Alliance of Specialty Medicine

Statement for the Record
Before the House Ways and Means Committee
Subcommittee on Oversight
"Efforts to Combat Waste, Fraud, and Abuse in the Medicare Program"

Wednesday, July 19, 2017

Chairman Buchanan, Ranking Member Lewis, and members of the Subcommittee, the Alliance of Specialty Medicine (the Alliance) would like to thank the House Ways and Means Oversight Subcommittee for the opportunity to provide input on efforts by the Centers for Medicare and Medicaid Services (CMS) to identify and combat waste, fraud, and abuse in the Medicare program. The Alliance is a coalition of medical specialty societies representing more than 100,000 physicians and surgeons from specialty and subspecialty societies dedicated to the development of sound federal health care policy that fosters patient access to the highest quality specialty care. As patient and physician advocates, the Alliance welcomes the opportunity to provide input in the formulation of health and Medicare policy.

While we recognize the importance of improving program integrity for Medicare to protect taxpayer dollars, the Alliance is increasingly concerned with CMS' approach to program integrity, which places numerous, burdensome requirements on physician practices. These initiatives are duplicative, disruptive to physician practices, and often lead to penalties based on technicalities or inconsistent application of program requirements. CMS also provides little transparency with respect to the scope, authority, and operations of initiatives they undertake, thereby creating additional uncertainty for the physician community and limiting accountability for CMS and its contractors.

To address these concerns, the Alliance urges Congress to:

- Streamline Medicare program integrity efforts to minimize burden and duplication;
- Increase transparency in Medicare medical review and audit initiatives;
- Enforce transparency in the development of local coverage and payment policies;
- Implement safeguards to ensure that Medicare denials and overpayment recoupments are proper; and
- Promote improvement through education and corrective action plans (CAPs) rather than penalties.

Additional details on these recommendations are provided below.

Streamline Program Integrity Efforts to Minimize Burden and Duplication

CMS and its contractors conduct multiple types of pre-payment review, post-payment review, and medical record auditing to determine the accuracy of Medicare payments to physicians and other providers. These may include reviews by Medicare Administrative Contractors (MACs), Recovery Audit Contractors (RACs), Unified Program Integrity Contractors (UPICs), and

Supplemental Medical Review Contractors (SMRCs), to name a few. Further, CMS also undertakes medical reviews as part of its Comprehensive Error Rate Testing (CERT) program. As a whole, these reviews are often duplicative, burdensome, and disruptive to physician practices, requiring time and resources of clinicians and administrative staff and preventing physicians from focusing on delivering high-quality care to the patients they serve.

To address this burden and duplication, the Alliance recommends that Congress require CMS to streamline its efforts related to medical reviews and auditing. For example, CMS should conduct a comprehensive review of its program integrity initiatives to assess their effectiveness, identify areas of duplication as well as opportunities for collaboration or consolidation across program integrity contractors, and discontinue efforts that are not focused on those claims and providers with the highest risk for improper payment. For initiatives that remain, CMS should adopt a streamlined approach to conducting reviews that all contractors should be required to follow. As part of this effort, CMS should ensure that contractors' efforts are coordinated such that the same records are not requested and the same claims are not reviewed multiple times, and that record requests are consolidated across contractors such that physicians are not barraged with record requests throughout the year.

Improve Transparency in Medicare Medical Review and Audit Initiatives

In addition to the duplication and burden they present, CMS' numerous medical review and audit initiatives lack transparency that is needed to hold CMS and its contractors accountable. As such, the Alliance has identified several recommendations for improving transparency for these initiatives.

First, CMS should be required to establish a new web portal for consolidating information on CMS' program integrity efforts, including information on contractors and their performance. The portal should include clear information on the function and scope of authority used to engage with each of the various Medicare program integrity contractors. CMS should also include information on each contractor, including its sampling and extrapolation methodologies. For each contractor, CMS should also annually publish key data related to its performance on audits, including the number of denials and appeals, net denials (defined as total denials minus denials overturned on appeal), and overall appeal rates.

Additionally, to ensure that they are targeting their efforts appropriately, Medicare auditors should be required to submit potential audits for review and approval by the Secretary. The Secretary should specify through a notice-and-comment process the criteria upon which proposed audits are assessed, and approved audits should be posted on the program integrity web portal.

Enforce Transparency in the Development of Local Coverage and Payment Policies

Too often, improper payments are identified on the basis of inconsistent or unclear Medicare coverage and payment policies. Additionally, contractors regularly do not follow proper notice and comment processes when developing or updating local coverage determinations. To address these challenges, the Alliance urges Congress to enforce transparency in the development of local coverage and payment policies by requiring contractors to adhere to CMS' established

requirements for soliciting comments and recommendations and for obtaining input from representatives of relevant specialty societies, as part of the contractor's notice and comment period for new or revised local coverage determinations (LCDs). Local contractors must also be required to provide a formal notice-and-comment process for any and *all changes* they intend to implement that would revise coverage and payment policies. Contractors who fail to meet these standards should be subject to successive penalties, up to and including termination.

Implement Safeguards to Ensure that Medicare Denials and Overpayment Recoupments are Proper

CMS' current program integrity contracts do not include sufficient safeguards to ensure that contractors make appropriate determinations with respect to denial of claims or services or identification of overpayments. For example, the individuals responsible for making denial determinations may not have the right expertise or training to assess the medical necessity of a given clinical scenario. Additionally, contractors often have limited accountability for making proper determinations that are upheld upon appeal, which encourages them to pursue overpayments even when evidence for improper payment is limited.

To mitigate physician burden and hassle associated with improper denials and overpayment determinations, the Alliance recommends that CMS be required to implement safeguards to ensure that Medicare denials and overpayment recoupments are proper. Specifically, CMS should mandate physician review for Medicare denials by requiring a physician practicing in the same specialty or sub-specialty and with clinical expertise or knowledge of the service in question to validate whether a medical necessity denial is warranted. Additionally, for those contractors whose determinations are overturned on appeal, Congress should require that they face financial penalties that, at a minimum, cover providers' administrative costs in pursuing the appeal, as an incentive to ensure contractor determinations are correct from the start.

Promote Improvement through Education and Corrective Action Plans Rather than Penalties

In recognition of the fact that improper payments are largely due to unintended coding and billing errors of providers acting in good faith, rather than bad actors committing fraud, the Alliance recommends that Congress should institute an approach for addressing improper payments in the Medicare program that prioritizes education and information-sharing, rather than harsh financial penalties. For example, CMS should be required to publicly report on common coding and billing errors and omissions, including providing detailed break-outs by error or omission type, physician specialty, contractor, and region, among others. CMS should also be required to provide enhanced educational offerings to physician practices on how to avoid common coding and billing mistakes.

Congress should also replace financial penalties with corrective action plans (CAPs) that provide clear steps for physician practices to reduce their improper payment rates. To support improvement under the CAPs, CMS should also be required to institute a program that would provide technical assistance to physician practices while they work to address internal deficiencies that may have led to a high volume of coding and billing errors and inappropriate payments.

Conclusion

Addressing fraud, waste, and abuse in the Medicare program must be a priority for CMS, and the Alliance recognizes the importance of targeted, high-value initiatives that address those providers or claims at the highest risk of fraud or improper payment. However, CMS must balance its program integrity objectives against the burden and disruption they create. The recommendations detailed above outline specific and actionable steps that can be taken to reduce the negative impacts of CMS' program integrity initiatives on physician practices to allow physicians to focus their attention and resources on providing the high-quality care Medicare beneficiaries need.

Thank you again for taking our written comments into consideration. The Alliance of Specialty Medicine looks forward to working with the Subcommittee on improving CMS' program integrity efforts.