Congress of the United States
Washington, DC 20515

October 30, 2020

The Honorable Seema Verma
Administrator
Centers for Medicare and Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244

Dear Administrator Verma,

We write to you to express bipartisan concern over a proposal by the Centers for Medicare and Medicaid Services (CMS) to expand prior authorization for certain items and services in the calendar year (CY) 2021 Medicare Hospital Outpatient Prospective Payment System (OPPS) and Ambulatory Surgical Center (ASC) Payment System.[1] If finalized, we believe this policy could negatively impact beneficiary access to medically necessary procedures, and we ask you to reconsider.

Prior authorization is an important cost utilization management tool in our current fee-for-service landscape and should be reserved for situations in which over-utilization has been demonstrated. However, through this proposed rule, CMS is moving toward broader use of prior authorization. In the CY 2021 proposed rule, CMS intends to implement prior authorization for two new service categories for the hospital outpatient department (HOPD) beginning on dates of service on or after July 1, 2021. The two new service categories proposed are implanted spinal neurostimulators and cervical fusion with disc removal. This follows implementation of prior authorization for five HOPD service categories on July 1, 2020.

CMS has prioritized improving patient care and eliminating rules and requirements that serve as a barrier to streamlined, quality health care through your Patients over Paperwork initiative. Among the concerns patients and health care providers have brought to you is a consensus that prior authorization has delayed or served as a barrier to quality patient care.[2] This is because prior authorization usually targets all providers instead of outliers. As you know, historically, Medicare has rarely required prior authorization for medically necessary services. It's even rarer for procedures for which there is a national coverage determination (NCD), which is the case with implanted spinal neurostimulators. The limited use rightly reflects concerns about the burden placed on providers and potential barrier to beneficiary access to medically necessary procedures and equipment.

That is why we are concerned that CMS is proposing to move forward with this expansion of prior authorization without the necessary guardrails to ensure beneficiary access to care is protected. This proposal

[1] Centers for Medicare and Medicaid Services, CY 2021 Medicare Hospital Outpatient Prospective Payment System and Ambulatory Surgical Center Payment System Proposed Rule (CMS-1736-P), August 12, 2020.

[2] Centers for Medicare and Medicaid Services, Request for Information: Reducing Administrative Burden to Put Patients over Paperwork (CMS-6082-NC), August 12, 2019. *See* comments, https://www.regulations.gov/docketBrowser?rpp=25&so=DESC&sb=commentDueDate&po=0&dct=PS&D=CMS-2019-0084.

comes only a few months after implementing prior authorization for five other service categories. When CMS proposed this policy, despite it agreeing with prior authorization being appropriate for those particular services, Medicare Payment Advisory Commission (MedPAC) noted it had a number of concerns about this proposed policy: a lack of experience in using prior authorization in fee-for-service Medicare, a lack of administrative structure for implementing this proposed policy, and a lack of guidelines through which providers would obtain prior authorization. In addition, the Commission is concerned that access to necessary care could be adversely affected. Therefore, MedPAC notes, CMS should proceed carefully in using prior authorization and consider the potential burden on providers, the agency's resources, beneficiaries, and taxpayers.[3]

The impact of that expansion is still unknown due to the newness of the policy. Further, in MedPAC's comment letter to CMS for the CY 2021 proposed rule, they repeat the same three operational concerns as well as reiterate their concern that "access to necessary care could be adversely affected."[4] It is critical that before CMS moves forward with adding new prior authorization requirements, it must first study the impact on beneficiary access and provider burdens. We support efforts to ensure appropriate safeguards are in place to protect the Medicare program, but not at the expense of delaying medically necessary care or adding costs and burdens to health care providers.

As supporters of H.R. 3107, the *Improving Seniors' Timely Access to Care Act of 2019*, we too seek to modernize the prior authorization process by establishing an electronic process and standard for health care providers to submit requests.[5] This legislation reflects years of concerns from providers and Medicare Advantage beneficiaries on the use of prior authorization for routine services and also the lack of transparency and guidelines to ensure an efficient process that protects patients. CMS should not expand prior authorization in traditional Medicare without learning from the experiences in Medicare Advantage.

Due to all of these concerns, we respectfully ask that CMS does not move forward with any expansion of prior authorization under OPPS until it has thoroughly examined its experiences with the five procedures that have recently established prior authorization and shared the results of this audit publicly. Thank you for your consideration of this issue.

Sincerely,

Roger W. Marshall, M.D.
Member of Congress

Ami Bera, M.D.
Member of Congress

Mike Kelly
Member of Congress

Suzan K. DelBene
Member of Congress

[3] http://www.medpac.gov/docs/default-source/comment-letters/09132019_opps_asc_2020_medpac_comment_v2_sec.pdf?sfvrsn=0
[4] http://www.medpac.gov/docs/default-source/comment-letters/10022020_opps_asc_2021_medpac_comment_sec.pdf?sfvrsn=0
[5] U.S. Congress, House, Improving Seniors' Timely Access to Care Act of 2019, HR 3107, 116th Cong. 1st sess, introduced in House June 5, 2019, https://www.govinfo.gov/content/pkg/BILLS-116hr3107ih/pdf/BILLS-116hr3107ih.pdf.

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