Ambulatory Surgery Center Association

April 16, 2024

The Honorable Chiquita Brooks-LaSure, Administrator
Centers for Medicare and Medicaid Services
Office of Strategic Operations and Regulatory Affairs,
Division of Regulations Development
Room C4–26–05,
7500 Security Boulevard
Baltimore, Maryland 21244–1850

Via online submission at https://www.regulations.gov/commenton/CMS-2024-0089-0001

Re: Prior Authorization Demonstration for Certain Ambulatory Surgical Center (ASC) Services

Dear Administrator Brooks-LaSure:

On behalf of the Ambulatory Surgery Center Association (ASCA), I submit the following comments in response to the Centers for Medicare & Medicaid Services' (CMS) notice of its intent to develop and implement a prior authorization demonstration for certain ambulatory surgical center (ASC) services (CMS–10884). ASCs are proud of the cost savings they provide to the Medicare program, saving Medicare more than ***$5 billion*** on an annual basis simply by existing as an alternative to hospitals.[1] ASCA supports efforts to save the Medicare program and taxpayers additional money, but this proposed demonstration will not accomplish what it claims to, namely, thwarting "improper or fraudulent payments." ASCA opposes this demonstration because it will be a waste of taxpayer dollars and an increased and unnecessary burden on ASCs.

The notice indicates that CMS seeks to implement a demonstration project, believing that it "will assist in developing improved procedures for the identification, investigation, and prosecution of Medicare fraud occurring in ambulatory surgical centers providing services to Medicare beneficiaries." There is already a mechanism in place for addressing fraud: the Medicare Fee for Service Recovery Audit Program. Through this program, recovery audit contractors (RAC) "identify and correct Medicare improper payments through the efficient detection and collection of overpayments made on claims of health care services provided to Medicare beneficiaries." This demonstration appears to be a solution in search of a problem—imposing additional burden on providers and additional cost on the Medicare program and taxpayers without evidence of widespread fraud in the ASC community.

There are 40 procedures listed in CMS-10884 Supporting Statement Part B. CMS indicates that data "from 2019 to 2021 shows these services have experienced significant increases in utilization in the ASC setting" and that "CMS selected the targeted services for inclusion in this

[1] State Cost Savings (2021) analysis file based on the CMS ASC LDS 2021 claims data that was used for the 2023 final rule.

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demonstration, based upon problematic events, data, trends, and potential billing behavior impacts of the OPD Prior Authorization Program which requires prior authorization as a condition of payment for these services."

Yet of the 40 codes listed, there is only **one** code, J0585, that saw an increase from 2019 to 2021. The increase during that timeframe was 1.5 percent. Twenty-one of the codes (52.5 percent) CMS proposes for this demonstration had 100 or fewer claims nationwide. Five of the codes (15847, 36474, 36476, 36479 and 36483) have a payment indicator N1, meaning they are **not separately payable** in the ASC setting. Since they do not receive reimbursement, it does not make sense to include them in a prior authorization demonstration.

If CMS wishes to establish a policy that requires additional burden on facilities, it should clearly delineate the criteria and exclude procedures that fall below a certain volume threshold or overall spend within the Medicare program. Then, when evaluating increased utilization, CMS should specify a percentage increase that will trigger the prior authorization. Based on the list that has been provided, there is a concerning lack of effort in identifying procedures that merit such concern. When imposing new burdens on well-regulated healthcare providers, CMS should show that there is a clear gain to taxpayers and the Medicare program. As presented, this demonstration misses the mark.

In addition, ASCA has questions regarding the demonstration design and the payment systems ultimately impacted. The demonstration mentions "ASC providers that submit claims with place of service 24 (Ambulatory Surgical Center), perform certain ASC services in the 10-demonstration states, and submit claims to Medicare fee-for-service." Since the term "ASC provider" is not one typically used to describe the facility itself, ASCA contacted the CMS staff referenced in the demonstration notice, asking whether the facility or the provider—the physician—was responsible for obtaining prior authorization. The staff informed that the "physician needs to submit the prior authorization request or materials requested by the MAC for preclaim review and that drives the process."[2]

However, in Supporting Statement Part B, under Small Businesses, it indicates that the "collection will impact small businesses or other entities to the extent that those ambulatory surgical centers that qualify as small businesses bill Medicare for the services that require prior authorization." ASCA requests clarification on whether the ASC's facility fee, the provider's professional fee or both are potentially impacted by failure to obtain prior authorization.

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Medicare reimbursement is not keeping pace with costs, and we object to this additional burden on the ASC community without a clear indication that the demonstration is needed. ASCA appreciates the agency's past willingness to listen to its concerns as it strives to ensure the continued viability of ASCs as cost-effective providers of care to Medicare beneficiaries. We stand ready to work with you and your staff on proposals to encourage migration to the lower-cost ASC setting, resulting in savings for the Medicare program and its beneficiaries. If you have

[2] Email from Justin Carlisle (Justin.Carlisle@cms.hhs.gov) to Alex Taira, ASCA staff, on Wednesday, February 24, 2024.

any questions, please contact ASCA chief advocacy officer, Kara Newbury, at knewbury@ascassociation.org or 703.636.0705.

Sincerely,

William Prentice
Chief Executive Officer