

May 18, 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:

The report accompanying the House-passed fiscal year 2022 Labor, Health and Human Services, Education, and Related Agencies Funding Bill includes language requesting a report from the Centers for Medicare & Medicaid Services (CMS) on the implementation of the Appropriate Use Criteria (AUC) Program, including program challenges and successes. The language further directs CMS to consult with stakeholders, including medical professional societies and developers of AUC and clinical guidelines, when formulating its report. The undersigned organizations are deeply concerned with the breadth and complexity of the AUC Program and request ample opportunity, including but not limited to a special stakeholder forum, in the months ahead to engage with the agency as it prepares its report to Congress.

On April 1, 2014, the *Protecting Access to Medicare Act* was signed into law. Over the course of eight years, CMS has published several rules in an attempt to fulfill the highly prescriptive AUC Program statutory mandate. During this time, physicians and other health care professionals have also dedicated time and resources for successful participation in the Medicare Quality Payment Program (QPP) to fulfill the objectives of lower costs to the Medicare program by improving beneficiary care and health.

The AUC report language states, “CMS shall consider existing quality improvement programs and relevant models authorized under Sec.1115A of the Social Security Act and their influence on encouraging appropriate use of advanced diagnostic imaging.” Examining how the QPP and alternative payment models being tested by the Center for Medicare and Medicaid Innovation promote appropriate resource use of diagnostic imaging is an important starting point for discussions. These initiatives are designed to hold physicians accountable for the quality and cost of care their patients receive, inherently discouraging unnecessary utilization of services like diagnostic imaging, which we believe fulfills the intent of the AUC Program without additional reporting burden.

We ask CMS to also consider programs and activities being implemented in medical practice that have demonstrated effectiveness at driving meaningful progress toward appropriate use of diagnostic imaging and how those activities can be leveraged. In addition, CMS should:

- Assess the impact of AUC on small and rural practices with a particular focus on practices that are exempt from MIPS under the low volume threshold.
- Release additional drill-down data about the Education and Operations Testing period, including which modifiers are being reported, the number of claims submitted in each clinical priority area, and which regions and specialties are reporting; and
- Evaluate alternatives to claims-based reporting for AUC information, including leveraging the data collected by the third-party vendors like CDSMs and registries, to assess AUC compliance.

As stated in the CY 2022 Medicare Physician Fee Schedule Final Rule, CMS estimates between 9-10 percent of all CY 2020 Medicare claims subject to the AUC program reported information sufficient to be considered compliant with the program — meaning that 90-91 percent of claims would not be considered compliant with AUC program requirements. We believe these statistics point to an overwhelming lack of awareness of the program among physicians and other health care professionals to which the AUC mandate would apply. While we are grateful CMS delayed the penalty phase of the program until the later of January 1, 2023, or the January 1 that follows the declared end of the COVID-19 public health emergency, further delay is needed to allow ample time to review and re-evaluate the program. Furthermore, we ask that physician practices not be asked to comply with the requirements of yet another reporting program while they continue to struggle with persistent staffing shortages and Medicare physician payments that have not kept pace with the cost of providing care.

Our organizations strongly support using appropriate use criteria and clinical practice guidelines to drive clinically appropriate diagnostic imaging services. However, the AUC Program mandate as structured would take away the flexibility of how physicians and other health care professionals consult AUC and, in some cases, make it difficult, if not impossible, to rely on the specialty-specific AUC developed by their professional societies or their continued use of nationally recognized independent care guidelines.

The time has come for a thoughtful re-examination of the program and action by Congress to address the complexity and prescriptiveness of the program, as well as the burden and cost it will impose among the vast majority of physicians in this country when it is layered, not integrated, upon existing CMS quality programs. Our organizations look forward to engaging with CMS as it fulfills the directive set forth in the House report.

Sincerely,

American Medical Association

AMDA - The Society for PALTC Medicine

American Academy of Allergy, Asthma & Immunology

American Academy of Facial Plastic and Reconstructive Surgery

American Academy of Family Physicians

American Academy of Neurology

American Academy of Orthopaedic Surgeons

American Academy of Otolaryngology- Head and Neck Surgery
American Academy of Physical Medicine & Rehabilitation
American Association of Neurological Surgeons
American Association of Oral and Maxillofacial Surgeons
American College of Allergy, Asthma & Immunology
American College of Cardiology
American College of Emergency Physicians
American College of Gastroenterology
American College of Obstetricians and Gynecologists
American College of Osteopathic Surgeons
American College of Physicians
American College of Rheumatology
American College of Surgeons
American Gastroenterological Association
American Medical Group Association
American Orthopaedic Foot & Ankle Society
American Society for Clinical Pathology
American Society for Dermatologic Surgery Association
American Society for Gastrointestinal Endoscopy
American Society for Radiation Oncology
American Society for Surgery of the Hand
American Society of Anesthesiologists
American Society of Echocardiography
American Society of Hematology
American Society of Nuclear Cardiology
American Society of Plastic Surgeons
American Urological Association
Association for Clinical Oncology
Association of American Medical Colleges
Congress of Neurological Surgeons
Heart Rhythm Society
Medical Group Management Association
North American Spine Society
Renal Physicians Association
Society for Cardiovascular Angiography and Interventions
Society of Cardiovascular Computed Tomography
Spine Intervention Society