



March 13, 2023

The Honorable Chiquita Brooks-LaSure  
Administrator  
Centers for Medicare & Medicaid Services  
7500 Security Boulevard  
Baltimore, MD 21244

SUBMITTED ELECTRONICALLY VIA <http://www.regulations.gov>

RE: Advancing Interoperability and Improving Prior Authorization Processes for Medicare Advantage Organizations Proposed Rule (CMS-0057-P)

Dear Administrator Brooks-LaSure:

The Association of Rehabilitation Nurses (ARN) – representing approximately 4,500 rehabilitation nurses and more than 14,000 Certified Registered Rehabilitation Nurses (CRRN) that work to enhance the quality of life for those affected by physical disability and/or chronic illness – appreciates the opportunity to comment on the Centers for Medicare & Medicaid Services' (CMS) Advancing Interoperability and Improving Prior Authorization Processes Proposed Rule (CMS-0057-P). ARN members believe there is a strong need for streamlining prior authorization processes in Medicare Advantage (MA) plans making it easier for our nation's seniors, including those in need of rehabilitative care, to get the care they need and improve health outcomes.

Rehabilitation nurses play many roles – Rehabilitation nurses work with patients of all ages, and their families or caregivers, soon after the onset of a disabling injury or chronic illness. They restore patients' lives, so they have freedom and independence again. They are collaborators, educators, care coordinators, advocates, and change agents. They work with other healthcare team members including physiatrists, occupational therapists, physical therapists, neuropsychiatrists, speech therapists, and many more specialists to create comprehensive care plans based on patient goals and maximum potential.

ARN supports all efforts to ensure persons with disabilities and chronic illnesses have access to the appropriate level of rehabilitation services to maximize functional outcomes, independence, and quality of life. Prior authorization requirements often delay patient

access to clinically appropriate care and prevent beneficiaries from receiving the treatment they need in order to regain and/or maintain their maximum level of health and function following injury, disability, or chronic illness. **For these reasons, we applaud the agency for its efforts to improve patient and provider access to health information and streamline processes related to prior authorization for medical items and services, and we appreciate your consideration of the following comments.**

#### *Provider Access API*

ARN appreciates CMS' efforts to better facilitate coordination of care. CMS is proposing to require payers to build and maintain a Provider Access API to share patient data with in-network providers with whom the patient has an existing relationship. We support CMS' proposal and appreciate the agency's efforts to ensure patients receive timely access to appropriate treatments and affordable care without generating administrative burden for providers. In light of the current and predicted workforce shortages, decreasing provider burden is crucial for protecting patient access to care. **While we do support CMS' proposal, we recommend CMS consider additional methods to provide all providers with access to the API, including those in-network and out-of-network.** For example, if a patient was traveling and unable to see the provider with whom they have an existing relationship, it is important for the out-of-network provider to have access to the patient's immunization records, past procedures, treatment plans, etc. Payers should have the ability to share data with all providers, regardless of whether they are in-network, if the patient allows it.

With this, ARN appreciates that CMS is proposing to require payers to provide a mechanism for patients to opt out of making their data available to providers through this API. This is an important mechanism for protecting patients and their health information. ARN believes that patients should be made aware of the transfer of their health information and have the ability to decide who obtains their records. **We urge CMS to finalize this requirement.**

#### *Improving Prior Authorization Processes*

The Department of Health and Human Services Office of the Inspector General (OIG) released two reports, one in 2018<sup>1</sup> and one in 2022<sup>2</sup>, detailing challenges related to denials of care and payment in Medicare Advantage plans. These reports showed that plans utilized prior authorization to delay and deny medical items and services that met the criteria for Medicare coverage. Additionally, post-acute care services, such as inpatient rehabilitation facilities (IRFs) and skilled nursing facilities (SNFs), where many ARN members

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<sup>1</sup> <https://oig.hhs.gov/oei/reports/oei-09-16-00410.asp>

<sup>2</sup> <https://oig.hhs.gov/oei/reports/OEI-09-18-00260.asp>

work, were among the facilities with frequent denials through the use of prior authorization. Therefore, ARN is pleased to see that CMS has proposed specific timeframes and communication requirements for payers.

ARN supports CMS' proposals requiring payers to include a specific reason when they deny a prior authorization request and requiring payers to publicly report certain prior authorization metrics. **We urge the agency to implement these policies as proposed.**

However, we are concerned that the proposed timeframes are too long for urgent and non-urgent requests. The timeframes, as currently proposed, would keep many patients in the wrong level of care, which will increase costs to the health system and the institutions where they are being treated. Delays in approval will significantly increase patients' length of stay (LOS) in a hospital, thereby increasing health care costs, and will lead to worse health outcomes for patients. **Therefore, ARN respectfully requests that CMS consider adopting at least a 48-hour timeframe for non-urgent requests and a 24-hour timeframe for urgent requests.** The prior authorization process must be streamlined so that electronic requests are responded to within one calendar day (24 hours), not one business day, for urgent requests, and two calendar days (48 hours) for non-urgent requests. This is particularly important for authorization requests sent on a Friday, or over the weekend. Health care is provided around-the-clock and available for patients 24 hours a day and 7 days a week; therefore, all of healthcare, including payers, should be available to turnaround prior authorization requests within a 24-hour timeframe. We believe these timeframes are much more appropriate to prevent negative health outcomes for our patients.

Moreover, ARN recommends that CMS provide clarification on what they consider "standard" and "urgent" requests by providing examples. It is important to note that urgent requests may vary by specialty. For example, requests that are urgent for rehabilitation patients may fall under the non-urgent category for others. We have provided examples where urgent prior authorization is necessary for our patients:

- A patient's electric wheelchair battery dies, or the chair has stopped working. Often, a manual wheelchair is not provided or approved by a patient's insurance plan, so they only have access to an electric wheelchair. In this scenario, the patient is left bed bound until the prior authorization request is approved, the wheelchair is repaired, or the battery is replaced.
- A patient requires a pressure-relieving cushion after their mattress deflated and caused a pressure ulcer. The provider-recommended seating system must be considered an urgent prior authorization request.

Finally, if CMS is unable to revise the prior authorization timeframe to 24 hours for urgent requests and 48 hours for non-urgent requests, ARN suggests that CMS consider implementing a process for peer-to-peer prior authorization where a physician would be able to assist in emergency situations to prevent worse outcomes for the patient.

#### *Electronic Prior Authorization Measure for MIPS Eligible Clinicians and Hospitals and Critical Access Hospitals (CAHs)*

ARN was pleased to see that CMS is proposing to implement a new measure for MIPS eligible clinicians under the Promoting Interoperability performance category of MIPS, as well as for eligible hospitals and critical access hospitals (CAHs) under the Medicare Promoting Interoperability Program, related to electronic prior authorization. We believe this new measure will help ensure that providers utilize this the Provider Access API technology and promote interoperability and the electronic exchange of health information. **Therefore, we urge CMS to implement this proposal as proposed.**

#### *Accelerating the Adoption of Standards Related to Social Risk Factor Data*

ARN appreciates that CMS is requesting information on barriers to adopting standards, and opportunities to accelerate adoption of standards, related to social risk data. We are glad to see CMS recognizes that social risk factors (e.g., housing instability, food insecurity) influence patient health and health care utilization. This information is important for providers to have so they can create comprehensive care plans that are reflective of the patient's needs. ARN encourages CMS to continue to implement social risk factors in the agency's quality measures to reduce disparities and improve outcomes for patients. However, ARN cautions that this data should not impact the decision-making process for payers. Certain social risk factors often make discharge plans more complex, and this should not delay or interrupt prior authorization requests. **ARN welcomes the opportunity to work with the agency to ensure that social risk factor data is used in a way that is in the patient's best interest.**

#### *Electronic Exchange of Behavioral Health Information*

ARN is pleased to see that CMS is requesting comments on best methods for advancing electronic data exchange among behavioral health providers. Research shows that the demand for mental health treatment and attention continues to increase, as the impact of the COVID-19 pandemic on mental health continues.<sup>3</sup> Because of this, it is extremely important for providers and payers to ensure safe and effective transfer of patients' behavioral health information.

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<sup>3</sup> <https://www.apa.org/pubs/reports/practitioner/2022-covid-psychologist-workload>

As CMS considers future rulemaking and policy on this topic, ARN members ask CMS to consider the following:

- Electronic medical records (EMR) and prior authorization processes should be designed to promote the best outcomes for patients. Prior to making any proposals in this area, CMS must gather data and evaluate patient outcomes of EMR and prior authorization processes.
- The transfer of EMRs, including behavioral health information, for children, adolescents, and young adults, should be limited between providers. Specifically, behavior therapists and psychologists' notes should not be included in the patients' medical record unless the patient poses the risk of harm to themselves or others.
- There should be limitations on how long behavioral health information should be included in the EMR as it may be unnecessary for behavioral health information to transfer from childhood into adulthood. Youth are often reluctant to seek treatment or preventive behavioral care due to fear of consequences from their parents, school, and/or the law (e.g., drug use). Knowledge that behavioral health records will follow them for their entire life may deter children from seeking behavioral health care services, which will ultimately lead to negative health care outcomes.
- Often, youth will be denied care without consent to disclose behavioral health information, either by the parent or the minor. In this circumstance, choosing to exercise their right to privacy becomes a social determinant of health for patients.
- Patients must be fully informed and understand that releasing medical records may put them at risk of involuntary disclosure. Health care data is unfortunately very vulnerable to hacking and data leaks; therefore, patients should be aware of these risks.

**ARN appreciates your consideration of these comments and welcomes the opportunity to work with you to ensure that electronic data exchange with behavioral health providers is in the best interest of our patients.**

#### *Prior Authorization for Prescription Drugs*

While not included in this proposed rule, ARN recommends that prescription drugs, which require prior authorization, be considered for inclusion. As you consider prior authorization changes for prescription drugs, we encourage you to improve transparency in the process. Many times, providers are not aware of the nuances of each insurance company and therefore may prescribe a medication that requires prior authorization. Prior authorization processes delay discharges and impact patient satisfaction when they find out from the pharmacy that the medication isn't covered under their plan or that it will cost them a significant amount of money. For example, ARN members who work in hospital-based rehabilitation clinics report that many of the calls received after a patient's discharge are related to challenges with medications. Often, medications that were effective during

the inpatient stay may not be on the patient's formulary or the drug is in a higher tier that requires prior authorization. Depending on the drug, this has led to patients requiring an ER visit, particularly if discharge occurred on a Friday or weekend. **For these reasons, ARN recommends that CMS work to implement improvements in the prior authorization process to improve transparency and the coverage process for prescription drugs to improve health outcomes and prevent increased health costs.**

ARN appreciates the opportunity to provide comments to CMS on this proposed rule. We look forward to working with you to ensure access to quality care for Medicare beneficiaries with physical disabilities and/or chronic disease. If you have any questions, please contact ARN's Health Policy Associate, Jeremy Scott at [jscott@dc-crd.com](mailto:jscott@dc-crd.com). We thank you for your consideration of our comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Maria Radwanski". The signature is written in a cursive, flowing style.

President Maria Radwanski, MSN, RN, CRRN