January 28, 2020

Via Electronic Mail Only
Seema Verma, Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-9915-P
P.O. Box 8010
Baltimore, MD 21244-8010

Re: Transparency in Coverage (CMS-9915-P)

Dear Administrator Verma:

On behalf of the members of the Advanced Medical Technology Association (AdvaMed), we are writing to provide comments on the proposed Transparency in Coverage Rule.

AdvaMed member companies produce the medical devices, diagnostic products, and health information systems that are transforming healthcare through earlier disease detection, less invasive procedures, and more effective treatments. AdvaMed members range from the largest to the smallest medical technology innovators and companies. We are committed to ensuring patient access to life-saving and life-enhancing devices and other advanced medical technologies in the most appropriate settings.

AdvaMed supports efforts designed to better inform consumers regarding their healthcare choices—including providing them with information regarding the quality and out-of-pocket cost of services. AdvaMed appreciates the Administration’s efforts to improve transparency in these areas for healthcare consumers. The ability to fully understand the personal financial impact of healthcare decision making, via improved transparency, will allow patients to act in a way that best suits their needs and those of their families. However, we urge the Administration and other agencies involved to be very thoughtful regarding how and what type of information to disclose.

AdvaMed agrees with the concept of providing patients with information that allows them to make informed decisions regarding their healthcare choices, including spending. We believe that any such information should be delivered to consumers in a format that is transparent and that meets consumer needs related to both price and quality outcomes. Determining the types of information to make available for this purpose is critical.

AdvaMed also would like to comment on the importance of market competition within the US healthcare system. The reliance on private negotiations among many individual stakeholders is a hallmark of this system. While there are certainly aspects of the US healthcare system where improvements are possible, we are generally concerned about this and other proposals that may
threaten some of the fundamental aspects of a competitive market that relies on private negotiations.

The potential impact resulting from the release of negotiated rates is unknown. In its transparency principles Americas Health Insurance Plans (AHIP) expressed concern that, “when doctors, drug makers, or hospitals know their competitors negotiated rates they can bid less aggressively, demanding higher rates that lead to higher costs for everyone.” Similar views on price transparency have been previously expressed by the Federal Trade Commission (FTC). In these statements the FTC has stated, “When networks are selective, providers are more likely to bid aggressively, offering lower prices to ensure their inclusion in the network. But when providers know who the other bidders are and what they have bid in the past, they may bid less aggressively, leading to higher overall prices.” In a letter from the FTC on this same issue, that agency addresses the many challenges in presenting information in a format and medium that is meaningful to and understood by consumers.

The proposed rule would require health plans to disclose rates negotiated and paid to in-network providers for each covered item and service and implies that consumers can benefit from this type of information. However, the rule does not clearly define the term in-network provider. The term “provider” as commonly used in the context of the delivery of healthcare services refers to an institutional healthcare setting or clinician or healthcare practitioner that provides care to a patient. It has not traditionally encompassed suppliers of services or manufacturers. AdvaMed believes the disclosure of supplier and manufacturer rate information is of limited value to patients and the ability to disassociate these discreet costs from the overall amount charged by a health plan, in a way that is consumer friendly will be difficult. For this reason, we recommend that the term “in-network provider” be clarified to exclude device suppliers and manufacturers.

Additionally, the type of data disclosure being requested from health plans in the proposed rule is prohibited for laboratory services. Section 1834A of the Social Security Act requires private payer rates reported by applicable laboratories to be kept confidential by CMS—thereby requiring CMS to keep contracted rates between hospitals and third-party payers for laboratory services confidential. The logic undergirding that provision should apply to the disclosure of similar information by health plans.


AdvaMed urges CMS to proceed cautiously as it considers policies that could be detrimental to existing competitive healthcare markets.

Conclusion

AdvaMed appreciates the opportunity to comment on the Transparency in Coverage proposed rule and urges CMS to consider and incorporate our recommendations into the final rule. We also urge CMS to work with us and other stakeholders as the Agency moves forward with the implementation and development of transparency policies to ensure information provided to consumers is as relevant and user-friendly as possible.

We would be pleased to answer any questions regarding these comments. Please contact me or DeChane L. Dorsey, Esq., Vice President, Payment and Health Care Delivery Policy, at (202) 434-7218, if we can be of further assistance.

Sincerely,

Donald May
Executive Vice President
Payment and Health Care Delivery