Statement on Improving Medicare Documentation Requirements to Substantially Reduce Improper Payments and Strengthen Medicare

Prepared for the Subcommittee on Oversight And Investigations, Committee on Energy & Commerce, U.S. House of Representatives for April 16, 2024
Hearing on "Examining How Improper Payments Cost Taxpayers Billions And Weaken Medicare And Medicaid."

The Council for Quality for Respiratory Care (CQRC) thanks the Subcommittee for focusing attention on the challenges of improper payments. The current documentation and review process has a particularly negative impact on Medicare beneficiaries who rely upon supplemental oxygen to maintain their quality of life and remain active members of their community. We encourage the Committee to maintain its commitment to strengthening programmatic oversight, curtail improper payments, and ensure efficient use of taxpayer dollars in the Medicare and Medicaid programs. To address the problem of improper payments in the area of supplemental oxygen therapy, we strongly urge the Committee to instruct the Centers for Medicare & Medicaid Services (CMS) to require Medicare contractors to use the CMS created clinical data element templates to establish beneficiary medical necessity. This one step would create a comprehensive set of information for meaningful audit review and would address the problems created by contractors relying solely on physician notes.

The CQRC is a coalition of the nation's leading home oxygen therapy provider and manufacturing companies. Together, we provide in-home patient services and respiratory equipment including liquid oxygen, oxygen concentrators, and sleep therapy devices, to more than two-thirds of all Medicare beneficiaries who rely upon supplemental oxygen therapy to maintain their independence and enhance their quality of life. Our members also employ approximately 35,000 people in the United States to help seniors and others receive the oxygen they need to live healthier lives.

As the Committee recognizes and the U.S. Government Accountability Office has reported, the problem of improper payments has been a critical concern for more than 25 years. In the case of supplemental oxygen, the problem of improper payments is directly linked to the Medicare contractors' sole reliance on physician medical record notes. Since 2016, the CERT has reported that less than one percent of the improper payment rate was due to patients not meeting Medicare's medically necessity requirements.[1] During the same period, the CERT has also reported that 72 to 99 percent of the oxygen improper payment rate was due to problems with the ordering clinicians'

[1]Centers for Medicare and Medicaid Services. Comprehensive Error Rate Testing (CERT), *2017-2021 Medicare-for-Service Supplemental Improper Payment Data. Tables D2 and J2.* Retrieved from: https://www.cms.gov/Research-Statistics-Data-and-Systems/Monitoring-Programs/Medicare-FFS-Compliance-Programs/CERT/CERT-Reports

documentation.[2] These reports indicate that there is no evidence of fraud or abuse in terms of beneficiaries receiving supplemental oxygen who do not medically require the equipment, supplies, and services. Yet, contractors deny millions of claims because physician chart notes meant to be used for physician-patient interactions do not contain the "magic words" Medicare contractors apparently want to see to reimburse supplemental oxygen providers filing physicians' prescriptions. While the initial number of denied claims remains high year-over-year, a survey of national and regional providers found that Administrative Law Judges overturned the vast majority of such denials finding sufficient documentation of medical necessity.

The heart of this problem is that physicians write their medical record notes to support ongoing treatment of their patients and not to meet contractor review criteria, which remain unclear. With the support of physicians, patient advocates, providers, and manufacturers, CMS developed a set of clinical data element that could be incorporated into electronic health records or similar systems to clearly identify the data CMS believes are necessary to support medical necessity of supplemental oxygen claims.[3] These data elements would not only provide clear direction to physicians who prescribe supplemental oxygen, but they also would make the medical review process efficient, accurate, and less costly. For example, if a submission did not include a required data element the system could alert the physician to the missing element, which he/she could then easily provide without undue burden to the patient in need of supplemental oxygen therapy. This approach would eliminate missing information and incomplete records, which in turn would reduce improper payments due to these errors. In addition to ensuring the proper payment for supplemental oxygen claims, this approach would reduce spending on audits and appeals that have historically resulted in the vast majority of such claims being paid.

Despite the clear improvement these data elements would provide, Medicare contractors without explanation have refused to adopt them, and CMS has not required the contractors to do so. As a result, the clinical data elements defined in 2018 have yet to be implemented, resulting in more than five years of additional improper payments for supplemental oxygen due to medical record errors. This situation has led to patients not being able to access medically necessary supplemental oxygen. Some patients have had to pay out of pocket for their life-sustaining supplemental oxygen, while others have been forced to leave their homes, families, and communities to enter nursing homes or long-term care facilities in order to access their Medicare benefit for supplemental oxygen. This situation particularly impacts our nation's seniors, who deserve better.

We encourage the Committee to engage with CMS so that the agency will require the contractors to use the clinical data element template. Contractors should not be permitted to refuse to adopt common-sense approaches that perpetuate incomplete or missing data.

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[2] *Id.;* Centers for Medicare and Medicaid Services. Comprehensive Error Rate Testing (CERT), *Medicare Fee-for-Service 2016 Improper Payment Rate Report*. Retrieved from: https://www.cms.gov/Research-Statistics-Data-and-Systems/Monitoring-Programs/Medicare-FFS-Compliance-Programs/CERT/CERT-Reports.

[3] CMS. Home Oxygen Therapy Order Template. (2018). CMS also created templates for the face-to-face encounters and lab results.

Taking this approach would then allow the contractors and CMS to target their resources on actual fraud and abuse to protect taxpayer dollars. If CMS will not act, we encourage the Committee and the Congress to pass the Supplemental Oxygen Access Reform (SOAR) Act (S. 3821, H.R. 7829). Among other things, this legislation would require CMS to modernize the contractor documentation review process by adopting the clinical data elements using an electronic submission process. We applaud Senators Cassidy, Warner and Klobuchar and Congressmen Valadao, Bucshon, A. Smith, and Brownley for introducing this important legislation that seeks to reform the Medicare supplemental oxygen benefit and protect patient access to this life-saving and life-sustaining therapy.

We thank you for providing us with the opportunity to submit this statement for the record and would welcome the opportunity to work with you more closely to address this systemic problem.