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July 27, 2022

The Honorable Chiquita Brooks-LaSure
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

Dear Administrator Brooks-LaSure:

On behalf of our physician and medical student members, the American Medical Association (AMA) thanks the Centers for Medicare & Medicaid Services (CMS) for delaying implementation of the penalty phase of the Appropriate Use Criteria (AUC) Program and continuing the Education and Operational Testing Period. We appreciate the agency's recognition that physicians and their software vendors need more time before CMS begins enforcing the AUC Program, which requires consultation of AUC for advanced diagnostic imaging services by an ordering professional and claims-based reporting of the AUC information by the rendering professional. **The AMA greatly appreciates this additional delay and urges CMS to utilize this time to modify the AUC Program using its existing authority and to work with Congress for any additional authority needed to reduce burden, increase flexibility, and maximize alignment with the Quality Payment Program (QPP).**

Prior to establishing an implementation date for the AUC Program penalty phase, CMS should seek input and implement recommendations from physicians and other stakeholders that have outstanding concerns about the AUC Program. If the agency feels constrained in its existing statutory authority, we urge CMS to work with Congress to remedy these gaps. In this spirit, we offer several suggestions to improve and modify the AUC Program to achieve its overall aim of reducing unnecessary advanced diagnostic imaging orders without imposing undue burdens on physicians that could potentially delay patient access to care, including:

- CMS should maximize alignment between the AUC Program and the QPP, including the Merit-based Incentive Payment System (MIPS) and alternative payment models (APMs). We strongly recommend that qualifying APM participants in advanced APMs and physicians, groups, and subgroups that opt into a MIPS Value Pathway (MVP) be exempt from the AUC Program as it is duplicative of both APM and MVP, which focus on clinically relevant quality improvement and accountability for resource use. CMS should also apply the MIPS small practice exception to the AUC Program, as small and independent practices are significantly disadvantaged in programs that require substantial technological investments and staff time to comply.[1] In

[1] Johnston KJ, Wiemken TL, Hockenberry JM, Figueroa JF, Joynt Maddox KE. Association of Clinician Health System Affiliation With Outpatient Performance Ratings in the Medicare Merit-based Incentive Payment System. *JAMA.* 2020;324(10):984–992. doi:10.1001/jama.2020.13136

addition, we urge CMS to use consistent hardship exception definitions in both MIPS and the AUC Program and eliminate unnecessary duplication in demonstrating qualification for those exceptions.
- CMS should evaluate alternatives to claims-based reporting of AUC information, including leveraging the data collected by third-party vendors like clinical decision support mechanisms and registries.
- CMS should clarify that the medical emergency hardship exception applies to all care subject to the Emergency Medical Treatment and Labor Act . We have heard concerns that the exception for suspected or confirmed medical emergencies is too narrow and subjective, and, as a result, is being interpreted to require emergency physicians to consult AUC.

We greatly appreciate that CMS initiated an Education and Operations Testing Period beginning on January 1, 2020, during which CMS pays claims for advanced diagnostic images regardless of whether they contain information on the required AUC consultation. Crafted in response to physician commentary, the Education and Operations Testing period was designed to raise awareness about the program and enable ordering and rendering providers to adjust workflows, train staff, and gain necessary experience with the program before it impacted claims payments. However, there are several reasons why physicians have been unable to sufficiently engage in these preparatory steps, and CMS should not move into the penalty phase before these hurdles have been resolved and stakeholders are ready to implement without delaying patient care.

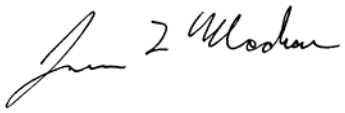
Physicians continue to divert resources to respond to the COVID-19 public health emergency, and they will need to work with their software vendors to ensure that all programming updates are installed and ready to meet the data reporting requirements. This effort will take time, and physicians will need to test these software changes once they are installed or updated. In addition, there remain unresolved workflow issues with AUC requirements. Notably, the industry is also awaiting additional guidance from CMS on several items, including:

- A new modifier to indicate that the physician is not subject to the AUC requirements.
- Information on how the reasons for rejection or denial of claims for missing AUC data requirements will be communicated to the physician.
- Information on how claims that are not accepted for lack of AUC information are to be treated if timely filing deadlines are not met due to delays in gathering subsequent information.
- Clarification on the availability and time period for which a hardship exemption applies.

Finally, we remain concerned about the lack of education and outreach on the part of CMS on the AUC program and its requirements. The 2022 Physician Fee Schedule proposed rule indicated that only 9-10 percent of claims submitted with AUC data were correct and would have been paid, showing the lack of awareness of this program. The significant number of claims that would have been rejected had the payment penalty phase been in effect are concerning, and we remain worried that the industry has not improved to the state at which it is ready to transition to payment penalty. In order to assess the current state of industry readiness, we request that CMS release more current data on the reporting of the AUC data, including the percentage of claims that include some portion of the AUC data and the percentage of claims that include all of the correct AUC data. We also request that CMS further expand its education and outreach efforts through Open Door Forums and targeted messaging. While the CMS website has some information about the program and reporting requirements, we are concerned about the general lack of awareness of the program among all providers.

The AUC program as established would impose significant burdens on physician practices and duplicate ongoing efforts to improve quality and reduce unnecessary costs in MIPS and APMs. **We greatly appreciate CMS' delay of enforcement of AUC penalties and strongly urge CMS to take advantage of this time to make improvements that would increase flexibility for ordering and rendering professionals and align participation with the QPP.** If you have any questions, please feel free to reach out to Jennifer Hananoki (Jennifer.Hananoki@ama-assn.org). We look forward to continued engagement on this program.

Sincerely,



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