KIDNEY CARE PARTNERS

August 22, 2016

Andrew Slavitt
Acting Administrator
Centers for Medicare and Medicaid Services
200 Independence Avenue, SW
Washington, DC 20201

Re: CMS-1654-P: Medicare Program; Revisions to Payment Policies under the Physician Fee Schedule and Other Revisions to Part B for CY 2017; Medicare Advantage Pricing Data Release; Medicare Advantage and Part D Medical Low Ratio Data Release; Medicare Advantage Provider Network Requirements; Expansion of Medicare Diabetes Prevention Program Model

Dear Acting Administrator Slavitt:

On behalf of Kidney Care Partners (KCP), I am writing to thank you for the opportunity to provide comments on "Revisions to Payment Policies under the Physician Fee Schedule and Other Revisions to Part B for CY 2017; Medicare Advantage Pricing Data Release; Medicare Advantage and Part D Medical Low Ratio Data Release; Medicare Advantage Provider Network Requirements; Expansion of Medicare Diabetes Prevention Program Model" (Proposed Rule). KCP is an alliance of members of the kidney care community that includes patient advocates, dialysis care professionals, providers, and manufacturers organized to advance policies that improve the quality of care for individuals with both CKD and irreversible kidney failure, known as ESRD.[1]

In sum, KCP:

- Supports adding the new telehealth codes related to chronic kidney disease and end stage renal disease.
- Supports policies that incentivize home dialysis, but encourages CMS to proceed cautiously in terms of revaluing CPT codes 90963 through 90970.
- Appreciates the proposals to minimize the burdens on practitioners and patients related to the Chronic Care Management codes, but recommends further modifications to the documentation requirements that place an inappropriate burden on beneficiaries.

[1] A list of KCP members is provided in Appendix A.

- Is concerned with the proposals to modify the valuation of certain vascular access-related codes.

I. KCP supports adding the new telehealth codes related to chronic kidney disease and end stage renal disease.

KCP supports adding the following codes for telehealth services:

- CPT codes 90967 (End-stage renal disease (ESRD) related services for dialysis less than a full month of service, per day; for patients younger than 2 years of age); 90968 (End-stage renal disease (ESRD) related services for dialysis less than a full month of service, per day; for patients 2-11 years of age); 90969 (End-stage renal disease (ESRD) related services for dialysis less than a full month of service, per day; for patients 12-19 years of age); and 90970 (End-stage renal disease (ESRD) related services for dialysis less than a full month of service, per day; for patients 20 years of age and older).

- CPT codes 99497 (advance care planning including the explanation and discussion of advance directives such as standard forms (with completion of such forms, when performed), by the physician or other qualified health care professional; first 30 minutes, face-to-face with the patient, family member(s), or surrogate); and 99498 (advance care planning including the explanation and discussion of advance directives such as standard forms (with completion of such forms, when performed), by the physician or other qualified health care professional; each additional 30 minutes (list separately in addition to code for primary procedure)).

- CPT codes 99291 (critical care, evaluation and management of the critically ill or critically injured patient; first 30-74 minutes); and 99292 (critical care, evaluation and management of the critically ill or critically injured patient; each additional 30 minutes (list separately in addition to code for primary service).

Having access to physicians through telehealth services is critically important for patients living in rural areas. As you are aware, the shortage of nephrologists remains a serious problem. This shortage means that some nephrologists drive several hours to see their patients. For example, patients in northern Idaho rely upon nephrologists from Washington State for their appointments. These nephrologists must budget long drives into their day to ensure they can meet with their patients. This means that they have less time to see patients overall. We continue to believe that telehealth is a useful tool for nephrologists to use when appropriate and complementary to their face-to-face

interactions. For example, telehealth can be particularly valuable when a patient has missed a scheduled visit because unforeseen circumstances.

Telehealth services offer these patients the opportunity to engage with their nephrologists more frequently and allow nephrologists to focus more of their time on caring for patients and less time on traveling to see them. Patients in rural areas may also find selecting home dialysis modalities more attractive if they can rely upon telehealth services to access their nephrologists. This is particularly important, for example, for pediatric patients in the Dakotas and Montana where there are no pediatric nephrologists. Telehealth services provide beneficiaries with the flexibility to interact with providers in a manner tailored to their needs.

We appreciate that CMS continues to identify opportunities for expanding telehealth services for patients with CKD and ESRD.

II. KCP supports policies that incentivize home dialysis, but encourages CMS to proceed cautiously in terms of revaluing CPT codes 90963 through 90970.

KCP remains a strong proponent of home dialysis for patients for whom it is the best option. We are pleased that CMS is willing to work with the kidney care community to identify ways to ensure that patients who believe home dialysis is the right option for them are able to access it.

As CMS consider the utilization of home dialysis, we ask that it also consider the factors other than payment policy which also play a critical role in whether a patient decides to use a home dialysis modality. The GAO has outlined these factors in its most recent report. Patients often select home dialysis because it provides them with more flexibility than an in-center option allows; yet, "[o]n the other hand, successfully performing home dialysis requires patients to undergo training and assume other responsibilities that they would not otherwise have if they dialyzed in a facility."[2] Additionally, patients need a partner to help them dialyze at home, as well as the appropriate physical location and home resources (such as a grounded electrical outlet, special water systems and drains, etc).[3] There can also be supply shortages that can make it difficult for new patients to access some treatment options. Additionally, the GAO notes that a patient who does not receive care from a nephrologist prior to beginning dialysis may not have the opportunity to receive the necessary training or have a permanent vascular access immediately.[4] Home

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[2]GAO, "End Stage Renal Disease: Medicare Payment Refinements Could Promote Increased Use of Home Dialysis," 7 (Nov. 2015).
[3]NIDDK, "Home Hemodialysis" *available at* https://www.niddk.nih.gov/health-information/health-topics/kidney-disease/home-hemodialysis/Pages/home-hemodialysis.aspx#think (last accessed July 18, 2016).
[4]*Supra*, note 2 at 8.

dialysis may also be more difficult for patients who have physical limitations (such as poor vision or dexterity), as well as those with multiple comorbidities that a nephrologist may also need to manage in an in-center setting.[5]

KCP has consistently prioritized and promoted policies to address barriers to accessing home dialysis. For example, we appreciate that CMS agreed to our recommendations to address misalignment in the Monthly Capitated Payment (MCP) rates that disadvantaged nephrologists who were providing care to home dialysis patients. We also continue to support efforts to identify and remove barriers to receiving home dialysis.

We believe that many of these barriers are best addressed through community efforts, but to the extent CMS plans to review the values of CPT codes 90963 through 90970, we recommend that CMS work closely with the nephrologists to ensure that the review focus on the home dialysis codes separately, for which we understand there is precedent. This approach would provide CMS with the opportunity to focus on the work that nephrologists must provide in order to take care of home dialysis patients.

III. KCP appreciates the proposals to minimize the burdens on practitioners and patients related to the Chronic Care Management codes, but recommends further modifications to the documentation requirements that place an inappropriate burden on beneficiaries.

KCP agrees that patient care management is critically important to improving patient outcomes and reducing overall Medicare spending. This fact is especially true when caring for patients with chronic conditions, such as kidney disease. We support the Agency's implementation of CCM service codes for chronically ill patients.

We are pleased that CMS has recognized the concerns we have raised about the burdensome nature of the service elements and billing requirements, as well as our concerns about underutilization of the benefit. We support the modifications that CMS has proposed to reduce these burdens. We remain concerned that CMS has proposed to maintain the beneficiary consent requirement. While the proposals outlined in the Proposed Rule would reduce the burdens somewhat, it continues to place the responsibility for remembering which physician is allowed to bill using the CCM code on beneficiaries. This situation is not appropriate.

We also remain concerned about the added financial burden on patients that results from the copayment amounts associated with the use of the code. These

[5] *Id.*

copayments may create disincentives for patients to agree to the attestation as well. We understand that CMS is trying to ensure that only one physician is billing using these codes for each beneficiary. If the copayment remains in place, it is critically important that the beneficiary understand in writing that he/she has a copayment obligation and is not surprised when asked to pay it. To address this problem, we recommend that CMS eliminate the copayment requirement on the CCM codes, as well as stop placing the beneficiary in the role of having to consent to the codes being used.

IV. KCP is concerned with the proposals to modify the valuation of certain vascular access-related codes.

Vascular access is an extremely important aspect of properly managing patients who rely upon life-sustaining dialysis services. While we understand that the RUC has proposed revaluing these codes, we are concerned that CMS has proposed cuts that go further than those suggested by the RUC. Policies should not create disincentives that place patient-care at risk. We are deeply troubled with the proposals related to the practice expense components of the codes. If these codes are finalized as proposed, KCP is concerned that they could reverse the progress made by the multi-year Fistula First/Catheter Last program, threaten patient access to high quality vascular access care, and increase the risk of bloodstream infections for dialysis patients. Therefore, we strongly urge CMS to work closely with the nephrologists to revise these proposals to protect beneficiaries who require dialysis treatments.

V. Conclusion

KCP appreciates the opportunity to provide comments on the Proposed Rule. We look forward to working with CMS on addressing the concerns in this letter as well as implementing the final rule. Please do not hesitate to contact Kathy Lester at (202) 534-1773 or klester@lesterhealthlaw.com if you have any questions.

Sincerely,

Frank Maddux, M.D.
Chairman
Kidney Care Partners

Appendix A: KCP Members

AbbVie
Akebia Therapeutics, Inc
American Kidney Fund
American Nephrology Nurses' Association
American Renal Associates, Inc.
American Society of Nephrology
American Society of Pediatric Nephrology
Amgen
AstraZeneca
Baxter Gambro Renal
Board of Nephrology Examiners and Technology
Centers for Dialysis Care
DaVita Healthcare Partners Inc.
Dialysis Clinic, Inc.
Dialysis Patient Citizens
Fresenius Medical Care North America
Fresenius Medicare Care Renal Therapies Group
Greenfield Health Systems
Hospira
Keryx Biopharmaceuticals, Inc.
Kidney Care Council
National Kidney Foundation
National Renal Administrators Association
Nephrology Nursing Certification Commission
Northwest Kidney Centers
NxStage Medical, Inc.
Renal Physicians Association
Renal Support Network
Rogosin Institute
Sanofi
Satellite Health Care
U.S. Renal Care