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June 28, 2021

Ms. Chiquita Brooks-LaSure
Administrator
Centers for Medicare & Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244-1850

Dear Administrator Brooks-LaSure:

On behalf of AMGA and our members, thank you for the opportunity to comment on the Centers for Medicare & Medicaid Services (CMS) Fiscal Year 2022 Medicare Hospital Inpatient Prospective Payment System for Acute Care Hospitals proposed rule (CMS-1752-P).

Founded in 1950, AMGA represents more than 450 multispecialty medical groups and integrated delivery systems, representing approximately 177,000 physicians who care for one in three Americans. Our member medical groups work diligently to provide innovative, high-quality, cost-effective, patient-centered medical care.

AMGA appreciates the various waivers and regulatory changes that CMS has instituted in response to the COVID-19 public health emergency (PHE), particularly those related to the Medicare Shared Savings Program (MSSP) and other value-based models of care.

AMGA is pleased to offer these recommendations for your consideration.

Key Recommendations:

- CMS should finalize its proposal to offer Accountable Care Organizations (ACOs) the option of remaining at their current position in the BASIC glide path in performance year (PY) 2022.
- CMS should not automatically advance an ACO so that it “skips” levels within the glide path.
- AMGA is concerned the CMS did not create a clear timeframe that ACOs will have to make an informed decision on whether to forgo automatic advancement.

Medicare Shared Savings Program

CMS is proposing to allow ACOs participating in the BASIC Track’s glide path to maintain their current risk level for PY 2022. This proposal is a continuation of the policy that CMS earlier finalized as part of the May 2020 interim final rule with comment period (IFC). AMGA appreciates CMS’ ongoing commitment to provide ACOs with the flexibility and options needed to respond to the COVID-19 pandemic. AMGA recommends that CMS finalize this proposal.

However, AMGA has concerns regarding the logistics of the deferred advancement policy. As finalized in the May 2020 IFC, ACOs that opted not to automatically advance in PY 2021 will transition to the level they would have reached had they not opted to freeze their participation level in response to the pandemic. For example, as CMS notes, any ACO that opted to hold its participation at Level B in 2021 will bypass Level C and advance to Level D in PY 2022. AMGA opposed this policy in our comments. These providers have not had adequate time and experience in risk-based arrangements to shift from a one-sided level to a level with significant downside risk.

In this proposed rule, CMS is extending the option to defer automatic advancement. ACOs may elect to remain in the same level of the glide path in PY 2022 in which it participated in PY 2021. Again, however, CMS would require the ACO to “skip” a level and advance as originally planned for PY 2023. Under the proposal, an ACO could elect to defer advancement for a second performance year. Should an ACO avail itself of this option, the proposal would require the ACO to skip two levels to determine its PY 2023 level. It is possible that an ACO would participate at Level A for PY 2020, 2021, and 2022 and then automatically transition to Level D for 2023.

The proposed rule includes a table that illustrates the various “freeze scenarios” for ACOs. For those that entered the glide path under a shared-savings only level—Level A or Level B—this proposal would automatically advance them into more advanced two-sided arrangements, Level D or Level E. These ACOs and their providers need additional time to learn how to operate in these arrangements. Allowing them to progress to the next level they would have participated in after deferring would enable them to continue their progress toward increased risk in a more realistic manner.

Introducing the level “skip” into the program undermines the intent and concept of the BASIC Track’s glide path. Instead of a gradual yet steady transition into increased levels of risk, ACOs face an abrupt shift in the level of risk they are assuming. The Pathways to Success final rule envisioned a journey for ACOs that factored in previous experience with value-based care and a readiness to assume financial risk. CMS recognized that due to the pandemic—an unforeseeable event entirely outside the control of the ACO—ACOs needed the option to reevaluate their risk tolerance and determine how quickly they could continue the transition into risk-bearing models. The skip feature, however, effectively eliminates the pause that CMS offered and assumes the ACO is in the same position had the pandemic not occurred.

AMGA also is concerned that CMS only provided a framework for the timeframe ACOs would have to make a decision on whether to pause or continue their advancement in the glide path. While CMS acknowledged that the annual change request cycle would begin before it finalizes the proposed rule, there will be only a “limited opportunity to submit a repayment mechanism, resolve any deficiencies, and have it approved in time for the start of the performance year.” This will require ACOs to evaluate a number of variables in what appears to be a short timespan before notifying CMS of its decision.

In addition, there is a lag between the end of a performance year and when CMS provides important data to an ACO. More specifically, our members have highlighted how CMS releases year end reports around the third or fourth week of July of the year following the end of the performance year (e.g., the ACO will receive 2021 performance year reports in July 2022). While

ACOs do receive quarterly updates from CMS, it is possible for there to be a difference between reports received in the fourth quarter of the performance year and the final report the ACO receives. If CMS finalizes the policy outlined in this proposed rule, this data lag could create significant burdens for ACOs, particularly those new to the program. If the rule is finalized, an ACO will receive the prior year's final report during the third quarter of 2022. The ACO then would be required to advance two stages without fully being able to evaluate what these reports mean for the ACO. Less mature ACOs might be less equipped to quickly evaluate, project, and develop strategies based on these reports. Finalizing this policy also might deter less mature ACOs from staying in the program.

We also are concerned about the effect that forcing ACOs to assume higher levels of risk will have on the move to value. This policy could jeopardize successful ACOs from staying in the program. As such, CMS should not finalize a requirement that includes an ACO "skipping" levels within the glide path.

Thank you for your consideration of our comments. If we can provide you with any more information, please feel free to contact me or Darryl Drevna, AMGA's senior director of regulatory affairs, at ddrevna@amga.org.

Sincerely,

A handwritten signature in cursive script that reads "Jerry Penso".

Jerry Penso, M.D., M.B.A.
President and Chief Executive Officer
AMGA