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ACA CHIROPRACTORS



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August 30, 2022

Ms. Chiquita Brooks-LaSure  
Administrator  
Centers for Medicare and Medicaid Services  
Department of Health and Human Services  
Attention: CMS-1770-P  
P.O. Box 8016  
Baltimore, MD 21244-8016

Dear Administrator Brooks-LaSure:

**RE: CMS-1770-P; Medicare and Medicaid Programs; CY 2023 Payment Policies under the Physician Fee Schedule and Other Changes to Part B Payments Policies; RIN 0938-AU81**

The American Chiropractic Association (ACA) submits the following comments regarding the Centers for Medicare and Medicaid Services (CMS) proposed regulation (“Rule”) to implement changes to the Physician Fee Schedule (PFS), Medicare Part B payment policies, and other areas of the Medicare program. ACA’s comments are directed specifically to the Rule’s proposed definition of “chronic pain,” proposed new billing codes to describe treatment of chronic pain management (CPM), and changes to the Medicare Economic Index. ACA greatly appreciates the opportunity to comment on the proposed Rule and offer the perspectives of our members who specialize in diagnosing and treating chronic pain.

ACA is the largest professional organization in the United States representing doctors of chiropractic (DCs). ACA members lead the chiropractic profession through collaborative relationships in public health, support for research and evidence-based practice, and the active reporting of functional outcome assessment measures to ensure the health and well-being of the estimated 35 million Americans who seek chiropractic care each year.

**Definition of Chronic Pain**

CMS proposes to define the term “chronic pain” as *“persistent or recurring pain lasting longer than three months.”* We appreciate that CMS welcomes comments on this proposed definition and seeks input from stakeholders. As CMS noted in the announcement of the proposed Rule, other institutions such as the Centers for Disease Control and Prevention, the National Institutes of Health, and the World Health Organization generally define the term as CMS has proposed.

ACA supports the proposed definition of “chronic pain” in the Rule, especially as it appears consistent with that of other agencies and organizations. We hope CMS maintains this definition in the final publication of the Rule.

**Establishment of New Billing Codes**

To enable Medicare providers to properly document chronic pain management (CPM) services and treatment, CMS proposes to create two new HCPCS-G billing codes: 1) HCPCS code GYYY1 to denote, among other services, *“chronic pain management and treatment, monthly bundle including, diagnosis; assessment and monitoring...”*,

and 2) HCPCS Code GYYY2: *“Each additional 15 minutes of chronic pain management and treatment by a physician or other qualified health care professional, per calendar month (List separately in addition to code for GYYY1). (When using GYYY2, 15 minutes must be met or exceeded).”* CMS proposes that these codes are to become effective on Jan. 1, 2023.

While ACA supports the establishment of these new codes, we are concerned by some statements CMS makes in the proposed Rule, notably the following: *“We believe that most CPM services would be billed by primary care practitioners who are focused on long-term management of their patients with chronic pain.”* Further, this statement is followed by CMS proposing that it may be open to allow billing by another practitioner only after HCPCS code GYYY1 has already been billed in the same calendar month by a different provider.

ACA urges CMS to recognize the unique and vital approach that chiropractic care has in treating CPM. DCs offer their patients a broad-based approach to pain management, including manual manipulation of the spine and extremities, joint mobilization, soft-tissue massage techniques, physiological therapies, exercise instruction and activity advice. ACA recommends that CMS reconsider this restrictive approach to using the new proposed codes and permit DCs to utilize the GYYY1 code without it first being used by another Medicare provider.

DCs play a vital role in treating chronic pain and can often treat such conditions early and prevent the patient from having to seek more healthcare services. In the Rule, CMS notes the importance of diagnosing and treating chronic pain early to avoid the possibility of a patient needing more costly and extensive medical care. As CMS states:

*“We also believe that the comprehensive care management involved in CPM services may potentially prevent or reduce the need for acute services, such as those due to falls and emergency department care associated with chronic pain, and also have the potential to reduce the need for treatment for concurrent behavioral health disorders, including substance use disorders. There is some evidence that addressing chronic pain early in its course may result in averting the development of “high impact” chronic pain in some individuals; these people report more severe pain, more difficulty with self-care, and higher health care use than others with chronic pain.”*

In our view, we concur with CMS and note that this is especially true for those suffering from chronic low back pain stemming from spinal injuries and conditions. Chiropractic care may often be an invaluable medical service to treat chronic pain and may at times obviate a need for expensive and risky surgical procedures.

### **Medicare Economic Index (MEI)**

In the proposed Rule, CMS recommends changes to the MEI to accurately reflect the current market conditions for medical providers in delivering services to patients. Specifically, CMS proposes to use a new benchmark to update the MEI weights by using data compiled in the United States Census Bureau’s Annual Survey. This approach would be a departure from previous CMS practice, which has been to rely on data from the American Medical Association’s Physician Practice Information (PPI) Survey. However, CMS recognizes that this change is significant and proposes to defer using the new methodology pending a review of stakeholder comments.

As CMS states:

*“Because there are significant proposed methodological and data source changes to the MEI for CY 2023 and significant time has elapsed since the last rebasing and revision of the MEI, we believe it is important to allow public comment and finalization of the proposed MEI changes based on the review of public comment before we incorporate the updated MEI into PFS ratesetting, and we believe this is consistent*

*with our efforts to balance payment stability and predictability with incorporating new data through more routine updates.”*

Taken together with the Professional Liability Insurance (PLI) premium adjustments for Non-Physician Health Care Professionals, MEI-proposed adjustments to PLI will be amplified, which makes it that much more important to delay the implementation of proposed changes to MEI methodology until the PPI survey is complete. We would further recommend that CMS continue to use the PPI data rather than the Census Bureau survey. We believe this would ensure consistency and use of a system that has proven to provide accurate data for the MEI. It is our understanding that the PPI survey will begin in early 2023.

ACA appreciates the opportunity to provide comments on the CMS proposed Rule. If you have any questions regarding our remarks, please contact Steve Kline, ACA Associate Director of Federal Government Relations, at [skline@acatoday.org](mailto:skline@acatoday.org) or (703) 812-0228.

Sincerely,

A handwritten signature in cursive script that reads "Michele Maiers". The signature is written in black ink and is positioned above the typed name and title.

Michele Maiers, DC, MPH, PhD  
President