August 10, 2020

Mr. Brad Smith
Deputy Administrator and Director of CMMI
Centers for Medicare & Medicaid Services
U.S. Department of Health and Human Services
Hubert H. Humphrey Building
200 Independence Avenue, SW
Washington, DC 20201

**Re: Overlap of Direct Contracting and ACOs and mitigating effects of COVID-19 on BPCI Advanced**

Dear Deputy Administrator Smith:

The undersigned organizations write to request that the Center for Medicare & Medicaid Innovation (CMMI) alter Direct Contracting timelines and Bundled Payments for Care Improvement Advanced (BPCI Advanced) addendums. We thank CMMI for its efforts to maintain a focus on the transition to value by providing additional opportunities to enter the Direct Contracting model and for taking actions to mitigate the effects of the ongoing COVID-19 pandemic on all payment models. We believe our suggested recommendations below will improve participants' experience in the models.

**Provide Seamless transition for ACOs to direct contracting model**

CMMI recently announced that Medicare Shared Savings Program (MSSP) and Next Generation Accountable Care Organization (NGACO) participants who choose to switch to Direct Contracting for the April 1, 2021 start date would need to end their participation in MSSP and NGACO at the end of CY 2020. This will essentially create a 3-month gap in which these participants would not be in the MSSP or a CMMI model, resulting in the loss of any flexibilities granted under these models and program. Most ACOs rely on these flexibilities as part of their care redesign models and they cannot simply "turn off" these practices for one-quarter before launching into a new model. The Direct Contracting model has been viewed as the next iteration of the ACO framework. However, creating a gap between programs will likely deter most ACO participants from moving into Direct Contracting during the first performance year.

**We strongly urge CMS to provide an opportunity for current MSSP and NGACO participants to seamlessly transition to Direct Contracting by offering a July 1 start date option.** Specifically, we recommend that CMMI permit current MSSP and NGACO participants to remain in their current models for the first half of 2021 and to start in Direct Contracting on July 1, 2021. This option should be limited to current MSSP and NGACO participants and should be in addition to the option to enter the program on April 1, 2021. CMS adopted a similar July 1 start date with the transition to Pathways to Success. Additionally, this policy aligns with the current program timeline which allows MSSP participants to voluntarily terminate their

participation in the program without penalty. We believe this approach will help current model participants ensure continuity for their participating providers and aligned beneficiaries.

**Clarify BPCI Advanced COVID-19 mitigation policy**

In June, CMMI announced three options to mitigate the effects of the ongoing public health emergency on the BPCI Advanced model: eliminate upside and downside risk for Model Year 3, exclude certain episodes with COVID-19 diagnoses, or continue in the program without policy changes. CMMI recently released the BPCI Advanced COVID-19 Bilateral Amendments, which clarified that the COVID-19 mitigation policies would only impact certain episodes that are active during 2020. The option to eliminate upside and downside risk applies to clinical episodes that are initiated on or after January 1, 2020 and end on or before December 31, 2020. The option to eliminate clinical episodes with a COVID-19 diagnosis applies to episodes that are initiated on or after January 1, 2020 and end on or before June 30, 2021.

The policies are intended to mitigate the impact of the public health emergency, which was declared on January 27, 2020 and currently extends to October 23, 2020. However, episodes can cross calendar years; so some episodes with a COVID-19 diagnosis will not be excluded under option 2 and some episodes will still be reconciled under option 1. For example, under option 1, any episodes that initiated in late CY 2019 and ended in 2020 or future episodes that initiate in late 2020 but end in 2021 would still be subject to reconciliation, despite potential overlap with the public health emergency. Additionally, it is possible that an episode initiated in late 2019 could have a COVID-19 diagnosis in early 2020 (e.g., February). However, under the parameters detailed in the bilateral agreement, this episode would not be excluded under option 2.

**Accordingly, we believe that any episodes initiating or concluding in 2020 should be subject to the two options under the bilateral agreements.** We appreciate that CMS recently updated the Bilateral Amendment for option 2 to include episodes that end on or before June 30, 2021. CMS should take a similar approach for option 1.

**Additionally, we encourage CMS to signal its intention to apply these policies for the duration of the public health emergency,** which may extend beyond Model Year 3. Providers face significant uncertainty in the wake of the ongoing pandemic. While we recognize that the Bilateral Amendment only applies to Model Year 3, providers would greatly benefit from clarity on how CMMI intends to mitigate the effects of the pandemic if it continues into 2021. Adopting these policies for the duration of the public health emergency would be consistent with how CMS is treating similar mitigation policies for other models and programs, such as Comprehensive Care for Joint Replacement and MSSP.

We also recommend that CMS address Care Redesign Plan (CRP) execution for participants who select option 1. CRPs can be very involved and set the basic parameters for how participants will manage episodes. **We recommend that CMS suspend the CRPs for performance periods 3 and 4 of Model Year 3. At a minimum, CMS should allow participants to revise their CRPs to reflect execution of option 1.**

Finally, **we encourage CMS to ensure participants have sufficient time to review their September monthly claims file before making a decision on their mitigation strategy.** Having access to the most up-to-date claims data will be critical for participants as they evaluate their options, especially those providers who may have only recently seen a surge in COVID-19 cases. As a result, CMS should extend the deadline to ensure participants have at least two weeks to evaluate their September monthly claims before making their selection.

**Conclusion**

If you have any questions, please contact Valinda Rutledge, Senior Vice President of Federal Affairs at America's Physician Groups at vrutledge@apg.org or Aisha Pittman, MPH, Vice President of Policy at Premier Inc. at Aisha_Pittman@PremierInc.com .

Sincerely,

America's Physician Groups
Premier healthcare alliance