November 10, 2021

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Director
Hospital and Ambulatory Policy Group
Centers for Medicare & Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244

Connie Leonard
Director
Provider Compliance Group
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7500 Security Boulevard
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Re: Medicare Administrative Contractor Implementation of Transitional Care Management Codes Creates Barrier to Use for Dialysis Beneficiaries

Dear Directors Blackford and Leonard:

I am writing on behalf of Kidney Care Partners (KCP) to ask your assistance in a matter that relates to the Transitional Care Management (TCM) codes established in recent years as part of the Physician Fee Schedule and their availability to Medicare dialysis beneficiaries. Specifically, our members report that some Medicare Administrative Contractors (MACs) are denying claims for these services when provided by a nephrologist in a dialysis facility (place of service 65), despite CMS never creating such a restriction. This behavior contradicts the efforts the Centers for Medicare & Medicaid Services (CMS) have undertaken during the CY2020 rulemaking cycle to expand the utilization of these codes.

KCP is an alliance of more than 30 members of the kidney care community, including patient advocates, health care professionals, providers, and manufacturers organized to advance policies that support the provision of high-quality care for individuals with chronic kidney disease (CKD), including those living with End-Stage Renal Disease (ESRD).

As you likely recall, the vast majority of the face-to-face visits between nephrologists and dialysis patients occur in the dialysis facility. Allowing nephrologists to bill for their services in the dialysis facility setting is essential to supporting dialysis patients. In-center patients receive dialysis three to four times each week. Adding additional nephrologist office visits has never been a practical solution for these patients, which CMS has always recognized. In-center visits are also important for home dialysis patients who visit a facility once a month to see their nephrologists and receive lab tests and other in-person services.

While CMS recognizes this reality when it chose not to place any site of service restrictions on billing for TCM, the decision on the part of some MACs to enforce their own views appears to miss this basic aspect of how beneficiaries engage with their

nephrologists. As a result, the MACs are failing to align with CMS's goal of "increasing utilization of TCM services [which] could positively affect patient outcomes."[1]

As the Bindman and Cox analysis upon which CMS relies for its decision details "beneficiaries who receive TCM services demonstrated reduced readmission rates, lower mortality, and decreased health care costs."[2] CMS has prioritized improving these outcomes for dialysis patients in its ESRD value-based purchasing program, the Quality Improvement Program (QIP). The Medicare Payment Advisory Commission also looks to patient outcomes in these areas to assess the quality of the Medicare ESRD program annually. In addition, the TCM services will be essential to supporting the Center for Medicare & Medicaid Innovation's ESRD Treatment Choices Model and the Kidney Care Choices Model that seek to increase patient selection of home dialysis modalities, access to transplant, and improve care coordination services. KCP has also learned anecdotally from participants in the ESRD Seamless Care Organization (ESCO) that providing TCM services in the dialysis facility was substantially beneficial to the dialysis patients receiving care as part of that model.

By not allowing nephrologists to bill dialysis facilities as the point of service for TCM codes, the MACs have created a barrier for dialysis patients' care teams to utilize these services in an effort to reduce hospital readmissions, lower mortality, and decrease the overall cost of their care. Moreover, given that dialysis patients are disproportionately Black and Hispanic,[3] the MACs are creating an inequity in the delivery of health care that the Biden-Harris Administration has sought to eliminate.

We appreciate that the CMS staff have tried to create a workaround for this situation. However, asking physicians to use the POS 11 physician office code instead of the POS 65 dialysis facility code is at best confusing and at worse risky advice if other contractors seek to audit these claims in the future.

Dialysis beneficiaries should have access to TCM services as CMS intended. Therefore, we ask that CMS immediately issue clarifying guidance to the MACs that claims listing POS 65 as a covered site of service for TCM services when billed concurrently with the Monthly Capitated Payment. TCM services provided in a dialysis facility should not be denied based on the point of service being listed. It may be that the confusion stems from outdated guidance as well. Thus, we also ask that CMS update the 2016 FAQ document, which despite changes made during more recent rulemaking and additional guidance issued during the summer, continues to suggest that TCM and MCP cannot be billed concurrently, and which seems not to be aligned with the MLN article on TCM services issued this summer.[4] While this problem appears to center on certain MACs, such as Noridian and Novitas, having clear national guidance avoids future problems as well.

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[1] 84 *Fed. Reg.* 40482, 40549 (August 14, 2019). CMS reiterated this goal in the final rule published on November 15, 2019.
[2] *Id.*
[3] USRDS, 2020 Annual Report.
[4] https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/PhysicianFeeSched/Downloads/FAQ-TCMS.pdf

KCP remains committed to improving the outcomes and lives of patients living with kidney disease and kidney failure. As such, we appreciate our ongoing partnership with CMS to eliminate barriers to accessing critical health care services. To that end, we ask for your immediate help in addressing the problem identified in this letter so that dialysis patients like other Medicare beneficiaries have access to TCM services and can experience the improved outcomes that can provide. Please do not hesitate to reach out to our counsel in Washington, Kathy Lester, if you have any questions or would like to discuss these concerns in more detail. She can be reached at 202-534-1773 or klester@lesterhealthlaw.com. Thank you again for considering our requests.

Sincerely,

John Butler
Chairman

Appendix: KCP Members

Akebia Therapeutics
American Kidney Fund
American Nephrology Nurses' Association
American Renal Associates, Inc.
American Society of Pediatric Nephrology
Amgen
Ardelyx
AstraZeneca
Atlantic Dialysis
Baxter
BBraun
Cara Therapeutics
Centers for Dialysis Care
Cormedix
DaVita
DialyzeDirect
Dialysis Patient Citizens
Dialysis Vascular Access Coalition
Fresenius Medical Care North America
Fresenius Medical Care Renal Therapies Group
Greenfield Health Systems
Kidney Care Council
Nephrology Nursing Certification Commission
Otsuka
Renal Physicians Association
Renal Healthcare Association
Renal Support Network
Rockwell Medical
Rogosin Institute
Satellite Healthcare
U.S. Renal Care
Vertex
Vifor Pharma