

National Indian Health Board



Submitted via: www.regulations.gov

May 9, 2016

The Honorable Andrew Slavitt
Acting Administrator
Centers for Medicare & Medicaid Services (CMS)
U.S. Department of Health and Human Services (HHS)
Attention: CMS-1670-P
7500 Security Boulevard
Baltimore, MD 21244-1850
Mail Stop C4-26-05

Re: Medicare Program; Part B Drug Payment Model [CMS-1670-P]

Dear Acting Administrator Slavitt:

On behalf of the National Indian Health Board (NIHB), I write to provide comments in response to the Centers for Medicare & Medicaid Services (CMS) proposed rule for the implementation of a new Medicare Part B Drug Payment Model under section 1115A of the Social Security Act, which was published in the Federal Register on March 11, 2016. NIHB is grateful for the opportunity to comment on the proposed Medicare Part B Drug Payment Model.

Established in 1972, the NIHB is an inter-Tribal organization that advocates on behalf of Tribal governments for the provision of quality health care to all American Indians and Alaska Natives (AI/ANs). The NIHB is governed by a Board of Directors consisting of a representative from each of the twelve Indian Health Service (IHS) Areas. Each Area Health Board elects a representative to sit on the NIHB Board of Directors. In areas where there is no Area Health Board, Tribal governments choose a representative who communicates policy information and concerns of the Tribes in that area with the NIHB. Whether Tribes operate their entire health care program through contracts or compacts with IHS under Public Law 93-638, the Indian Self-Determination and Education Assistance Act (ISDEAA), or continue to also rely on IHS for delivery of some, or even most, of their health care, the NIHB is their advocate.

BACKGROUND

Currently, the Medicare Part B reimburses for the average sales price of the drug, plus 6 percent. The 6 percent add-on fee went into effect in 2006 and was devised as to pay doctors and hospitals more accurately for staffing and administrative costs associated with dispensing drugs in

outpatient settings. Beginning in late 2016, under the first phase of the proposed rule, doctors and hospital outpatient centers would be reimbursed the average price plus 2.5 percent, along with a flat fee of \$16.80 per drug per day. The second phase, set to start in 2017, would evaluate the effectiveness of Part B drugs for a particular medical condition for decreasing or eliminating the copayment made by Medicare beneficiaries for drugs deemed as high-value medications.

TRIBAL CONSULTATION

The National Indian Health Board (NIHB) is strongly supportive of the commitments made by the Centers for Medicare & Medicaid Services (CMS) to modify Medicare payment for outpatient drugs. We recognize that the CMS has been tasked with a large amount of work to accomplish the implementation of this five-year Medicare initiative proposed rule in a short amount of time. However, we encourage CMS to be cautious in its efforts and take into account all stakeholders, including Indian Tribes, as it issues its final rule. Congress has recognized that “[f]ederal health services to maintain and improve the health of the Indians are consonant with and required by the Federal Government’s historical and unique legal relationship with, and resulting responsibility to, the American Indian people.”¹ The federal trust responsibility and laws enacted pursuant thereto provide ample authority for the federal agencies of the Executive Department to design, implement and tailor federal programs in a manner that recognizes and supports the unique government to government relationship between sovereign Tribal governments and the United States.

NIHB would also like to request Tribal consultation on the Medicare Part B Drug Payment Model proposed rule as it is of the utmost importance that the Centers for Medicare & Medicaid Services (CMS) and Medicare units within CMS conduct consultation for coordination, to ensure consistency in its application. The rulemaking process is not a substitute for *meaningful* Tribal consultation because the rulemaking process is open to everyone, not just Tribes. This is consistent with the President’s consultation policy as outlined in Executive Order 13175 of November 6, 2000 and reconfirmed in the memorandum of November 5, 2009.

PAYMENT MODEL CONCERNS

The National Indian Health Board (NIHB) is concerned that the Medicare Part B Drug Payment Model could cause disorder within the current reimbursement framework for drugs covered under the Medicare Part B program, particularly for rural and smaller provider groups. It is essential for CMS to address unique barriers to Medicare Part B drugs that rural American Indian and Alaska Native Medicare beneficiaries are constantly challenged with.

¹ 25 U.S.C. § 1601(1).

The Medicare Part B Drug Payment Model proposed rule will lead to decreasing access to care and higher drug costs for American Indian and Alaska Native Medicare beneficiaries. The Medicare beneficiaries served under Part B are those most in need of the medicines their doctors prescribe, include patients fighting cancer, multiple sclerosis, and rheumatoid arthritis. The proposed Medicare drug model will lead to numerous physicians in rural community practices to be challenged with acquisition costs that exceed Medicare payment for certain drugs necessary for their patients.

NIHB believes that the Medicare Part B Drug Payment Model further threatens rural American Indian and Alaska Native patient access, health outcomes, as well as increases overall health expenditures. The proposed reductions to Medicare Part B drugs for Medicare beneficiaries, especially American Indians and Alaska Natives will shift patients to more expensive health care facilities. Access to care for rural American Indian and Alaska Native Medicare beneficiaries is already constrained and patients travel long distances to health care facilities. The potential shift of care from rural community practices to hospital centers will increase travel time for Medicare beneficiaries, which could lead to patients not obtaining care necessary to benefit their medical conditions.

Conclusion

Thank you for the opportunity to comment on the Centers for Medicare & Medicaid Services (CMS) proposed rule for the Medicare Part B Drug Payment Model. The National Indian Health Board (NIHB) requests that CMS take these comments and recommendations under consideration. NIHB strives to partner with CMS to ensure that the health care needs throughout Indian Country are met. Please contact Devin Delrow, NIHB Federal Relations Director at ddelrow@nihb.org or (202) 507-4072 if there are any additional questions.

Respectfully,



Lester Secatero
Chairman, National Indian Health Board

CC: Vikki Wachino, Deputy Administrator and Director for Medicaid and CHIP Services

Kitty Marx, CMS Office of Tribal Affairs