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April 6, 2020

Seema Verma, MPH, Administrator
Centers for Medicare & Medicaid Services
U.S. Department of Health and Human Services
Hubert H. Humphrey Building, Room 445–G
200 Independence Avenue, SW
Washington, DC 20201

Submitted electronically via www.regulations.gov

Subject: CMS-4190-P Medicare and Medicaid Programs; Contract Year 2021 and 2022 Policy and Technical Changes to Medicare Advantage Program, Medicare Prescription Drugs Benefit Program, Medicaid Program, Medicare Cost Plan Program, and Programs of All-Inclusive Care for the Elderly

Dear Administrator Verma:

On behalf of the American Association of Neurological Surgeons (AANS) and the Congress of Neurological Surgeons (CNS), representing more than 4,000 neurosurgeons in the United States, we appreciate the opportunity to comment on the opioid prescribing provisions of the above-referenced notice of proposed rulemaking.

Implementation of Provisions of the SUPPORT Act

As CMS implements the Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment (SUPPORT) Act, we are particularly concerned that surgical and chronic pain patients can continue to receive the care that they need. CMS has asked for public comment on reasonable measures to assess inappropriate prescribing of opioids. We are eager to assist CMS as the agency establishes its policy to direct Medicare Advantage (MA) plans to help identify patterns of inappropriate prescribing while avoiding unnecessary harm and suffering for patients.

Concerning the proposed definition of inappropriate prescribing of opioids, CMS states that patterns of abuse will be established based on facts considered by plan sponsors. As CMS develops guidance for MA plans on how to determine inappropriate prescribing, we encourage the agency to consider that a peer physician from the same specialty — after reviewing specific patient needs — is most qualified to determine whether opioids have been prescribed appropriately. Opioid prescribing decisions must be made between the physician and his/her patient as these determinations are highly individualized.

Development of Non-opioid Treatments

The AANS and CNS believe that MA and Part D sponsors should be required to increase coverage, availability and affordability of non-opioid treatment options, including placing non-opioid pharmacologic and non-pharmacologic options on the lowest cost-sharing tiers with minimal co-pays and benefit limitations. Neurosurgeons find that innovation in chronic pain control is hampered by difficulty getting appropriate reimbursement for neuromodulation and neuroablation advances to offer to patients as opioid-sparing therapies. For example, many neurosurgeons have incurred barriers to providing spinal

cord stimulation and other device-related procedures for chronic pain. CMS should follow the guidance from the Pain Management Best Practices Inter-Agency Task Force "Report on Pain Management Best Practices." This report specifically recognized the existence of high-quality evidence for neuromodulation, including spinal stimulation, new waveforms and spinal infusion pumps, and expressed problems with insurance coverage for these procedures.

Exemptions for Chronic Pain Patients

The AANS and CNS commend the agency for recognizing that some patients should be exempt from these regulations ("exempted beneficiaries"), including patients:

- being treated for ongoing cancer-related pain
- residing in a long-term care facility;
- receiving hospice care; or
- receiving palliative or end-of-life care.

Neurosurgeons support appropriate prescribing of opioid analgesics for those patients who benefit from them both before and after surgery and for certain chronic pain patients. We continue to collaborate on evidence-based prescribing guidelines that take this into account and do not to create an undue burden on patients and clinicians. As such, there should be recognition of the unique characteristics of chronic pain patients who are not opioid-naïve at the time of surgery and should be exempt from post-operative guidelines. For example, a high percentage of patients undergoing elective spinal surgery for degenerative disease are chronic opioid users, and their post-operative pain control needs are highly individualized. Therefore, we ask CMS to consider classifying as "exempted beneficiaries," any chronic pain patient under the care of an appropriately credentialed pain management physician or neurosurgeon with an opioid contract in effect.

Conclusion

The AANS and the CNS appreciate the opportunity to provide feedback on these specific provisions of the proposed rule. Appropriate pain care for our neurosurgical post-operative and chronic pain patients is an essential part of our specialty. We are well prepared to provide expertise to the agency in our shared dedication to improve the health and wellbeing of patients. If you have any questions or need additional information, please feel free to contact us.

Sincerely,

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