

February 7, 2023

Hon. Chiquita Brooks-LaSure
Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-0057-P
P.O. Box 8013, Baltimore, MD 21244-8013.
Submitted electronically via
<http://www.regulations.gov>

Subject: CMS-0057-P

Medicare and Medicaid Programs Patient Protection and Affordable Care Act; Advancing Interoperability and Improving Prior Authorization Processes for Medicare Advantage Organizations, Medicaid Managed Care Plans, State Medicaid Agencies, Children's Health Insurance Program (CHIP) Agencies and CHIP Managed Care Entities, Issuers of Qualified Health Plans on the Federally-facilitated Exchanges, Merit-based Incentive Payment System (MIPS) Eligible Clinicians, and Eligible Hospitals and Critical Access Hospitals in the Medicare Promoting Interoperability Program

Dear Administrator Brooks-LaSure:

On behalf of over 39,000 orthopaedic surgeons and residents represented by the American Association of Orthopaedic Surgeons (AAOS) and the orthopaedic specialty and state societies that agreed to sign on, we are pleased to submit comments on the Centers for Medicare & Medicaid Services (CMS) Interoperability and Patient Access Proposed Rule (CMS-0057-P) published in the Federal Register on December 12, 2022, to improve electronic exchange of healthcare data, decrease provider burden while advancing the operations associated with prior authorization and interoperability in the health market.

Prior authorization (PA) is a management process utilized by insurance companies and payers to regulate, in advance, if a health service, procedure, or prescribed product will be approved and covered by the patient's care plan.¹ Prior authorization has increased burden for both patients and providers as longer wait times for approval have elevated risks for negative health outcomes.² According to the 2022 report conducted under the U.S. Department of Health and Human Services (HHS) Office of Inspector General (OIG), 13% of prior authorization denials in the Medicare Advantage (MA) program were for health services that met the Medicare fee-for-service (FFS)

¹ DeMarzo A. What is Prior Authorization? Prior Authorization Training. Published December 15, 2020. <https://www.priorauthtraining.org/prior-authorization/>

² Prior Authorization: Fast PATH. AHIP. <https://www.ahip.org/prior-authorization-helping-patients-receive-safe-effective-and-appropriate-care>

coverage rules, which more than likely caused prevention or delays in patient care.³

The American Society of Clinical Oncology (ASCO) conducted surveys among oncology practices and determined the negative impacts of the prior authorization process. Some findings include significant impacts on patients' health, such as disease progression (80%) and loss of life (36%). These survey results also showed delays in treatment (96%), diagnostic imaging (94%), and patient out-of-pocket costs (88%) as some of the largest impacted areas.⁴ The American Medical Association (AMA) reports that physicians complete an average of 41 prior authorizations per physician per week, with 40% of physicians indicating that increased administrative staff is required to complete these prior authorizations.⁵

AAOS members have expressed concerns with the constraining and burdensome nature of prior authorization requirements.⁶ As practitioners spend significant time and administrative support on PA, less time is spent on patient care while simultaneously increasing cost to the health care system.

Improving Prior Authorization Processes

AAOS supports the use of HIPAA-compliant Prior Authorization Requirements, Documentation and Decision Application Programming Interface (PARDD APIs) to include functionality for data exchange including forms, medical records, and information regarding approval or denial of requests. To reiterate our comments on the Medicare Advantage RFI⁶, we believe that it is critical for CMS to establish and maintain a robust system for continual oversight of MA plans' use of PA processes to ensure that Medicare beneficiaries enrolled in MA plans have the same access to covered services as those covered under Medicare FFS, as required by statute.⁷ Guidance to plans to reduce PA for routine procedures and services that are largely approved would improve timely access to care for beneficiaries and reduce unnecessary burdens and costs on medical practices across the country. We also suggest that prior authorization and approval/denial rates should be collected (and made public) through ongoing oversight and special focused audits.⁷

Gold Carding Programs for Prior Authorization

CMS believes that the gold-carding approach will support building an infrastructure that would allow practitioners to provide care efficiently and effectively in a timely and value-based manner. AAOS encourages the adoption and establishment of gold-carding programs to help alleviate provider burden.⁶ As previously stated in the AAOS MA RFI Comment Letter, gold-carding would allow physicians with a 90% PA approval rating to be exempt from PA requirements under MA plans and

³ Prior Authorization and Utilization Management Reform Principles Prior Authorization and Utilization Management Reform Principles. <https://www.ama-assn.org/system/files/principles-with-signatory-page-for-slsc.pdf>

⁴ American Society of Clinical Oncology. ASCO Prior Authorization Survey. <https://old-prod.asco.org/sites/new-www.asco.org/files/ASCO-Prior-Auth-Survey-Summary-November-2022.pdf>

⁵ Prior authorization. American Medical Association. <https://www.ama-assn.org/practice-management/prior-authorization/prior-authorization#:~:text=Prior%20authorization%20is%20a%20health>

⁶ AAOS MA RFI Comment Letter <https://www.aaos.org/globalassets/advocacy/issues/aaos-ma-rfi-comments-final.pdf>

⁷ AAOS Comments- ONC Interoperability & Information Blocking Proposed Rule <https://www.aaos.org/globalassets/advocacy/issues/aaos-comments---onc-interoperability--information-blocking-proposed-rule.pdf>

establish processes to ensure that MA plans do not inappropriately revoke this exception.⁶ Gold carding, established under Texas Law HB 3459,⁸ will allow physicians who qualify for the exemption of the prior authorization process, a six-month exemption period. Once this six-month period is concluded, health plans would have the opportunity to rescind the physicians' exemptions if the physician did not meet certain medical criteria. Physicians would have the opportunity to repeal this decision through an independent process.⁹

AAOS supports CMS proposed requirement that coverage determinations are to be made on a timely basis, no later than 72 hours following the recipient's request. We also support the use of quality and star ratings with regards to gold card obtainment. Under gold-carding, we support the requirement that insurance companies must provide clinicians of the same specialty as the requesting physician, inferring that peer-to-peer PA related discussions should be conducted by similarly qualified physicians. This will save time and resources for both the requesting physician and the insurance company to process PA requests and initial denials.

Improvements in Prior Authorization Processes, Decisions and Notification Timeframe Proposals

As AAOS commented in the past, we support utilizing open APIs to improve the exchange of health information to improve patient satisfaction and care.¹⁰ Allowing all parties involved, including payers, providers, and patients, to have full transparency in data sharing will better streamline prior authorization. AAOS encourages the following measurable items to be addressed as required reporting by insurance plans:

- I) The percentage of prior authorization requests approved during the previous plan year, including the initial determination concerning each item and service per plan.
- II) The percentage of PA requests that were initially denied, including requests to appeal denials, and the percentage of appeals that were overturned concerning each item and service, broken down by each stage of appeal (including judicial review). Information displaying the number of initial denials due to request submissions that did not meet clinical evidence standards may also support transparent data sharing.
- III) The percentage of PA requests that were denied including the percentage of the total number of denied requests due to decision support technology or other clinical decision-making tools.
- IV) The average and median amount (in hours) that elapsed during the previous plan year between the submission of PA request to the plan and the determination by the plan concerning such request for each item and service, not including PA requests that did not embody all required information to be submitted by the plan.
- V) A descriptive list of each occurrence during the previous plan year in which the plan determined to approve or deny an item or service in the case where a provider furnished an additional or differing item or service during the preoperative period of surgical or additional invasive procedures that such provider deemed medically necessary.

⁸ 87(R) HB 3459 - Enrolled version - Bill Text. capitol.texas.gov. Accessed January 26, 2023. <https://capitol.texas.gov/tlodocs/87R/billtext/html/HB03459F.htm>

⁹ The 2021 Texas Legislature Created the Nation's Model Prior Authorization Law through HB 3459, Which Will. <https://toa.org/wp-content/uploads/2022/08/Prior-Auth-One-Page-2022.pdf>

¹⁰ AAOS Comments on Draft Trusted Exchange Framework and Common Agreement 2.20.18 <https://www.aaos.org/globalassets/advocacy/issues/aaos-comments-on-draft-trusted-exchange-framework-and-common-agreement-2.20.18.pdf>

- VI) A disclosure and description of any software decision-making tools the plan utilizes in making determinations concerning such request.
- VII) Other required information determined appropriate from the Secretary.

Updates to Electronic Prior Authorization for MIPS Promoting Interoperability Performance Category and the Medicare Promoting Interoperability Program

As stated in the AAOS Comments on Draft Trusted Exchange Framework and Common Agreement,¹⁰ AAOS strongly supports the development of interoperability standards for all Electronic Health Records (EHRs). Under this proposal, AAOS appreciates the standard for providers to have full access to prior authorization rulings, including approvals, denials, and request for information through Fast Healthcare Interoperability Resources (FHIR) PARDD API.¹¹ We believe that in order for interoperable systems to be successful, the focus should not merely be on electronic distribution, receiving, integrating, and use of data from exterior sources. Instead, shifting the focus of interoperability to allow data exchange to be helpful and the use of information will be secure, useful, and valuable to both patients and practitioners and other providers.¹¹

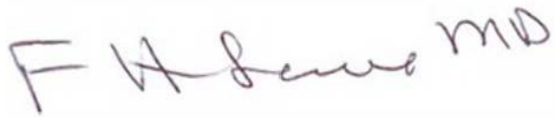
AAOS also believes it is imperative to develop meaningful and transparent use of EHRs across public insurance plans and private carriers to provide efficient care for patients and their families.¹² AAOS supports authorizations to be done electronically through a secure HIPAA-compliant manner to decrease medical practice staff burnout from strenuous means of obtaining prior authorization. This will enable a shift to increased patient focused care.

Thank you for your time and attention to the concerns of the American Association of Orthopaedic Surgeons (AAOS) on the significant proposals made in the CY 2022| CMS Interoperability and Patient Access Proposed Rule. The AAOS looks forward to working closely with CMS on further improving the prior-authorization systems, greater interoperability of health information and to enhance musculoskeletal care for patients in the United States. More specifically, we would like to have uniform and standardized systems for prior authorization that reduce clinician burden and unnecessary delays in providing health care. Should you have questions on any of the above comments, please do not hesitate to contact Shreyasi Deb, PhD, MBA, AAOS Office of Government Relations at deb@aaos.org.

¹¹ CMS Interoperability and Patient Access Proposed Rule Summary
<https://www.aaos.org/globalassets/advocacy/rules/cms-interoperability-and-patient-access-final-rule-summary.pdf>

¹² American Association of Orthopedic Surgeons (AAOS), Comment Letter, HHS Strategy on Reducing Regulatory and Administrative Burden Relating to the Use of Health IT and EHRs, January 28, 2019.
https://www.aahks.org/wp-content/uploads/2019/02/Strategy_on_Reducing_Regulatory_and_Administrative_Burden.pdf

Sincerely,

A handwritten signature in blue ink that reads "F H Savoie MD". The signature is written in a cursive style.

Felix H. Savoie, III, MD, FAAOS AAOS President

cc:

Kevin J. Bozic, MD, MBA, FAAOS, First Vice-President, AAOS Paul Tornetta III, MD, PhD, FAAOS, Second Vice-President, AAOS

Douglas W. Lundy, MD, MBA, FAOA, FAAOS, Advocacy Council Chair, AAOS Thomas E. Arend, Jr., Esq., CAE, CEO, AAOS

Nathan Glusenkamp, Chief Quality and Registries Officer, AAOS Graham Newson, Vice-President, Office of Government Relations, AAOS

This letter has received sign-on from the following orthopaedic societies:

American Association for Hand Surgery (AAHS)
Arthroscopy Association of North America (AANA)
American Orthopaedic Foot & Ankle Society (AOFAS)
American Orthopaedic Society for Sports Medicine (AOSSM)
American Shoulder and Elbow Surgeons (ASES)
Cervical Spine Research Society (CSRS)
Limp Lengthening and Reconstruction Society (LLRS)
Musculoskeletal Tumor Society (MSTS)
Orthopaedic Rehabilitation Association (ORA)
Orthopaedic Trauma Association (OTA)
Pediatric Orthopaedic Society of North America (POSNA)
Ruth Jackson Orthopaedic Society (RJOS)
Society Of Military Orthopaedic Surgeons (SOMOS)
Scoliosis Research Society (SRS)

California Orthopaedic Association
Connecticut Orthopaedic Society
Florida Orthopaedic Society
Illinois Association of Orthopedic Surgeons
Iowa Orthopaedic Society
Louisiana Orthopaedic Association
Maryland Orthopaedic Association
Massachusetts Orthopaedic Association
Michigan Orthopaedic Society
Minnesota Orthopaedic Society
Missouri State Orthopaedic Association
Nebraska Orthopedic Society
New Jersey Orthopaedic Society
New York State Society of Orthopaedic Surgeons
North Carolina Orthopaedic Association
North Dakota Orthopaedic Society
Ohio Orthopaedic Society
Pennsylvania Orthopaedic Society
South Carolina Orthopaedic Association
South Dakota State Orthopaedic Society
Texas Orthopaedic Association
Virginia Orthopaedic Society
Wisconsin Orthopaedic Society