September 11, 2023

The Honorable Chiquita Brooks-LaSure, Administrator
Centers for Medicare & Medicaid Services
U.S. Department of Health and Human Services
7500 Security Boulevard Baltimore, MD 21244

RE: Medicare and Medicaid Programs; CY 2024 Payment Policies under the Physician Fee Schedule and Other Changes to Part B Payment and Coverage Policies; Medicare Shared Savings Program Requirements; Continued Implementation of Requirements for Manufacturers of Certain Single-dose Container or Single-use Package Drugs to Provide Refunds with Respect to Discarded Amounts; Medicare Advantage (CMS-1784-P)

The American Alliance of Orthopaedic Executives (AAOE) submits these comments and recommendations on behalf of our over 1,300 members and 660 medical practices across the country whose mission is to promote quality healthcare practice management in the orthopedic and musculoskeletal industry. We appreciate the opportunity to provide comment on the proposed CMS-1784-P and specifically its proposals for the Merit-Based Incentive Payment System.

<u>The Problem</u>

The original intent of the Merit-Based Incentive Payment System (MIPS) was to drive improvement in care processes by tying payments to quality and reducing the cost of effective care while serving as an on-ramp to Alternative Payment Model (APM) participation. However, the program has failed to live up to its expectations by becoming administratively complex to implement and costly for providers. MIPS undermines patient care as practices are forced to reallocate limited resources to comply with the program. Small and rural health care facilities with limited resources are hardest hit due to these regulations.

The Medicare Payment Advisory Commission (MedPAC) has reported to Congress that MIPS does not adequately measure physician performance because the assessments for individual providers vary based upon which metrics they choose to report. Specialty organizations have lodged complaints that the measures are primary care driven and work well for a healthcare system, not for standalone independent single specialty practices. Orthopedic practices have raised concerns that limitations of specialty-specific MIPS measures make the program burdensome for doctors and discourages practices from attempting to improve their scores and avoid a penalty.

Based on the most recent Quality Payment Program (QPP) report, in 2021 the mean MIPS score for small groups was 73.71 points. In the 2024 proposed Medicare Physician Fee Schedule (PFS), CMS proposes to increase the MIPS performance threshold from an already high threshold of 75 points in 2023 to 82 points for 2024. This threshold is too high and risks penalizing many practices, particularly smaller practices, who do not have access to the same resources as large systems. CMS estimates that 46% of MIPS eligible clinicians would receive a negative payment adjustment for the CY 2024 performance period/2026 MIPS payment year if the proposed PFS policies are finalized.

The cost category of MIPS, which accounts for 30% of the points, holds clinicians accountable for costs they cannot control. In addition to not receiving adequate or timely feedback on this measure performance from CMS there is no way to go back and make ongoing corrections to meaningfully improve performance and processes to avoid the penalty for the year.

A study found that in 2019, physicians spent more than 53 hours per year on MIPS-related activities. The researchers concluded that if physicians see an average of four patients per hour, then the 53 hours spent on MIPS-related activities could be used to provide care for an additional 212 patients per year. The same study found that MIPS cost practices $12,811 per physician to participate in 2019. 64.56% of Medical Group Management Association (MGMA) members surveyed for the 2022 annual regulatory burden report found QPP reporting to be extremely or very burdensome and 90% felt that the positive adjustments do not cover the costs of preparing for and reporting under the MIPS program. This problem has only been exacerbated post-COVID, as medical practices face significant challenges related to high rates of inflation, staffing shortages, and reimbursement challenges, they cannot afford to divert financial and staff resources away from patient care to comply with MIPS requirements.

Recommendations

We need to be confident that the measures we use to assess and compare performance are meaningful and incentivize physicians to participate in these new payment models. If HHS wants to continue the MIPS program, it needs to work with specialty organizations. AAOE proposes to refine MIPS from the current one-size-fits-all reporting program to a system based on clinically relevant and efficient metrics. We also urge HHS to maintain traditional MIPS as an option alongside

voluntary MVP reporting under the QPP. We are concerned that the current problems of MIPS are being repackaged as MVPs.

AAOE is ready to provide thoughts and conversation on the current situation and future direction of the provision of orthopedic care for stakeholders. We thank you for the opportunity to comment and look forward to working with CMS and HHS to provide the best care available.

Sincerely,

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2023 – 2024 President, American Alliance of Orthopaedic Executives