AAFP
AMERICAN ACADEMY OF FAMILY PHYSICIANS

Memo on White House Executive Order

On October 3, the White House issued an Executive Order (EO) on "Protecting and Improving Medicare for Our Nation's Seniors."

The EO, which was signed by the President at an event in Florida, is being positioned as the Republican alternative to "Medicare for All" and other plans proposed by Democrats and Presidential candidates. The EO opens with a clear explanation of why the Administration is pursuing the proposed changes in policy, stating:

> *"The proposed Medicare for All Act of 2019, as introduced in the Senate ("Medicare for All") would destroy our current Medicare program, which enables our Nation's seniors and other vulnerable Americans to receive affordable, high-quality care from providers of their choice. Rather than upend Medicare as we know it, my Administration will protect and improve it."*

In 10 categories, the collection of proposed policies in the EO includes both recommendations that are supported and opposed by the AAFP. Those categories are:

1. Protect and improve the Medicare program by enhancing its fiscal sustainability through alternative payment methodologies that link payment to value, increase choice, and lower regulatory burdens imposed upon providers.
2. Providing More Plan Choices to Seniors
3. Improving Access Through Network Adequacy
4. Enabling Providers to Spend More Time with Patients
5. Encouraging Innovation for Patients
6. Rewarding Care Through Site Neutrality
7. Empowering Patients, Caregivers, and Health Providers
8. Eliminating Waste, Fraud, and Abuse to Protect Beneficiaries and Taxpayers
9. Maximizing Freedom for Medicare Patients and Providers
10. General Provisions

The EO directs the Department of Health and Human Services (HHS) to study, develop and propose policies that achieve the directives of the EO under two primary time frames – 180 days (March 2020) or one year (October 2020) from the date of the EO. **It is important to note that the proposed changes in policies included in the EO direct the Secretary of HHS to pursue certain actions via proposed changes in regulation. The provisions of the EO do not have the effect of law, they are proposals that will require full compliance with the rulemaking process.**

As noted, the EO contains policies that are both consistent with and in opposition to AAFP policies. We have expanded on those items in the next section of this memo. We have already initiated conversations with the Administration via the White House and HHS, and we will

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continue this engagement in the weeks and months ahead as we work to shape the policies in a manner that is beneficial to family medicine.

PROTECT AND IMPROVE THE MEDICARE PROGRAM BY ENHANCING ITS FISCAL SUSTAINABILITY THROUGH ALTERNATIVE PAYMENT METHODOLOGIES THAT LINK PAYMENT TO VALUE, INCREASE CHOICE, AND LOWER REGULATORY BURDENS IMPOSED UPON PROVIDERS.

AAFP Policy: in general, the AAFP agrees. We continue to promote policies that would expand access to family medicine, reduce the administrative complexity of participating in the Medicare program and increase the programs investment in family medicine and primary care. We continue to advocate for more Advanced APM options must be available to primary care physicians to move the Medicare program towards value—especially for small and rural practices.

IMPROVING ACCESS THROUGH NETWORK ADEQUACY.

Within 1 year of the date of this order, the Secretary shall propose a regulation to provide beneficiaries with improved access to providers and plans by adjusting network adequacy requirements for MA plans to account for:

(a) the competitiveness of the health market in the States in which such plans operate, including whether those States maintain certificate-of-need laws or other anti-competitive restrictions on health access; and

(b) *the enhanced access to health outcomes made possible through telehealth services or other innovative technologies.*

AAFP Policy: The AAFP encourages HHS and policymakers to examine network adequacy as a factor in identifying core health services. Strong network adequacy standards promote the primary care medical home model as a way to deliver higher quality, lower costs, and a stronger patient-physician relationship. Primary care capacity should be the focal point of network adequacy. Additionally, when determining network adequacy, the ratios for primary care physicians to covered persons and for physicians to covered persons by specialty, should reflect physician FTEs, because physicians may practice part-time or in multiple locations. In addition, non-physician providers (i.e., nurse practitioners and physician assistants) should not be counted because listing these providers creates the illusion that there is more access to physicians.

The AAFP supports expanded use of telehealth and telemedicine as an appropriate and efficient means of improving health, when conducted within the context of appropriate standards of care. The appropriateness of a telemedicine service should be dictated by the standard of care and not by arbitrary policies. Available technology capabilities as well as an existing physician-patient relationship impact whether the standard of care can be achieved for a specific patient encounter type.

Telehealth technologies can enhance patient-physician collaborations, increase access to care, improve health outcomes by enabling timely care interventions, and decrease costs when utilized as a component of, and coordinated with, longitudinal care. Responsible care coordination is necessary to ensure patient safety and continuity of care for the immediate condition being treated, and it is necessary for effective longitudinal care (for clarification, forwarding documentation by electronic means, including fax, is not acceptable for coordination of care with the primary care physician or medical home). As such, the treating physician within

a telemedicine care encounter should bear the responsibility for follow-up with both the patient and the primary care physician or medical home regarding the telemedicine encounter.

ENABLING PROVIDERS TO SPEND MORE TIME WITH PATIENTS.

Within 1 year of the date of this order, the Secretary shall propose reforms to the Medicare program to enable providers to spend more time with patients by:

(a) proposing a regulation that would eliminate burdensome regulatory billing requirements, conditions of participation, supervision requirements, benefit definitions, and all other licensure requirements of the Medicare program that are more stringent than applicable Federal or State laws require and that limit professionals from practicing at the top of their profession;

(b) proposing a regulation that would ensure appropriate reimbursement by Medicare for time spent with patients by both primary and specialist health providers practicing in all types of health professions; and

(c) conducting a comprehensive review of regulatory policies that create disparities in reimbursement between physicians and non-physician practitioners and proposing a regulation that would, to the extent allowed by law, ensure that items and services provided by clinicians, including physicians, physician assistants, and nurse practitioners, are appropriately reimbursed in accordance with the work performed rather than the clinician's occupation.

AAFP Policy: Item (a) is vague and confusing. Its true intent is not clear and will require additional analysis to determine our position on this proposed policy. Item (b) is consistent with AAFP policy on Medicare payment. Item (c) is inconsistent with AAFP policy on coding and payment and we will be expressing our opposition to the Secretary in advance of the rulemaking process. The AAFP guidelines on the supervision of certified nurse midwives, nurse practitioners and physician assistants opposes the independent practice of non-physician providers and equity in payment for those who may have independent practice authority under state law.

ENCOURAGING INNOVATION FOR PATIENTS

Within 1 year of the date of this order, the Secretary shall propose regulatory and sub-regulatory changes to the Medicare program to encourage innovation for patients by:

(a) streamlining the approval, coverage, and coding process so that innovative products are brought to market faster, and so that such products, including breakthrough medical devices and advances in telehealth services and similar technologies, are appropriately reimbursed and widely available, consistent with the principles of patient safety, market-based policies, and value for patients. This process shall include:

a. adopting regulations and guidance that minimize and eliminate, as appropriate, the time and steps between approval by the Food and Drug Administration (FDA) and coverage decisions by the Centers for Medicare and Medicaid Services (CMS);

b. clarifying the application of coverage standards, including the evidence standards CMS uses in applying its reasonable-and-necessary standard, the standards for deciding appeals of coverage decisions, and the prioritization and timeline for each National Coverage Determination process in light of changes made to local coverage determination processes; and

c. identifying challenges to the use of parallel FDA and CMS review and proposing changes to address those challenges; and

(b) *modifying the Value-Based Insurance Design payment model to remove any disincentives for MA plans to cover items and services that make use of new technologies that are not covered by FFS Medicare when those items and services can save money and improve the quality of care.*

AAFP Policy: The AAFP does not have policy on bringing innovative products and services to market faster. The AAFP believes that physicians should receive payment for services that are reasonable and necessary, safe and effective, medically appropriate, and provided in accordance with accepted standards of medical practice. The technology used to deliver the services should not be a consideration, only whether the service is medically reasonable and necessary. The AAFP would oppose mandatory use and purchase of new technologies without appropriate reimbursement and payment for them.

REWARDING CARE THROUGH SITE NEUTRALITY

The Secretary shall ensure that Medicare payments and policies encourage competition and a diversity of sites for patients to access care.

AAFP Policy: The AAFP strongly supports this objective and will be working with the Secretary and Congress to achieve the enactment and enforcement of this recommendation.

EMPOWERING PATIENTS, CAREGIVERS, AND HEALTH PROVIDERS

(a) Within 1 year of the date of this order, the Secretary shall propose a regulation that would provide seniors with better quality care and cost data, improving their ability to make decisions about their healthcare that work best for them and to hold providers and plans accountable.
(b) Within 1 year of the date of this order, the Secretary shall use Medicare claims data to give health providers additional information regarding practice patterns for services that may pose undue risks to patients, and to inform health providers about practice patterns that are outliers or that are outside recommended standards of care.

AAFP Policy: In general, the AAFP agrees with both objectives. The AAFP believes that transparency in health care refers to reporting information which can be easily verified for accuracy. Both data and process should have transparency and an explicit disclosure of data limitations. Transparency in health care includes, but is not limited to, easy availability of:

- payers' payment policies
- payers' claims adjudication software logic edits
- payers' fee schedules
- payers' clinical policies
- payers' data analysis methodology and performance measures used in rating
- physician performance
- reporting of physician health care cost and quality information

Determining how this data will be presented, transmitted and used are important questions we will need to answer. Item (b) is a policy the AAFP has promoted for several years. It is our belief that access to quality and cost data at the primary care practice level will assist family physicians in managing their patient population and is central to being successful in value-based payment models.

ELIMINATING WASTE, FRAUD, AND ABUSE TO PROTECT BENEFICIARIES AND TAXPAYERS

(a) The Secretary shall propose regulatory or sub-regulatory changes to the Medicare program, to take effect by January 1, 2021, and shall propose such changes annually thereafter, to combat fraud, waste, and abuse in the Medicare program. The Secretary shall undertake all appropriate efforts to direct public and private resources toward detecting and preventing fraud, waste, and abuse, including through the use of the latest technologies such as artificial intelligence.

(b) The Secretary shall study and, within 180 days of the date of this order, recommend approaches to transition toward true market-based pricing in the FFS Medicare program. The Secretary shall submit the results of this study to the President through the Assistants to the President for Domestic and Economic Policy. Approaches studied shall include:

a. shared savings and competitive bidding in FFS Medicare;
b. use of MA-negotiated rates to set FFS Medicare rates; and
c. novel approaches to information development and sharing that may enable markets to lower cost and improve quality for FFS Medicare beneficiaries.

AAFP Policy: The AAFP supports strong and appropriate efforts to prevent fraud, waste and abuse. As HHS contemplates ways in which it may reduce fraud, waste, and abuse and improve program integrity, we would urge it to focus more on outcomes related to quality and cost and less on procedural safeguards. Such an approach would be more consistent with the guiding principle of choice and competition in the market based on quality, costs, and outcomes than the current approach of subjecting beneficiaries and physicians to increasingly stringent forms, coverage criteria, and documentation requirements.

REDUCING OBSTACLES TO IMPROVED PATIENT CARE

Within 1 year of the date of this order, the Secretary shall propose regulatory changes to the Medicare program to reduce the burden on providers and eliminate regulations that create inefficiencies or otherwise undermine patient outcomes.

AAFP Policy: The AAFP strongly supports this objective and will be working closely with HHS and CMS to effectuate this proposal into actual policies that achieve a reduction in point-of-care administrative burden for family physicians. Reducing administrative complexity is a strategic priority for the AAFP. We will advocate policymakers closely consult and adhere to AAFP's principles for administrative simplification. Adherence to these principles will ensure that patients have timely access to treatment while reducing administrative burden on physicians.

MAXIMIZING FREEDOM FOR MEDICARE PATIENTS AND PROVIDERS

(a) Within 180 days of the date of this order, the Secretary, in coordination with the Commissioner of Social Security, shall revise current rules or policies to preserve the Social Security retirement insurance benefits of seniors who choose not to receive benefits under Medicare Part A, and propose other administrative improvements to Medicare enrollment processes for beneficiaries.

(b) Within 1 year of the date of this order, the Secretary shall identify and remove unnecessary barriers to private contracts that allow Medicare beneficiaries to obtain the care of their choice and facilitate the development of market-driven prices.

AAFP Policy: The AAFP does not have policy regarding Medicare beneficiary enrollment. The AAFP policy on access to comprehensive care supports the concept of access to essential health care to all peoples regardless of social and economic status. The AAFP supports efforts to identify appropriate funding of these essential medical services, and the AAFP continues to support its basic concepts and long-term goals of access to comprehensive and continuing medical care for all.

GENERAL PROVISIONS

(a) Nothing in this order shall be construed to impair or otherwise affect:
   a. the authority granted by law to an executive department or agency, or the head thereof; or
   b. the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) *This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.*

AAFP Policy: The AAFP appreciates that the EO acknowledges the public rule-making process.