November 12, 2024

Chiquita Brooks-LaSure
Administrator
Centers for Medicare & Medicaid Services
Hubert H. Humphrey Building
200 Independence Avenue, SW
Washington, DC 20201

SUBJECT: CMS-10913, Medicare Part C Utilization Management Annual Data Submission and Audit Protocol Data Request; Notice, Agency Information Collection Activities: Proposed Collection; Comment Request; Federal Register (Vol 89, No 145), September 10, 2024

Dear Administrator Brooks-LaSure:

The California Hospital Association (CHA) appreciates the opportunity to comment on the Centers for Medicare & Medicaid Services (CMS) proposed collection, "Medicare Part C Utilization Management Annual Data Submission and Audit Protocol Data Request."

In California, Medicare Advantage (MA) enrollment is increasing among Medicare beneficiaries, while enrollment in fee-for-service (FFS) Medicare is decreasing. As of 2021, 52.2% of California's Medicare beneficiaries were enrolled in MA plans[1]. In addition, California is home to 1.4 million individuals dually-eligible for both Medicaid (Medi-Cal) and Medicare[2]. Under California's ongoing Medicaid reform initiative, California Advancing and Innovating Medi-Cal (CalAIM), dually-eligible beneficiaries will be encouraged to enroll in Dual Eligible Special Needs Plans (D-SNPs) aligned with a Medi-Cal managed care plan.

Many of these beneficiaries are enrolled in high quality Medicare Advantage Organizations (MAOs) that are part of tightly integrated delivery systems that are fulfilling the promise of MA plans to provide cost-effective care. However, as the senior population grows, and as our state moves to enroll our most vulnerable seniors and persons with disabilities into MA plans, it is critical that CMS take steps to ensure that all MAOs employ policies and practices that expand access to care, ensure care is provided in the

[1] https://www.dhcs.ca.gov/services/Documents/OMII-Medicare-Databook-February-18-2022.pdf
[2] https://atiadvisory.com/wp-content/uploads/2022/02/Profile-of-the-California-Medicare-Population.pdf

most clinically appropriate setting, and support providers' efforts to improve health equity. **For this reason, CHA strongly supports CMS' proposals to increase MAO transparency and accountability by implementing additional data collection and audit procedures for utilization management policies and tools.**

The need for additional oversight of MAOs is underscored by results from several investigations, including a 2018 U.S. Health and Human Services Office of Inspector General (OIG) report[3] that found MAOs overturned 75% of their own denials, and has led to OIG plans for additional investigation of MA post-acute care denials. A 2023 survey of CHA members found that patients with MA plans are nearly twice as likely to experience a discharge delay than those with traditional Medicare, raising serious questions about access to medically necessary post-acute care for MA enrollees[4].

More recently, the U.S. Senate Permanent Subcommittee on Investigations (PSI) issued a report on the prior authorization practices of the three largest MAOs[5], which revealed that MA plans are intentionally targeting costly stays in post-acute care facilities to increase profits. The report also called into question the use of algorithms, artificial intelligence (AI), and automation as part of MA plans' utilization management policies. **CMS should ensure that its data collection captures information on how plans use AI and other predictive technologies to make prior authorization determinations and audit the data to ensure that the use of AI does not result in determinations that are more restrictive than Medicare fee-for-service requirements.**

CHA encourages CMS to expand its proposed data collection to include measures that will assess MAO use of prior authorization and its impact on patient access to care. Such measures could include requiring that MAOs report which services, procedures, or medications are subject to prior authorization, the associated criteria for approval, percentage of requests that are approved or denied, percentage of denials that are appealed, and the denial overturn rate. CMS should collect data on measures that address the timeliness of prior authorization decisions, including turnaround time for both routine and time-sensitive prior authorization requests, as well as timeliness of care access for the beneficiary.

CMS should also collect data related to the utilization of certain service categories to ensure that MA plans provide their enrollees with the appropriate level of care in the appropriate setting. This would include data on prior authorization determinations for care in skilled-nursing facilities, inpatient rehabilitation facilities, and long-term care hospitals. MAOs that exhibit low utilization for certain service categories relative to the traditional Medicare population could be targeted for a review of their

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[3] https://oig.hhs.gov/oei/reports/oei-09-16-00410.asp
[4] https://calhospital.org/wp-content/uploads/2024/01/Impact-of-Inadequate-Networks-CHA-Analysis-FINAL.pdf
[5] https://www.hsgac.senate.gov/wp-content/uploads/2024.10.17-PSI-Majority-Staff-Report-on-Medicare-Advantage.pdf

compliance with Medicare policies, including criteria for approval and the role of qualified clinicians in the decision-making process.

CHA commends CMS for its recognition of the widespread and systemic problems with MAO utilization management practices and its impact on beneficiary access to care. Hospitals strongly support the agency's effort to implement additional data collection to ensure that all Medicare beneficiaries have adequate and timely access to Medicare services. If you have any questions, please contact me at mhoward@calhospital.org or (202) 488-3742, or my colleague Patricia Blaisdell at pblaisdell@calhospital.org or (916) 552-7553.

Sincerely,

/s/
Megan Howard
Vice President, Federal Policy