October 19, 2022

RE: Request for Information on the *Medicare Access and CHIP Reauthorization Act of 2015* (MACRA)

Submitted electronically via macra.rfi@mail.house.gov

Representatives Bera, Bucshon, Schrier, Burgess, Blumenauer, Wenstrup, Schneider, and Miller-Meeks:

The Emergency Department Practice Management Association (EDPMA) thanks you for your request for information related to the *Medicare Access and CHIP Reauthorization Act of 2015* (MACRA), which was enacted to repeal the sustainable growth rate formula and move Medicare towards value-based payment. As we hope this letter will illustrate, MACRA has not been implemented effectively and has therefore done little to transform Medicare into a value-driven payer. Since Medicare payment is a complex area of law with direct impact on beneficiary care, **EDPMA calls on Congress to begin the process of reform as soon as possible by convening roundtables with affected stakeholders and/or hearings in the Committees of jurisdiction to inform potential legislative solutions.**

EDPMA is the nation's only professional physician trade association focused on the delivery of high-quality, cost-effective care in the emergency department. EDPMA's membership includes emergency medicine physician groups of all sizes, as well as billing, coding, and other professional support organizations that assist healthcare providers in our nation's emergency departments. Together, EDPMA's members deliver or directly support health care for approximately half of the 146 million patients that visit U.S. emergency departments each year.

Reimbursement Instability

Despite MACRA's attempts to modernize physician payment, Medicare still underpays physicians for care delivered to program beneficiaries, a problem that continues to worsen due to annual proposed reductions in reimbursement and lack of any mechanism to account for inflation. As you know all too well from your leadership on this issue, the statutory directions pursuant to which the Centers for Medicare and Medicaid Services (CMS) must calculate reimbursement rates often result in large proposed annual cuts that Congress must then step in to avert. Even at the time of this writing, Medicare providers are facing a 4.42% reduction to the 2023 Medicare Physician Fee Schedule (MPFS) conversion factor if Congress does not intervene.

Meanwhile, even before the recent high levels of inflation, the costs of providing medical care have increased dramatically in the last decade.

Yet unlike all other major Medicare payment systems, the MPFS has no mechanism to reflect annual inflation. One such indicator of inflation is the Consumer Price Index for all Urban Consumers (CPI-U), which for 2022 when finalized could be at least 8.6%,[1] yet nothing in the MPFS accounts for these rising costs even though the system purportedly reimburses for practice expenses. MACRA did not

[1] Bureau of Labor Statistics: https://www.bls.gov/opub/ted/2022/consumer-prices-up-8-6-percent-over-year-ended-may-2022.htm

contemplate such updates perhaps due to the expectation that value-based payment would inherently provide a way to reflect annual cost increases.

This expectation has not materialized. For the bulk of what minor incentives have been available to date, statutory authority will end in 2024.

Value and Quality

As the RFI notes, MACRA created a two-track reimbursement system: the Merit-Based Incentive Payment System (MIPS), as well as processes to adopt Advanced Alternative Payment Models (APMs). Currently, clinicians who participate sufficiently in an Advanced APM are considered Qualifying Participants (QPs), qualify for a 5% lump sum incentive payment, and are excluded from MIPS. However, as noted above, after the 2022 performance year, there is no further statutory authority for a 5% APM incentive payment for QPs. Instead, beginning with the 2024 performance year/2026 payment year, MACRA authorizes a small but enhanced conversion factor (CF) update for QPs: QPs will receive a 0.75% base CF update and non-QPs (including MIPS-eligible clinicians, who will still be subject to MIPS' payment adjustments) will receive a 0.25% based CF update. CMS recently estimated that the QP conversion factor is not expected to equate to the maximum available positive payment adjustment under MIPS until *after 2038*. Under MACRA, the minimum Medicare patient and payment thresholds that must be met to achieve QP status also will increase starting in 2023: the Medicare payment amount qualification will increase from 50% to 75%. The Health and Human Services Secretary has also provided that the Medicare patient count qualification will increase from 35% to 50%.

Left unchanged, the projected payment disparity between the two tracks of the Quality Payment Program (QPP) and the fact that MACRA expressly excludes QPs from the definition of "MIPS eligible clinician" will cause clinicians to shift out of APMs and into MIPS over the next 15 years. In the 2023 proposed MPFS, even CMS expressed concern that these existing policies could impact the willingness of eligible clinicians to participate in Advanced APMs in CY 2023 and for several years to come, as well as interfere with the Center for Medicare and Medicaid Innovation's testing of voluntary Advanced APMs. This runs counter to the congressional intent of MACRA, which was to create a glidepath *toward* APM participation. CMS also expressed concern that a shift of more experienced clinicians out of Advanced APMs and into MIPS could increase the relative number of high-performing clinicians who earn a positive MIPS payment adjustment, which could in turn reduce the average and maximum positive MIPS payment adjustment amounts under this budget neutral program—a critical concern when physicians are already facing such low base payment updates under MACRA.

For emergency medicine and other hospital-based specialists, who generally see the most vulnerable, resource-intensive patients, there have been very few opportunities to participate in Advanced APMs to date. As a result, these clinicians have had few opportunities to qualify for the APM track of the QPP to date and have had little choice but to participate in MIPS. Even if an opportunity for emergency physicians to participate in an APM were to arise in the near future, they will have missed out on the expiring 5% incentive payment, which current APM participants have reported as critical to establishing and sustaining the infrastructure needed to participate in an APM.

If the QPP were resulting in marked improvements to care for beneficiaries, payment issues could be solved more easily because physicians would be eager to find *any* solution enabling them to remain in the program. However, CMS has not publicized any convincing data documenting improved care quality or outcomes resulting from the QPP. Anecdotally, many clinicians view the MACRA-established quality programs as exercises in paperwork and box-checking that have little to no relevance to their actual

clinical care. This view was supported by a recent Government Accountability Office (GAO) report on MACRA, which identified among the challenges the fact that "MIPS scores did not necessarily reflect the quality of care provided, but rather how well providers were complying with the reporting requirements of the program."[2] The high administrative burdens of these programs create an attendant problem identified by GAO, which is "a low return on investment—that is, low payment adjustments relative to the high financial or administrative costs incurred by participating providers."[3]

Ironically, despite this high focus on administrative tasks, CMS itself is internally disorganized when it comes to QPP implementation. There seems to be little alignment within CMS regarding the requirements of MIPS, other CMS value-based reporting programs, and its various APMs. In addition, the numerous external contractors employed by CMS to carry out and administer quality and value-focused programs carry out their tasks with little coordination. Within MIPS, in particular, CMS has adopted excruciatingly complex policies and goal posts that shift from year to year.

Recommendations for Improvement

Regarding MACRA improvement and – more generally – Medicare physician reimbursement, both Congress and the agency have different roles to play, each of which is critical to realizing the goals behind MACRA's enactment.

EDPMA urges Congress to consider the following improvements to stabilize the MPFS:

- Create a mechanism within the Medicare Physician Fee Schedule to incorporate an annual inflationary index such as the Medicare Economic Index (MEI);
- Adjust for inflation the threshold at which budget neutrality is triggered;
- Provide limited authority to CMS to waive statutory budget neutrality requirements in certain circumstances.

Additionally, EDPMA urges Congress to make the following improvements to the QPP:

- Close the looming reimbursement disparity between APMs and MIPS participation;
- Extend statutory bonus payment authorities, including the 5% APM Incentive Payment;
- Maintain the current QP patient and payment threshold levels;
- Direct CMS to collaborate with stakeholders to develop APMs that are relevant to emergency care and provide upfront incentives to ensure necessary startup investments.

[2] GAO-22-104667, available: https://www.gao.gov/assets/gao-22-104667.pdf.
[3] *Id.*

EDPMA thanks you again for your leadership on physician payment issues and is eager to partner with you to begin the process of reform. To that end, **we ask that, as a follow-up to this RFI, you consider hosting roundtables for open discussions with key stakeholders, as well as request that the Committees of jurisdiction in each Chamber prioritize legislative hearings on MACRA reform**. Hearings and roundtable discussions will provide the opportunity to discuss, fully vet, and translate into legislative language the many recommendations from stakeholders.

In the meantime, should you have questions or require additional information, please reach out to EDPMA's Executive Director, Cathey Wise, at cathey.wise@edpma.org.

Sincerely,

Don Powell, DO, FACEP
Chair
Emergency Department Practice Management Association