MEDICAL SOCIETY OF THE STATE OF NEW YORK
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September 2, 2022

Chiquita Brooks-LaSure
Administrator
Centers for Medicare & Medicaid Services
U.S. Department of Health and Human Services
Attention: CMS-1770-P
P.O. Box 8016
Baltimore, MD 21244

Re: Medicare and Medicaid Programs; CY 2023 Payment Policies Under the Physician Fee Schedule and Other Changes to Part B Payment Policies; Medicare Shared Savings Program Requirements

Dear Administrator Brooks-LaSure:

On behalf of our over 20,000 physician and student members treating hundreds of thousands of New York patients each year, we are writing to you to express our strong concerns with various aspects of the proposed 2023 Medicare payment rule that would impose huge cuts on these dedicated physicians.

The 2023 Medicare proposed fee schedule rule not only **fails to account for inflation in practice costs and COVID-related challenges to practice sustainability, but also includes a significant and damaging across-the-board reduction in payment rates**. The constant decrease to physician reimbursement creates long-term financial instability in the Medicare physician payment system and threatens patient access to Medicare-participating physicians.

Specifically, we are urging the following:

- **Maintain the 3% increase** to ensure there are no further cuts to physician reimbursement rates in CY 2023, as well as increasing office-based physician payments by the same percentage as those approved for inpatient settings.
- **Reject changes to the Geographic Adjustment Factor** that unfairly singles out New York physicians for additional cuts
- **Permanently finalize expanded telehealth flexibilities** and ensure telehealth visits are *reimbursed at parity with office visits*, as well as finalize flexibilities for supervision requirements
- **Support lowering to age 45** the minimum age to cover a colorectal cancer screening test

Prevent Cuts to the Conversion Factor
CMS estimates the conversion factor for 2023 to be $33.0775, a decrease of $1.53 from CY 2022's CF of $34.6075, which reflects the budget neutrality adjustment, the 0% update adjustment factor, and the expiration of the 3% increase for services furnished in CY 2022, as provided in the Protecting Medicare and American Farmers from Sequester Cuts Act.

The reduced conversion factor will significantly reduce already low reimbursement for many physicians, which has been increased in real dollars for over 20 years. Furthermore, physicians already had to incur a 2% cut earlier this year due to re-implementation to the sequestration reductions. The result is that patients suffer as physicians adjust to unpredictable and excessive reductions to reimbursement that inhibit their ability to ensure beneficiaries have access to the care they need.

This alongside the imminent payment cuts from the Medicare sequester and the Statutory Pay-As-You-Go (PAYGO) Act will be financially catastrophic for independent physicians, driving many into retirement or into other employment arrangements. A 2022 report by Avalere/Physicians Advocacy Institute (PAI) PAI-Avalere Report on Physician Employment Trends found nearly 110,000 additional physicians became employees of hospitals or other corporate entities – 83,000 of that shift occurred after the onset of COVID-19.

We urge CMS to at minimum maintain the 3% increase in 2023 as physicians continue to face challenges resulting from COVID. We also urge CMS to provide financial stability through a baseline positive annual update reflecting inflation in practice costs, and eliminate, replace or revise budget neutrality requirements to allow for appropriate changes in spending growth. Critical reforms to the Medicare fee schedule are needed because the current budget neutrality requirement can lead to arbitrary reductions to reimbursement unrelated to the cost of providing care. It is imperative that office-based Medicare physician payments be increased by the same percentage as those approved for inpatient settings.

Reject Changes to the Medicare Economic Index (MEI) Cost Share Weights
CMS is proposing to rebase and revise the MEI cost share weights for CY 2023. CMS notes that using the new MEI cost weights to set Medicare physician payment rates would not change overall spending on professional services but would likely result in significant changes to payments among professional services. In consideration of their ongoing efforts to update to the Medicare payment rates with more predictability and transparency, and in the interest in ensuring payment stability, CMS is proposing not to use the proposed updated MEI cost share weights for CY 2023.

We are particularly concerned about significant adverse impact this change will have on many physician specialties critically important to treating Medicare-enrolled patients. The proposed shift in payment weights from physician work to practice expense principally favors Diagnostic Testing Facility (+13%), Portable X-Ray Supplier (+13%), Independent Laboratory (+10%) and Radiation Therapy Centers (+6%), to the detriment of Cardiothoracic Surgeons (-8%), Neurosurgeons (-8%),

ER physicians (-8%) and Anesthesiologists (-5%). Even primary care physicians would face decreases, including Family Medicine (-1%), Geriatrics (-2%), and Internal Medicine (-2%). In summary, this proposal redistributes physician payment from physician work to the business side of healthcare. This proposal is particularly unfortunate as physicians face uncertainty about the Medicare conversion factor and continue to suffer from burnout. More should be done to help ensure the availability of physicians for their patients, rather than direct resources away from those directly providing patient care.

If these changes were not going cause enough damage, we are alarmed with the CMS proposal to reduce the professional liability insurance (PLI) component of the MEI from 4.3% to 1.4%. As it noted in the various charts that describe the impact of this change, reducing the PLI component of the MEI has a disproportionate impact on the physicians of New York State, as New York has liability premiums that far exceed most other states. This would prompt significant additional cuts to Medicare payments – on top of the already possible 8.5% cuts - at the worst possible time.

A recent report from Diederich Healthcare showed that in 2019, New York once again had the highest cumulative medical liability payouts of any state in the country, 68% more than the state with the second highest amount (Pennsylvania). It also had the highest per capita liability payment, 10% more than the 2nd highest state (Massachusetts). It also far exceeds other large states such as California and Texas. Furthermore, even though many physician specialists across the New York City and Long Island region of the state already pay hundreds of thousands of dollars per year for their liability coverage, the major liability carrier serving New York physicians just received authorization from the New York Department of Financial Services to increase premiums by another 5%.

Given all these factors, it would be unconscionable to now diminish by 2/3 the PLI component of the Geographic Adjustment Factor. Seniors' access to needed care will inevitably suffer as physicians leave the Medicare program.

We understand that there is concern that the data currently utilized for the MEI are outdated and we understand CMS's desire to update these data. We urge CMS to collaborate with the American Medical Association on this new data collection effort to ensure consistency and reliability in physician payment. Updates to MEI weights should be postponed until new AMA survey data are available.

Continuing Part B Payment Policies for Telehealth

While CMS has finalized the extension of certain telehealth flexibilities and has made other flexibilities more permanent for certain populations, there remains a gap in the ability to provide telemedicine services in the home and appropriate reimbursements for these services post-PHE. Therefore, we urge that CMS:

- Continue telehealth flexibilities permanently and reimburse telehealth services at parity with in-person service rates after the COVID-19 PHE concludes.
- Permanently remove geographic restrictions and allow the patient's home to be a permissible originating site while also ensuring that there are policies in

place to safeguard that patients are receiving care from local physicians and practices in their communities to preserve the patient-physician relationship.

CMS is proposing no change to the length of time that temporary Category 3 services will remain on the Medicare Telehealth Services List. Category 3 services will be included through CY 2023 unless the PHE extends well into CY 2023, in which case CMS may reconsider. CMS seeks comment on whether the flexibility to meet the immediate availability requirement for direct supervision by real-time, audio/visual technology should be made permanent. CMS is also seeking comment on the possibility of permanently allowing immediate availability for direct supervision through virtual presence for a subset of services, and where patient safety should be a concern. MSSNY supports continuing telehealth flexibilities but recommends that flexibilities and reimbursement rates continue post-COVID-19, permanently, as many physician practices, especially those in primary care, and the patients they serve will remain heavily reliant on telehealth services for the immediate future (if not longer). Telehealth services can also assist in access for populations that traditionally have had limited access in urban and rural areas, as a *supplement but not replacement* for face-to-face care**.** These flexibilities should also be a permanent fixture of the Medicare Advantage (MA) Part C and D plans.

Additionally, we urge CMS to continue to *reimburse telehealth services at parity* with in-person service rates after the COVID-19 PHE concludes. Reimbursement should remain informed by service type, as opposed to setting of care—to the most reasonable extent possible. Physicians should continue to have the flexibility to make a clinically informed decision about whether a telehealth or in-person visit would be most beneficial for a patient, and they should have this flexibility without unnecessary and/or disconnected pricing incentives. The benefits and challenges of telehealth versus in-person care is dependent on several patient factors, both medical and non-medical. To this end, we believe that telehealth and in-person care *should be reimbursed at equal rates*, and that the ultimate differentiator in physician reimbursement should be dependent on the service type as well as value/quality of care provided.

Nevertheless, as federal agencies contemplate policy solutions to expand access to virtual platforms, it is imperative that CMS ensures that any future policies looking to expand telehealth coverage in Medicare do not expand the scope of practice of non-physician health care professionals beyond that supported by their licensure, education, and training prior to the PHE; and/or, allow a payment differential between telehealth and in-office visits, especially such payment differentials which could create barriers to continuity of care for patients and prevent them from receiving care from their routine physicians.

We are supportive of the flexibility to allow direct supervision to be provided through a virtual presence and encourages CMS to extend it permanently. This is an important issue for rural or distant training centers with residency and fellowship programs and those with satellite facilities where training takes place.

Colorectal Cancer Screening
MSSNY supports the CMS proposal to expand Medicare coverage of certain colorectal cancer (CRC) screening tests by reducing the minimum age payment limitation to 45 years. CMS notes that this proposal aligns with the United States Preventative Services Task Force (USPSTF) May 2021 revised recommendation that those who do not have symptoms of CRC and who are at average risk begin screening at 45. MSSNY is also urging New York Governor Kathy Hochul to sign into law a similar measure that was passed by the New York State Senate and Assembly this past legislative session.

Thank you for your attention to our comments.

Sincerely,

Parag Mehta, MD
President
Medical Society of the State of New York