

March 6, 2020

Re: CMS-2020-0003

Seema Verma
Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
7500 Security Boulevard

Re: Advance Notice of Methodological Changes for Calendar Year (CY) 2021 for Medicare Advantage (MA) Capitation Rates and Part C and Part D Payment Policies

Dear Administrator Verma:

On behalf of nearly 38,000 members, the American College of Emergency Physicians (ACEP) appreciates the opportunity to comment on the CY 2021 Advance Notice for the Medicare Advantage program and the Part D Prescription Drug Benefit program.

In the notice, the Centers for Medicare & Medicaid Services (CMS) seeks comment on three initial opioid prescribing (IOP) measures that align with the Centers for Disease Control and Prevention (CDC) Guideline for Prescribing Opioids for Chronic Pain. CMS states that the measures would provide additional tools for Part D sponsors to monitor initial opioid prescriptions that increase risk for chronic opioid use and opioid use disorder (OUD). Further, CMS reiterates that these measures, along with its Part D opioid policies in general, are not meant to represent “prescribing limits which could have unintended consequences that adversely impact a beneficiary’s access to medically necessary prescribed opioids.”¹

ACEP understands and appreciates CMS’ attempts to monitor opioid prescriptions as part of its overall effort to tackle the opioid crisis. However, we continue to have concerns that CMS’ policies, especially the opioid-related safety edits finalized in 2019, do not adequately take into account the unique nature of care provided in emergency departments (EDs). Emergency physicians operate in shifts, and therefore it may be logistically challenging for a patient or pharmacist to immediately reach out to the physician who treated the patient. We had recommended that CMS create a more flexible policy for opioids prescribed by emergency physicians in emergency departments to account for situations when a pharmacy or sponsor is unable to reach

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¹ Advance Notice of Methodological Changes for Calendar Year (CY) 2021 for Medicare Advantage (MA) Capitation Rates and Part C and Part D Payment Policies – Part II, 5 Feb. 2020, page 78.

the emergency physician who ordered the prescription. The care coordination safety edits require the pharmacist to contact the prescriber to override the edit. If the pharmacy cannot reach the prescriber, the beneficiary, a representative of the beneficiary, or the prescriber can request an expedited coverage determination, which must be resolved within 24 hours. However, an expedited determination process still usually involves a supporting statement from the prescriber that the drug is necessary. Thus, this safety edit could impose a burden on both the beneficiary and the prescriber.

We also continue to believe that the supply limit for initial opioid prescription fills should be no less than the current requirement of seven days. There are many cases where a prescription is ordered by an emergency physician on a Friday before a holiday weekend, and the patient is unable to obtain follow-up care with an appropriate specialist until the following week. For example, if a patient is seen in the ED for a limb fracture at the beginning of a holiday weekend, it could easily be up to five days until the patient can get in to see an orthopedist who can stabilize and fully set the fracture, and, if needed and appropriate, provide a prescription for additional opioids. While seven days is generally an acceptable limit, we also note that in some extreme situations, such as natural disasters, a 7-day supply may be insufficient. Going forward, ACEP recommends that CMS consider allowing a longer supply limit in certain exceptional circumstances.

Finally, we encourage CMS to consider holding off on finalizing any major policies that align with CDC's current Guideline for Prescribing Opioids for Chronic Pain. In December 2019, the CDC held a public meeting where it announced its intention to form a workgroup that would update the guideline to include up-to-date clinical evidence and best practices.² During the meeting, there was a robust discussion from a clinical panel of physicians and other health care practitioners about how the current guideline has been misinterpreted—as well as numerous public comments from patients supporting that assertion. The CDC also wants to expand the guideline to address the treatment of acute pain. Given the upcoming work the CDC will be conducting related to opioid prescribing guidelines, we believe that it is prudent for CMS to wait until that effort has been completed before creating new policies that are based off of current guidelines.

We appreciate the opportunity to share our comments. If you have any questions, please contact Jeffrey Davis, ACEP's Director of Regulatory Affairs at jdavis@acep.org.

Sincerely,

A handwritten signature in black ink that reads "William P. Jaquis". The signature is written in a cursive, flowing style.

William P. Jaquis, MD, MSHQS, FACEP

ACEP President

² Information about the CDC meeting can be found at: <https://www.cdc.gov/injury/bsc/opioid-workgroup-2019.html>.