

September 17, 2021

The Honorable Chiquita Brooks-LaSure

Administrator

Centers for Medicare & Medicaid Services

Department of Health and Human Services

Attention: CMS-1751-P

Mail Stop C4-26-05

7500 Security Boulevard

Baltimore, MD 21244-1850

# Re: Medicare Program: Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems and Quality Reporting Programs etc. (“OPPS Proposed Rule” or “Proposed Rule”)

Dear Administrator Brooks-LaSure:

The undersigned members of the Regulatory Relief Coalition (RRC), representing physicians throughout the country, are pleased to have the opportunity to comment on the OPPS Proposed Rule. The RRC is a group of national physician specialty organizations advocating for regulatory burden reduction in Medicare so that physicians can spend more time treating patients. Our aim is to ensure that prior authorization (PA) is not a barrier to timely access to care for the patients we serve.

The RRC is pleased that the calendar year (CY) 2022 OPPS Proposed Rule does not propose to expand the list of hospital outpatient services subject to PA. The RRC is extremely concerned about CMS’ incorporation of PA – traditionally a utilization control process used by managed care organizations – into the Medicare Fee-for-Service (FFS) Program. Over the past 10 years, health plans have increasingly used PA to reduce health care spending, substantially delaying medically necessary patient care and significantly increasing providers’ administrative costs. Obtaining PA from various Medicare Advantage (MA)and other health plans typically require physicians or their staff to spend the equivalent of two or more days each week negotiating with insurance companies –time that would better be spent taking care of patients.

According to a RRC survey, for most physicians (74%), it takes between 2 to 14 days to obtain PA, but for 15%, this process can take from 15 to more than 31 days. A majority of physicians report that PA forces patients to abandon treatment altogether, and physicians overwhelmingly (87%) report that PA has a negative impact on patient clinical outcomes. Most physicians (84%) report that the burden associated with PA has significantly increased over the past five years as insurers have increased the use of PA for procedures (84%); for diagnostic tools (78%); and for prescription medications (80%). The burden associated with PA for physicians and their staff is now high or extremely high (92%), and in any given week, most physicians (42%) must contend with between 11 and 40 PA requests.

In light of the increased and increasing proportion of Medicare beneficiaries enrolled in MA plans and the ubiquitous use of PA by these plans, both patient organizations and more than 100 members of Congress requested that CMS address this issue. And on May 13, Reps. Suzan DelBene (D-Wash.), Mike Kelly (R-Pa.), Ami Bera, MD, (D-Calif.) and Larry Bucshon, MD, (R-Ind.) reintroduced the *Improving Seniors’ Timely Access to Care Act of 2021 (HR 3173*), which mandates increased oversight of MA plans’ use of PA. This bill is currently endorsed by over 300 patient and provider organizations and co-sponsored by over 200 members of the House on a bipartisan basis. Given the clear consensus that the PA processes used by MA organizations need to be reformed, we do not believe that it appropriate to extend these same processes to Medicare FFS.

In fact, the initial adoption of hospital outpatient PA requirements in the CY 2020 OPPS Final Rule (CMS-1717-FC) for five procedures[[1]](#footnote-1) constituted a significant departure from traditional Medicare claims processing practices. Nevertheless, before the agency and the Medicare Administrative Contractors (MACs) had an opportunity to assess this new system, effective July 1, 2021, CMS added two additional procedures to the list of hospital outpatient services subject to PA.[[2]](#footnote-2)

This expansion was adopted without adequate transparency regarding the standards used to select the services that would be subject to these burdensome new requirements and in the face of evidence that the MACs were failing to process PA requests for the original five procedures within the required time frames. In fact, while the hospital outpatient PA program ostensibly became fully operational over a year ago, unacceptable delays continue. Physicians who have been subject to PA requirements since July of 2020 continue to experience significant challenges in obtaining timely approval, with some requests for medically necessary services taking three months to be approved. These approval delays result in other downstream barriers to PA approval, including repetitive requests from MACs for information that has already been provided, ultimately forcing physicians to delay medically necessary surgeries. While CMS has provided an exemption pathway from the PA program, implementation issues affecting initial PA approvals are affecting implementation of this pathway, since the availability of the exemption depends in part on the approval rate of initial requests.

For these reasons, we strongly support CMS’ decision to refrain from further expanding PA requirements in 2022. Furthermore, we urge the agency to take the following actions:

* Immediately halt the PA requirements for the seven clinical areas currently subject to this new program. At the very least, CMS must closely monitor the implementation of the current PA requirements to ensure that decisions are made promptly and, if they are not, clarify that the PA requirements are not barriers to payment for these services.
* Release the MACs’ PA data to improve transparency.
* Clarify the process for removing services from the PA requirements.
* Suspend the use of PA for any additional services under all Medicare FFS programs.

Thank you for considering our comments.

Respectfully,

American Academy of Family Physicians

American Academy of Neurology

American Academy of Ophthalmology

American Academy of Orthopaedic Surgeons

American Association of Neurological Surgeons

American College of Cardiology

American College of Surgeons

Association for Clinical Oncology

Congress of Neurological Surgeons

Medical Group Management Association

North American Spine Society

1. Blepharoplasty, botulinum toxin injections, panniculectomy, rhinoplasty and vein ablation. [↑](#footnote-ref-1)
2. Implanted spinal neurostimulators and cervical fusion with disc removal. [↑](#footnote-ref-2)