis, and treatment of chest diseases. CHEST is the global leader in advancing best patient outcomes through innovative chest medicine education, clinical research, and team-based care. We respectfully submit the following comments and suggestions to HHS and CMS that we feel will ensure continued access to life-saving care for our patients. In short, we hope that HHS will pursue a forward-looking strategy that provides ample time for providers to become reaccustomed (once again) to pre-PHE requirements.

I. NCD/LCD Requirements

During the public health emergency, CMS determined not to enforce certain requirements contained in national coverage decisions (NCDs), local coverage decisions (LCDs), and policy articles. For example, CMS and the Medicare Administrative Contractors (MACs) suspended enforcement of face-to-face or in-person encounters for evaluations, assessments, and certifications under the conditions that services and supplies provided to Medicare beneficiaries must still be reasonable and necessary and that the medical record must be sufficient to demonstrate medical necessity.

CHEST urges CMS and the Durable Medical Equipment (DME) MACs to focus any enforcement efforts on claims and services provided after the end of the PHE, rather than expending resources on auditing claims and services provided during the PHE. Enforcement agencies such as the Government Accountability Office

(GAO) and the HHS Office of Inspector General (OIG) have not reported an increase in health care fraud, waste, or abuse during the PHE as it relates to respiratory care. In one study for example, the OIG identified 1,714 providers out of 742,000 whose billing for telehealth services in the first year of the PHE posed a high risk for fraud, waste, or abuse.¹ In other words, 99.98% of providers showed no evidence of telehealth billing practices that pose a high risk to Medicare. If PHE fraud were to occur, it would likely be in the telehealth space given the massive increase in telehealth services.

We appreciate the CMS Spotlight that states, "For certain DME items, [PHE flexibilities] included the non-enforcement of clinical indications for coverage...once the PHE ends CMS plans to primarily focus reviews on claims with dates of service outside of the PHE, for which clinical indications of coverage are applicable."² We encourage CMS to reiterate this position in a more formal policy announcement to provide practitioners with greater certainty about the audit process after the PHE.

II. Oxygen Recertifications

For Group 1 patients, home oxygen and other related items require recertification of medical necessity 12 months after the initial certification. We request that CMS provide flexibility to conduct these recertifications, as providers may have a three-year backlog of patients who would require recertification. A transition period for oxygen recertifications post-PHE would provide certainty for Medicare beneficiaries who require home oxygen. For example, CMS could allow 18 months from the end of the PHE for recertifications to occur for any patient who was prescribed home oxygen during the PHE.

III. Medical Necessity Audits

In November 2022, the Agency released official guidance concerning how it will handle Medicare claims audits after the termination of the PHE determination. CHEST understands the need for CMS to conduct audits to prevent fraud and abuse and conduct oversight in order to maintain program integrity. Telehealth services have and continue to make it possible for physicians to provide patients with necessary services uninterrupted. In addition to oxygen, CHEST physicians prescribe numerous other DME items that include but are not limited to respiratory assist devices for respiratory failure, positive pressure devices for sleep apnea, and prosthetic devices. As noted previously, audits of telehealth services revealed that more than 99% of clinicians code and bill appropriately.¹ Though CHEST supports the maintenance and improvement of the program integrity moving forward, medical necessity audits that include claims retroactive to the start of the PHE would excessively burden busy practitioners. These practitioners will already be expected to perform recertification visits, which may result in potential denial of treatment that patients need. Because CHEST is dedicated to ensuring all patients have access to high-quality care, our aim is to mitigate disruptions in necessary services to patients as the PHE winds down. We appreciate and support the decision by CMS to focus audits by review contractors on services provided after the PHE.

IV. Telehealth

¹ See <https://oig.hhs.gov/oei/reports/OEI-02-20-00720.pdf>.

² See <https://www.cms.gov/About-CMS/Components/CPI/CPI-Spotlight>.

CHEST appreciates the joint inter-agency and Congressional efforts to improve patient access to telehealth services both during the PHE and post-PHE. We acknowledge the significant measures HHS has taken to expedite the adoption and awareness of telehealth during the COVID-19 pandemic. Given the recent legislation authorizing an extension of many of the policies outlined in the COVID-19 public health emergency through December 31, 2024, some telehealth flexibilities have been made permanent while others have been extended. CHEST supports the extension and continuation of the telehealth flexibilities that allow Medicare patients to receive telehealth services authorized in the Calendar Year 2023 Medicare Physician Fee Schedule in their home. CHEST also supports the extension of the flexibility that bars geographic restrictions for originating site for non-behavioral/mental telehealth services.

V. Conclusion

CHEST appreciates the opportunity to submit comments to HHS and CMS regarding the end of the PHE and the need to ensure continued access to respiratory care for Medicare beneficiaries. We welcome the opportunity to answer any questions, elaborate on CHEST policy positions, and serve as a resource on chest medicine.

Sincerely,



Doreen J. Adrizzo-Harris, MD, FCCP
President



Robert Muscacchio, PhD
CEO/EVP