American Academy of PAs

September 13, 2022

The Honorable Chiquita Brooks-LaSure, MPP
Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-1751-P
7500 Security Boulevard
Baltimore, MD 21244-1850

Re: [CMS-1772-P] Medicare Program: Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems and Quality Reporting Programs; Organ Acquisition; Rural Emergency Hospitals: Payment Policies, Conditions of Participation, Provider Enrollment, Physician Self-Referral; New Service Category for Hospital Outpatient Department Prior Authorization Process; Overall Hospital Quality Star Rating

Dear Administrator Brooks-LaSure,

The American Academy of PAs (AAPA), on behalf of the more than 159,000 PAs (physician assistants/ associates) throughout the United States, appreciates the opportunity to provide comments on the Centers for Medicare and Medicaid Services' (CMS) 2023 Hospital Outpatient Prospective Payment System proposed rule. PAs seek to work in partnership with CMS to advance policies that would increase access to high quality care for all Medicare beneficiaries. It is within this context that we draw your attention to our comments.

Supervision of Diagnostic and Therapeutic Services Furnished to Outpatients

CMS proposes to make technical corrections related to the supervision of therapeutic and diagnostic tests to include physician assistants and other "nonphysician practitioners" in the regulations and definitions of *general supervision* and *personal supervision*. Specifically, CMS proposes to replace cross references at § 410.27(a)(1)(iv)(A) and (B) and § 410.28(e) to the definitions of general and personal supervision at § 410.32(b)(3)(I) and (iii) with the text of those definitions. CMS also proposes to revise § 410.28(e) to clarify that certain nonphysician practitioners (i.e., nurse practitioners, physician assistants, clinical nurse specialists and certified nurse midwifes) may supervise the performance of diagnostic tests to the extent they are authorized to do so under their scope of practice and applicable State law.

In the interim final rule with comment period published on May 8, 2020, in the Federal Register titled "Additional Policy and Regulatory Revisions in Response to the COVID-19 Public Health Emergency and Delay of Certain Reporting Requirements for the Skilled Nursing Facility Quality Reporting Program" (the May 8th COVID-19 IFC) (85 FR 27550, 27555 through 27556, 27620), CMS revised § 410.32(b)(1) to allow for the duration of the PHE, PAs and certain other practitioners to supervise the performance of diagnostic tests. In the CY 2021 PFS final rule (85 FR 84590 through 84492, 85026), CMS further revised § 410.32(b)(1) to make the revisions made by the May 8th COVID-19 IFC permanent and to add certified registered nurse anesthetists to the list of nonphysician practitioners permitted to supervise diagnostic tests.

While some regulations were updated based on this policy change, other regulations were not revised to expressly include PAs. Of the three levels of defined supervision (§ 410.32(b)(2)(i), § 410.32(b)(2)(ii), § 410.32(b)(2)(iii)), only the definition for direct supervision was modified to indicate that a "supervising practitioner" other than a physician can provide the required supervision. The definitions for general and personal supervision continue to refer only to a physician. However, CMS notes that although the definitions of general and personal supervision do not specify that a "supervising practitioner" could furnish these levels of supervision, the revisions to the "basic rule" governing supervision of diagnostic tests at § 410.32(b)(1) provide the authority for PAs and other practitioners to provide all three levels of supervision. Despite PAs and other practitioners having the authority to provide general and personal supervision based on the "basic rule", the outdated definitions § 410.32(b)(2)(i) and § 410.32(b)(2)(iii) have caused confusion and an incorrect interpretation that PAs and other non-QHPs cannot provide general or personal supervision to the extent authorized by state law.

AAPA supports technical changes to clarify that PAs, NPs, and other advanced practice nurses may provide general, direct, and personal supervision of outpatient diagnostic services to the extent that they are authorized to do so under their scope of practice and applicable State law. The Academy also supports the clarification that PAs and other practitioners may supervise therapeutic services. CMS should revise § 410.32(b)(2)(i) and § 410.32(b)(2)(iii) to include PAs. To promote clarity, which CMS states is the purpose of the proposed regulatory changes, it is important for CMS to expressly list PAs, NPs, and other professionals in regulations and not refer to unspecified groups of practitioners with terms, such as "nonphysician practitioners." Finally, AAPA requests that CMS revise all guidance documents, such as Transmittal B-01-28 and Transmittal 251v, in a timely manner to eliminate confusion that may be caused by outdated language contained in these documents.

Prior Authorization

In prior rulemaking, CMS established a process to seek prior authorization for certain designated hospital outpatient services. CMS uses its statutory directive at 42 USC 1395l (t)(2)(F), which indicates "the Secretary shall develop a method for controlling unnecessary increases in the volume of covered OPD services," to justify the initial categories of services that require prior authorization, as well as those subsequently added. In the 2023 OPPS proposed rule, CMS proposes to add an additional category of services for which prior authorization is required.

AAPA shares CMS' concern for the potential of improper payments and recognizes the value of prior authorizations in reducing the excessive provision of services, as well as limiting services that are not medically necessary. However, in a time in which CMS seeks to increase patient access and reduce administrative barriers, AAPA cautions that the agency must be judicial in its determinations of what services to add to the list of categories for which prior authorization is required (found at 42 CFR § 419.83). We recognize that CMS views prior authorization as an important tool in securing the financial sustainability of the Medicare program, however, any constraints put on the receipt of necessary services may in fact lead to an increase in Medicare expenditures (in addition to additional costs to the agency due to the administration of prior authorization requests) if appropriate care is not received by a patient in a timely manner resulting in a deterioration of a patient's medical status and the need for additional, potentially more expensive care.

While AAPA's comments are not in relation to any particular category of services already proposed, we note that additional burdens placed on health professionals may inhibit the ability of such providers to deliver timely, necessary care to patients. Consequently, while AAPA finds CMS' detailed method of analysis and determination of which categories may require prior authorization creditable, we recommend that CMS additionally include panels of various types of health professionals in the process that, after review of data provided by the agency, offers additional input as to when the use of prior authorization is most warranted. Such health professional interaction can provide valuable context and perspective on high-volume services that may validate or contradict a decision to require prior authorization. In addition to being judicial in those services for which prior authorization is required, AAPA also requests that CMS seek to increase the automation and timely completion of the prior authorization process. These recommendations will assist health professionals in providing necessary care to Medicare beneficiaries as efficiently as possible.

AAPA requests that CMS work with appropriate health care professionals and medical societies to reach consensus on existing and any additional services that will be subject to prior authorization to ensure patient access to medically necessary care and avoid unnecessary time and administrative burdens for health professionals.

Thank you for the opportunity to provide feedback on payment policies under the 2023 Outpatient Prospective Payment proposed rule. AAPA welcomes further discussion with CMS regarding these issues. For any questions you may have please do not hesitate to contact Michael Powe, AAPA Vice President of Reimbursement & Professional Advocacy, at michael@aapa.org.

Sincerely,

Lisa M. Gables, CPA
Executive Vice President and Chief Executive Officer