



Physicians Caring for Texans

September 28, 2020

**VIA Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov)**

Seema Verma, Administrator  
Centers for Medicare & Medicaid Services  
U.S. Department of Health and Human Services  
Attention: CMS-1736-P  
PO Box 8013  
Baltimore, MD 21244-1850

*Re: CY 2021 Medicare Hospital Outpatient Prospective Payment System and Ambulatory Surgical Center Payment System Proposed Rule (CMS-1736-P)*

Dear Administrator Verma:

On behalf of our more than 53,000 Texas physicians and medical student members, the Texas Medical Association (TMA) writes in response to the CY 2021 Medicare Hospital Outpatient Prospective Payment System and Ambulatory Surgical Center Payment System [proposed rule](#) as published in the Aug. 12, 2020, *Federal Register*.

#### Physician-Owned Hospitals

Among several provisions, this proposed rule removes certain restrictions on the expansion of physician-owned hospitals that qualify as “high Medicaid facilities,” and clarifies that certain beds are counted toward a hospital’s baseline number of operating rooms, procedure rooms, and beds.

The Affordable Care Act established an effective ban on the creation and expansion of physician-owned hospitals (POHs) and limited existing POHs to the number of beds, operating rooms, and procedure rooms for which they were licensed as of March 23, 2010. TMA maintains this provision stifles competition, limits job growth, inhibits innovation, and restricts patient access to care. These restrictions also interfere with physician autonomy, patient choice, and the patient-physician relationship.

POHs have a strong track record of providing community benefits, quality care, and increasing competition, and operating the most efficient, state-of-the-art facilities. TMA’s 2018 survey shows that Texas physicians more favorably addressed patient safety, hospital and medical staff cooperative working relationships, and other metrics for POHs compared with non-POHs. This is largely due to having local physicians not only treating patients but also being heavily involved in making detailed decisions about hospital operations, staff, equipment, training, and procedures that can best serve their patients and their community.

Section 6001 of the Affordable Care Act is an arbitrary ban on POHs. This ban has not improved care quality or access but actually has decreased care quality and access. As such, this proposal is a good step for the agency to take. However, the Centers for Medicare & Medicaid Services (CMS) should not stop here. CMS must recognize the harm this law has caused patients and urge Congress to repeal section 6001.

**TMA strongly supports these proposals, especially since TMA and others specifically requested these changes in a letter sent June 13, 2017.**

Prior Authorization

Recently, CMS added a prior authorization process to certain services when they are provided in an outpatient department. This proposed rule adds two new service categories (cervical fusion with disc removal and implanted spinal neurostimulators) to the process. TMA is concerned with these additions. TMA's preliminary 2020 survey results show that 87% of physicians report the burden associated with prior authorizations has increased over the past five years. It is extremely disappointing to see CMS tout its focus on administrative simplification yet continue to add burdens to physicians.

The prior authorization burdens on physicians cause practices to hire staff solely to work on the enormous amount of work caused. Almost half of Texas physicians reported hiring such staff in TMA's preliminary 2020 survey report. This adds considerable burden and cost to an already massively and inappropriately taxed system.

**TMA continues to strongly oppose the expanded use of prior authorization and other private-payer utilization controls that are simply inconsistent with the Administration's stated goal of reducing administrative burden and putting patients over paperwork.** Medicare beneficiaries should receive quality and timely care. Utilization management tools potentially limit access to care by creating significant barriers that delay the start or continuation of necessary treatment.

Once again, we thank you for this opportunity to comment on this proposed rule. If you have any questions, please do not hesitate to contact Robert Bennett, TMA vice president of medical economics, at [Robert.Bennett@texmed.org](mailto:Robert.Bennett@texmed.org).

Sincerely,

A handwritten signature in black ink, appearing to read 'Diana L. Fite', with a large, stylized flourish at the end.

Diana L. Fite, MD  
President  
Texas Medical Association