



March 24, 2020

Seema Verma
Administrator Centers for Medicare and Medicaid Services
U.S. Department of Health and Human Services
200 Independence Avenue SW
Washington, DC 20201

Dear Administrator Verma:

On behalf of the American College of Physicians (ACP), the largest medical specialty organization and the second largest physician group in the United States, the College writes to express our sincere appreciation for the regulatory relief actions taken to date by CMS to enable physicians and other clinicians to focus on caring for patients impacted by the coronavirus pandemic. ACP members include 159,000 internal medicine physicians (internists), related subspecialists, and medical students dedicated to scientific knowledge and clinical expertise in the diagnosis, treatment, and compassionate care of adults across the spectrum from health to complex illness.

The College applauds CMS for taking bold actions to [broaden telehealth services and use discretionary enforcement for certain HIPAA requirements](#). Given the Public Health Emergency (PHE) declaration, CMS announced an extension of these services to allow access by all patients, regardless of their geographic location. Under these revisions, physicians can bill for the following types of visits: (1) telehealth visits, (2) virtual check-ins, and (3) e-visits. For telehealth visits in particular, the HHS Office of Inspector General (OIG) will allow physicians to reduce or waive patient cost-sharing and CMS has indicated it will not conduct audits to ensure a prior patient relationship existed—although these flexibilities do not appear to apply to virtual check-ins or e-visits, which is something ACP believes should change. CMS has also [eased “provider” enrollment](#) by providing certain flexibilities in the requirements, including:

- Establishing a toll-free hotline for physicians and others to gain temporary enrollment privileges. This applies to both Medicare and Medicaid;
- Waiving the following screening requirements: application fees, criminal background checks, and site visits;
- Postponing re-validation actions; and
- Expediting pending and new “provider” enrollment applications.

We commend the Agency for taking these important steps to ensure patients will continue to receive care in the most efficient, timely, and safe way possible.

ACP is also appreciative of CMS’ March 22 [announcement](#) on quality reporting program policy changes that responded directly to ACP advocacy [requests](#) to broadly exempt clinicians from a 2021 MIPS penalty based on 2019 data and not count data for the first six months of 2020 toward quality and value-based purchasing programs. These are both very important steps in the right direction to ensure patients continue to receive care in the most efficient, timely, and safe way possible—although, as detailed later in this letter, much more can and should be done. Additionally, the College applauds new

actions by CMS that complement ongoing efforts to create regulatory flexibilities that will have an immediate, positive, tangible impact on Medicare clinicians' abilities to treat patients and contain the spread of COVID-19.

The College urges CMS to take additional steps to ensure the safety of patients, internists, and other physicians on the frontlines of care. We believe there are further steps that will assist physicians in meeting these unprecedented challenges and patient needs without derailing the important progress that is being made to improve the quality and efficiency of care. In direct response to these recent actions on behalf of the Agency, ACP would like to make the following comments and recommendations:

Evaluation and Management Coding Changes for 2021

- **Provide reimbursement for CPT codes 99441 – 99443, which are telephone evaluation and management services** provided by a physician to an established patient, parent, or guardian not originating from a related E/M service provided within the previous 7 days nor leading to an E/M service or procedure within the next 24 hours or soonest available appointment. **Additionally, we ask that CMS pay for these services at the same rate as in-person visits during this national emergency.** Not reimbursing for telephone visits (99441-99443)—at a payment level on par with in-person visits—disproportionally affects elderly patients, many of whom are managing multiple chronic conditions, who do not have smartphones, or may have one but do not know how to use FaceTime or Skype but do know how to use their telephone. They are the ones who most need to practice social distancing from physician practices and clinics—and in some cases, from their own family members—to protect themselves from exposure to the virus while still receiving uninterrupted primary care services.
- **Allow physicians to waive co-pays for all types of telemedicine services.** While we appreciate the guidance issued by CMS last week that waived copays for certain types of visits, we urge CMS to grant this authority to physicians for virtual check-ins and e-visits.
- **Make all types of telemedicine, including telehealth visits, virtual check-ins, phone consultations, and e-visits, available to both new and established patients.** We are encouraged by the agency's actions thus far to improve telehealth accessibility, and we urge CMS to make additional changes to allow all patients to take advantage of these expanded flexibilities.
- **The College continues to urge CMS to ensure that the Evaluation and Management (E/M) coding changes, as finalized in the 2020 Physician Fee Schedule final rule, are implemented on January 1, 2021 without delay or other changes that will undermine their impact,** to ensure stability and more appropriate payment for internal medicine specialists and other physicians that provide primary and comprehensive care—critically important during this time of extreme instability in the health care system. The College has had several encouraging conversations with CMS about these important changes, and we look forward to working with the agency to implement these changes.

Prior Authorization

- **ACP recommends CMS waive all prior authorization (PA) requirements during this period of national emergency.** Delays in patient care resulting from PA restrictions may result in patients occupying hospital beds that could be used during this emergency. ACP appreciates the agency's work on efforts to reduce physician burden, and we urge CMS to allow additional flexibilities so that physicians may focus on patients, not paperwork.

Home Health Care

- **ACP urges CMS to relax the Home Health Care (HHC) regulations for home-bound patients.** There is a growing challenge to get patients discharged from the hospital as quickly and safely as possible. In an effort to keep patients safe, clinicians need to avoid sending these elderly patients to the lab for follow up testing to ensure continued improvement. Ideally, these patients should stay in their homes and not put themselves at risk. We urge CMS to consider allowing HHC agencies to come to homes to draw needed blood work. Currently, if they do not meet the home-bound status, they don't qualify for HHC and the only option is for them to go to a lab which will put them at risk for exposure to COVID-19.

Quality Payment Program

- **ACP reiterates its previous request for CMS to extend the Merit-Based Incentive Payment System (MIPS) reporting deadline for 2019 data until the end of 2020.** ACP appreciates CMS taking steps to ease burden on clinicians by implementing a MIPS reporting extension to April 30, 2020 coupled with an automatic exemption from 2019 performance related penalties. However, the value of any quality reporting program is that clinicians collect, interpret, and leverage data to drive meaningful improvements in care delivery. Hundreds of thousands of clinicians are actively participating in the program. For them, 30 days is simply not enough flexibility for a crisis of this magnitude. In 2018, 84% of data reporters scored at or above the exceptional performance bonus threshold of 70 points, making the margin of error extremely small. Asking clinicians to submit all 2019 data by April 30 would essentially be asking them to forgo any realistic chance of earning a substantive positive reimbursement. While we realize this may delay 2021 performance adjustments, giving clinicians a realistic opportunity to submit data and earn a possible performance bonus will be more important to the future vitality of the program. Extending the deadline to collect more data is also critical to the program's future because the program relies on data from past performance years to set benchmarks for both individual measures and collective performance. Without robust 2019 data, the accuracy and validity of future benchmarks will suffer.
- **ACP urges CMS to consider universally applying the MIPS penalty exemption to all MIPS reporters, including those that may have already submitted data for two or more performance categories.** We recognize that this should impact a relatively small proportion of the MIPS reporting population, but to those clinicians, it could have a monumental impact. CMS has itself expressed concerns for scenarios in which APM entities or QCDR, EHR, or other technology vendors may inadvertently submit MIPS data unbeknownst to, and to the detriment of, the clinician or practice. In general, CMS should be encouraging, not discouraging, the collection of useful performance data. This technical fix will help to ensure clinicians and practices are not penalized for furthering value-based reform efforts.
- **ACP urges CMS to broaden the exemption of 2020 claims data to cover the entire 2020 performance year.** ACP appreciates CMS excluding the first six months of claims data from 2020 performance for all quality reporting and value-based purchasing programs. However, we are now three months into the year with no clear end to the pandemic in sight. Dealing with this disaster will have broad-ranging impacts on quality and financial performance for months, if not years, after the technical endpoint of the pandemic. Therefore, as CMS considers additional relief to clinicians during this pandemic, we urge the Agency to extend the deadline until at least

the end of the of 2020 performance year.

- **ACP recommends CMS broaden the automatic neutral payment adjustment and exclusion of 2020 claims data to participants in Medicare advanced Alternative Payment Models (APMs), particularly risk-bearing advanced APMs.** The College appreciates that this is an ongoing situation and that CMS is evaluating options for further relief around participation and data submission for 2020. As it does, clinicians who support the movement to value by participating in APMs must not be forgotten. COVID-19 will have damaging effects on global financial benchmarks, target pricing, and quality and cost performance that will negatively impact the clinicians who participate in these models not just in 2019 and 2020, but in future performance years as well, as future measure benchmarks and financial targets are set based on 2019 and 2020 performance data. While we understand that CMS needs time to make certain methodological changes to global financial benchmarks, target pricing, or quality and cost metrics based on the individual design and features of each model, to avert a mass panic and exodus from Medicare APMs, CMS needs to make basic assurances now, including broad-reaching relief from performance penalties and removing compromised claims data.
- **The College also reiterates our [previous requests](#) to assure clinicians and strengthen the QPP and broader value-based reform movement in this uncertain time.**
 - Extend upcoming APM deadlines related to 2019 data submission, cutoff dates to drop out and avoid financial penalties for 2020 performance, and 2021 participation agreements.
 - Consider additional options to support APM participants, including up front funding opportunities and reinsurance options.
 - Extend the MIPS measure submission deadline and incorporate flexibility for measure developers for the 2021 development cycle, including an ability to submit preliminary measures for consideration.
 - Commit to a graduated implementation timeline for the MVP.

Health Information Technology - 21st Century Cures Act Implementation:

- **ACP continues to implore CMS and ONC to offer hardship exceptions for the upcoming regulatory deadlines in the recent “Patient Access” and “Information Blocking” final regulations.**

Medicare Advantage and Medicare Part D (prescription drug coverage)

- **ACP continues to encourage CMS to extend the comment period on the proposed rules for these programs until at least October 5, 2020 in order to allow physicians to focus on delivering critical care during this public health emergency.**

Appropriate Use Criteria (AUC)

- **ACP asks that CMS work together with Congress to suspend AUC requirements until to aid physicians in meeting the current and expected demands on their services.**

In Conclusion

ACP is extremely thankful and encouraged by the actions taken by CMS to date that will be enormously beneficial to physicians and their teams in both caring for patients impacted by this pandemic and for patients at-large. At the same time, we continue to strongly recommend that CMS take additional emergency actions to adequately assist and prepare physicians and other clinicians with the resources and burden reduction they need to be successful in defeating this pandemic. We understand that in the coming months, CMS will be considering additional ways to reduce burden and ensure clinicians are appropriately supported and protected against potential unintended consequences in the wake of COVID-19. ACP would like to offer our full assistance toward these efforts, and we intend to continue voicing the perspective of internal medicine physicians, who are witnessing the firsthand impact of this pandemic. Please contact Brian Outland, PhD, Director, Regulatory Affairs, by phone at 202-261-4544 or email at boutland@acponline.org if you have questions or need additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert M. McLean". The signature is written in a cursive, flowing style.

Robert M. McLean, MD, MACP
President