AAOS
American Academy of Orthopaedic Surgeons
American Association of Orthopaedic Surgeons

Statement for the Record

House Energy and Commerce Hearing

MACRA and Alternative Payment Models: Developing Options for Value-based Care

Wednesday, November 8, 2017

On behalf of over 18,000 board-certified orthopaedic surgeons, the American Association of Orthopaedic Surgeons (AAOS) would like to commend Chairman Michael Burgess and Ranking Member Gene Greene for holding the Energy and Commerce Subcommittee on Health hearing, "MACRA and Alternative Payment Models: Developing Options for Value-based Care." The AAOS appreciates your willingness to look critically at alternative payment models (APMs).

As you know, AAOS and the entire physician community worked closely with Congress on drafting and implementing the Medicare Access and CHIP Reauthorization Act (MACRA) of 2015. In addition to repealing the flawed Sustainable Growth Rate (SGR) formula, this legislation offered a number of ways to improve the previous reimbursement and reporting frameworks, such as streamlining requirements and lowering penalties, reducing administrative burdens, and increasing flexibility and support for small and solo practices. We have continued to work with members of Congress and the Centers for Medicare & Medicaid Services (CMS) as the rules for years one and two of this new framework are finalized, and we remain committed to ensuring the legislation is improved over time. Certainly, opportunities to examine and refine the MACRA framework – such as that provided by today's hearing – will ensure the legislation improves delivery of care for Medicare patients across the country.

In addition to the Merit-Based Incentive Payment System (MIPS) program, the second track or MACRA provides bonus payments for physicians who participate in alternative payment models (APMs) that hold providers financially accountable for health care costs. Eligible APM participants must tie payments to specified quality measures, use certified electronic health record (EHR) technology, and assume more than nominal financial risk. Further, certain APMs enable physicians to qualify for a five percent bonus payment as "Advanced APMs" while other APMs may improve physicians' MIPS scores as "MIPS APMs."

The AAOS strongly supports efforts by CMS to make appropriately structured APMs available to physicians and other providers, including bundled and episode-of-care payment models. We have supported previous efforts by CMS through the Center for Medicare and Medicaid Innovation (CMMI) to develop bundled payment models in the area of musculoskeletal care. One such initiative, the Bundled Payments for Care Improvement (BPCI) program, addresses episode-based payment approaches to delivering care to beneficiaries with multiple types of clinical episodes, including musculoskeletal conditions. AAOS believes that properly

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constructed APMs have the potential to generate savings for Medicare while having positive effects on patient care. In fact, many AAOS members have been leaders in developing, implementing, and evaluating episode-of-care payments under the ACE Demonstration Project and the BPCI.

However, the revenue and patient thresholds for eligible clinicians to become qualifying providers (QPs) under MACRA is quite onerous for specialty physicians. Finalized rules require that in 2019, 25 percent of Medicare payments and 20 percent of patients are qualifying thresholds to receive the increased APM bonus. These patient count and payment thresholds are very high for specialty physicians and most of them are likely to not qualify on these levels. Moreover, attempts to meet these thresholds may magnify sub-specialization and incentivize procedure-focused practice. While there are some exceptions on threshold requirements for specialists who participate in multiple APMs, AAOS would like to note that these requirements are restrictive.

It is heartening to note that MIPS APMs will have their resource use component weight reduced to zero with the 10 percent reassigned to increase weights for CPIA and ACI thereby creating a pathway of qualification from MIPS APMs to Advanced APMs. Nevertheless, in the spirit of the MACRA legislation, the AAOS has consistently requested reductions in unnecessary and burdensome requirements to qualify for Advanced APMs that cause resources to be spent on administrative costs rather than patient care. At present, there are no Advanced APMs available for orthopaedic surgeons to embrace, and to date there is no clear guidance whether or not CJR will be considered an Advanced APM. We have also requested for a clear pathway for rapid approval and implementation of physician-directed APMs.

Additionally, the AAOS has noted that APMs (including BPCI and the Comprehensive Care for Joint Replacement model) that require coordinated care across settings reveal limitations in the current Stark Law. The Stark Law is structured to control the volume of referred services, and it a strict liability statute that leads to heavy penalties to unintentional and technical errors by physicians and their staff. Liability statutes, like the Stark Law, do not encourage physicians to participate in coordinated care models as the costs of compliance and disclosures required can be prohibitive for small and medium-sized physician practices.

Physician referrals in Accountable Care Organizations (ACOs) are theoretically exempt from the Stark Law requirements through fraud and abuse waivers. The AAOS believes there should be similar exceptions and protections for physicians and physician groups participating in APMs, and strongly encourages Congress to protect in-office ancillary services exception.

Finally, the AAOS encourages the Committee to consider the ways in which qualified clinical data registries (QCDRs) can play a critical role in improving quality and patient care within APMs. Under Section 105(b) of MACRA, Congress directed CMS to provide QCDRs access to

real-time Medicare claims data for purposes of linking such data with "with clinical outcomes data and [perform] risk-adjusted, scientifically valid analyses and research to support quality improvement or patient safety." Increased participation in APMs can be encouraged by providing QCDRs timely access to this data to perform validation and analysis. The data QCDRs collect provides a wealth of clinical information for measure developers and, absent full implementation of this provision of MACRA, represents an underutilized resource. All participants should also be allowed to submit advanced APMs' quality data through a QCDR, as is the case for MIPS and some current APMs. Having an incentive bonus for participation in a QCDR for those qualifying APM participants would also encourage these QPs to contribute to this valuable reservoir of clinical data.

Thank you again for holding this important hearing on Medicare's payment systems and programs. The AAOS is committed to continue working with Congress and the Administration to ensure that patients have access to the highest quality musculoskeletal care. Please contact Catherine Boudreaux, Senior Manager of Government Relation (boudreaux@aaos.org) if you have any questions or if the AAOS can serve as a resource to you.