

December 12, 2023

The Honorable Chiquita Brooks-LaSure
Administrator
The Honorable Jon Blum
Principal Deputy Administrator & Chief Operating Officer
Centers for Medicare and Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244

Dear Administrator Brooks-LaSure and Principal Deputy Administrator Blum:

The organizations below are writing to convey our disappointment with a meeting that took place on July 27, 2023 among our organizations, the Centers for Medicare and Medicaid Services (CMS) Coverage and Analysis Group (CAG) representatives within the Center for Clinical Standards and Quality (CCSQ), and Contractor Medical Directors (CMDs) from several Medicare Administrative Contractors (MACs) who participated in what has been referred to as the “MAC Local Coverage Determination (LCD) Workgroup.”

Our organizations have been engaging with CAG since January 2022, and with the MAC LCD Workgroup since the summer of 2022, raising to their attention concerns that we have collectively identified with the process that is currently in place for implementing local coverage policy, including concerns about the devaluation of the advisory role of Contractor Advisory Committee (CAC) representatives, lack of notice and comment, process challenges, and lack of transparency.

Over the course of several meetings and written communications with CAG and/or the MAC LCD Workgroup, we have shared our recommendations for how to address those concerns. We also raised some of our concerns with Principal Deputy Administrator Blum in a September 30, 2022 meeting, where we focused on issues that we believed were cross-cutting in nature and might not be addressed through our engagement with the MAC LCD Workgroup.

At that time, we believed that the MAC LCD Workgroup would be responsive to the concerns we had raised that could be addressed independently by the MACs, and that they would work collaboratively with our organizations in good faith to reach mutually agreeable solutions. To that end, we responded to specific questions raised by the Workgroup in March 2023, and shared a set of Principles for Sound Local Coverage Policies that we developed to further clarify our priorities.

Through regular communication with Dr. Robert Kettler, who served as a liaison between the Workgroup and our organizations, we understood that:

- The MAC LCD Workgroup was considering our concerns and recommendations;
- The MAC LCD Workgroup was making recommendations to CAG on how and to what extent to address our concerns (estimated timeframe of May 2023); and
- A follow-up meeting between the MAC LCD Workgroup and our organizations would provide a debriefing of the Workgroup’s recommendations and CAG’s responses.

To our disappointment, the July 27, 2023 follow-up meeting failed to meet our expectations. The MAC LCD Workgroup participants and CAG representatives did not meaningfully acknowledge the concerns or recommendations we raised. For example, our organizations previously recommended that the MACs hold regular, timely, and accessible CAC meetings. On this issue, one CMD member of the Workgroup

expressed the sentiment that “not having a CAC meeting saves a lot of time” – a statement we viewed as a remarkable dismissal of the role that CACs play and a signal that MACs are abdicating their responsibility to undertake meaningful engagement with the provider community. Instead, the MAC LCD Workgroup participants and CAG representatives provided a basic primer on the local coverage process, to include an overview of the LCDs development process, how LCDs differ from national coverage determinations (NCDs), and how the Medicare program defines “medically reasonable and necessary.” It should not have to be said that our organizations are already well aware of these fundamentals. While we recognized that the MAC LCD Workgroup and CAG might not adopt all – or even a majority – of our recommendations, we believed that they would treat us as equal partners in an ongoing effort to improve processes for Medicare stakeholders. Instead, our representatives felt that the MAC and CMS representatives ignored our concerns and devalued the time, effort, and commitment that our organizations and physician volunteers have given to achieve a more transparent and inclusive local coverage process. Moreover, CAG representatives suggested it was difficult for the Agency to engage with our organizations since Congress has not provided them a specific process for modifying its LCD development policies.

We believe that CMS and its contractor representatives should be accountable to the providers upon which the success of the Medicare program depends, and that they should strive to address concerns raised by the stakeholder community. Our organizations continue to seek improvements in local coverage processes through collaboration and coordination. However, without clear prioritization and guidance from senior leadership within the organization, there appears to be little chance that such an outcome will be achieved, given our previous experience. As such, we would appreciate the opportunity to meet with you to reiterate our concerns and develop a strategy for collaborating on solutions. Our attached Principles for Sound Local Coverage Policies articulates our vision for how local coverage policies can be developed and updated in an inclusive, informed, and transparent manner.

Thank you for your consideration of our comments. We will be reaching out to formally request a meeting, but if you have any questions or would like additional detail on our engagement efforts in the meantime, please do not hesitate to contact Scott Haag, JD, MSPH, Senior Director for Health Policy and Practice at the American Podiatric Medical Association, at shaag@apma.org or (301) 581-9233.

Sincerely,

American Podiatric Medical Association
American Academy of Allergy, Asthma & Immunology
American Academy of Dermatology Association
American Academy of Ophthalmology
American Association of Orthopaedic Surgeons
American College of Foot and Ankle Surgeons
American College of Radiology
American College of Rheumatology
American Gastroenterological Association
American Occupational Therapy Association
American Orthopaedic Foot & Ankle Society
American Physical Therapy Association
American Society of Hand Therapists
American Society of Podiatric Surgeons
College of American Pathologists

Alliance of Wound Care Stakeholders
Coalition of State Rheumatology Organizations