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ACA CHIROPRACTORS  Hands down better™

Sept. 7, 2018

Ms. Seema Verma, MPH
Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Hubert H. Humphrey Building
200 Independence, Ave., S.W.
Washington, D.C. 20201

Re: CMS-1693-P Medicare Program; Revisions to Payment Policies Under the Physician Fee Schedule (PFS) and Other Revisions to Part B for CY 2019

Dear Administrator Verma:

The American Chiropractic Association (ACA), the largest organization in the United States representing doctors of chiropractic (DCs), is leading the chiropractic profession in the most constructive and far-reaching ways – by working hand in hand with other health care professionals, by supporting meaningful research, and by using that research to inform chiropractic practice. ACA members pledge to adhere to the highest standards of ethics and patient care, contributing to the health and well-being of the estimated 35 million individuals across the country who seek chiropractic care each year. ACA appreciates the opportunity to provide comments on the “Revisions to Payment Policies Under the Physician Fee Schedule (PFS)” and “Other Revisions to Part B for CY 2019” that was published in the *Federal Register* on July 27, 2018. We offer comments and recommendations on the following topics addressed in this proposed rule:

- *Evaluation and Management (E/M) Documentation Guidelines*
- *Low Value Threshold for the Merit-Based Incentive Payment System (MIPS)*
- *Proposed Changes to MIPS Quality Measures*

Evaluation and Management (E/M) Documentation Guidelines

The American Chiropractic Association joined the American Medical Association and approximately 170 other health care organizations in urging rapid adoption of proposed changes in CMS Evaluation and Management (E/M) services documentation requirements targeted towards decreasing administrative burden. In particular, ACA applauds CMS plans to 1) focus patient history documentation requirements on the time interval following the previous visit only; and 2) eliminate the need for physicians to re-document information that has previously been added to the patient record by either the patient or the doctor’s staff. These issues are particularly relevant to alleviating the administrative burden of chiropractic physicians, who often work in solo practices and adhere to clinical care pathways that call for multiple patient visits over a period of several weeks. Since doctors of chiropractic are prohibited from billing Medicare for E/M services, it is very important that any changes in E/M documentation standards are also reflected in the chiropractic documentation standards currently used by CMS to audit doctors of chiropractic as part of the Comprehensive Error Rate Testing (CERT) program.

ACA would also like to use this opportunity to once again reiterate our strong concerns regarding a doctor of chiropractic's inability to report E/M services under the current Medicare Payment System. In the Calendar Year 2014 Medicare Physician Fee Schedule proposed rule, CMS sought comments to determine whether to expand Medicare coverage to include E/M services provided by doctors of chiropractic. Subsequently, in the CY 2014 final rule, CMS stated, "Any possible changes to our current policy on allowing chiropractors to bill E/M services will be addressed in future notice and comment rulemaking." However, since that time, this issue has not been addressed in any proposed or final rule. Given the prevalence of acute and chronic musculoskeletal conditions in today's society, the ongoing opioid crisis and the growing research support for conservative chiropractic care,¹ it is clear that chiropractic care should be a covered and integrated condition-based service in today's value-based health care system, rather than a limited intervention (i.e., "manual manipulation of the spine to correct a subluxation").² All other physician-level practitioners have provisions for E/M reimbursement under the Medicare payment system. Chiropractors should no longer be the exception.

Low Value Threshold for the Merit-Based Incentive Payment System (MIPS)

CMS has established a low-volume threshold that exempts some MIPS-eligible clinicians from participation in the MIPS program. Low-volume threshold clinicians are defined as those who have Medicare Part B allowed billing charges less than or equal to \$90,000 for covered professional services under the Physician Fee Schedule or who furnished covered professional services under the PFS to 200 or fewer Medicare Part B-enrolled beneficiaries. ACA appreciates CMS' acknowledgement of the population of clinicians who may be disproportionately burdened if expected to meet MIPS program requirements. However, this policy essentially precludes the vast majority of doctors of chiropractic from participating in the MIPS program. The only Medicare-covered service provided by doctors of chiropractic is spinal chiropractic manipulative treatment (CMT) and the average participating provider reimbursement amount for CMT (CPT® codes 98940, 98941 and 98942) is \$35.00. Therefore, it is extremely difficult for a doctor of chiropractic to meet either threshold. In fact, it is estimated that less than 500 chiropractors currently do so. ACA urges CMS to address this issue by 1) allowing doctors of chiropractic to voluntarily "opt in" to MIPS participation in 2019, and 2) expanding coverage of chiropractic services to include, at a minimum, payment for E/M services and extra-spinal manipulation.

Proposed Changes to MIPS Quality Measures

ACA is appreciative of CMS efforts to expand inclusion of chiropractic participation in quality-measurement reporting by expanding the denominator of functional status change measures for patients with impairments D16-D22 (see below) to included chiropractic codes. We agree completely with CMS that physical functional status is relevant to a broad spectrum of specialties, including chiropractic, and can be very useful in evaluating the effectiveness of a treatment plan. Therefore, we laude efforts to address this issue through the proposed expansion of eligible clinicians who would have the opportunity to submit outcome measures. It is completely appropriate to include chiropractic codes within the denominators of measures D19 (Lumbar Impairments) and D22 (General Orthopaedic Impairments). However, the inclusion of chiropractic codes in measures D16-D18 and D20-21 is more problematic. Again, chiropractic coverage of Medicare services provided by doctors of chiropractic is currently limited to the use of CPT® codes 98940, 98941 and 98942, which describe manipulative treatment of the spine only. A CPT® code to describe chiropractic manipulative treatment of extra-spinal joints such as the knee, hip and ankle exists (98943) and is widely used by the chiropractic profession when providing patient care for these impairments. However, this code is explicitly excluded from the Medicare Fee Schedule. Thus, the proposed change to expand the denominator of the

¹ Goertz CM, Long C, Vining R, Walter J and Coulter I. Effect of Usual Medical Care Plus Chiropractic Care vs Usual Medical Care Alone on Pain and Disability Among U.S. Service Members With Lower Back Pain: A Comparative Effectiveness Clinical Trial. <https://doi.org/10.1001/jamanetworkopen.2018.0105>.

² Social Security Act §1861(r)(5)

Functional Status Change measures highlighted below is not appropriate unless CMS also changes their payment policy to include reimbursement of extraspinal manipulative treatment using CPT® code 98943.

D 16 Functional Status Change for Patients with Knee Impairments)

D 17 Functional Status Change for Patients with Hip Impairments

D 18 Functional Status Change for Patients with Foot or Ankle Impairments

D19 Functional Status Change for Patients with Lumbar Impairments

D20 Functional Status Change for Patients with Shoulder Impairments

D21 Functional Status Change for Patients with Elbow, Wrist or Hand Impairments

D22 Functional Status Change for Patients with General Orthopaedic Impairments

Once again, ACA appreciates the opportunity to provide comments on the CY 2019 PFS proposed rule. If you should have any questions, please feel free to contact John Falardeau, ACA Senior Vice President for Public Policy and Advocacy at (703) 812-0214.

Respectfully,

A handwritten signature in black ink, appearing to read "N. Ray Tuck". The signature is fluid and cursive, with the first name "N." and the last name "Tuck" clearly visible.

Dr. N. Ray Tuck
President, American Chiropractic Association