

DATE

Chiquita Brooks-LaSure
Administrator
Centers for Medicare & Medicaid Services
U.S. Department of Health & Human Services
7500 Security Boulevard
Baltimore, MD 21244

RE: Request for Information: Prior Authorization for Hospital Transfers to Post-Acute Care Settings during a Public Health Emergency (CMS-4192-P)

Dear Administrator Brooks-LaSure:

We appreciate the opportunity to respond to the Request for Information: Prior Authorization for Hospital Transfers to Post-Acute Care Settings during a Public Health Emergency contained in the proposed rule for Contract Year 2023 Policy and Technical Changes to the Medicare Advantage and Medicare Prescription Drug Benefit Programs. We have learned that prior authorization requirements during a public health emergency creates catastrophic backlogs that leave vulnerable patients at risk.

Paragraph on system/facility here.

Frustrations with prior authorizations have been an ongoing issue that pre-date the current public health emergency to which we detail below. Unfortunately, the ongoing pandemic has only exacerbated the problem as acute care facilities look to move patients – Covid patients, post-Covid patients, and non-Covid related patients – quickly in order to make space for those infected with the virus and in need of inpatient care. We ask that you consider the following:

- As part of the pandemic response, the Centers for Medicare and Medicaid Services (CMS) released a memo on March 10, 2020, that details permissible flexibilities for plans during the public health emergency. While this document offered helpful information on the laws governing emergency declarations, it failed to require that prior authorization be waived during the pandemic leaving each plan to determine the policy. We suggest that CMS mandate a waiver of prior authorization policies during public health emergencies.
- It is our understanding that governors have the authority under 42 CFR § 422.100 to waive prior authorization requirements in their state due to a public health emergency or disaster such as a weather-related event. CMS should clarify and educate state governments on authority on this authority to allow for better management of health care needs during disasters or public health emergencies.
- During the public health emergency, providers experienced a patchwork of policies across the country, and even within states, that allowed for waivers for certain types of post-acute care facilities by a few payors but not all, leading to confusion for providers in

both acute and post-acute care facilities. For continuity, especially for those systems who have maintain facilities in multiple states and/or patients who reside in different states, CMS should require policies that are the same nationwide.

- Hospital discharge prior authorization requirements hinder the ability for medical teams to offer patients and their families a continuity of care. Often, authorizations to move patients to new sites of care can take anywhere from three days to two weeks, leaving patients in the acute care facility unnecessarily proving to be fatal in certain situations. CMS should require that any prior authorization requirement, whether during a public health emergency or not, have a specific time limit of no more than 72 hours.
- Patients who are post-covid or not infected with the virus would recover far better in a different care setting that could provide the level of care needed such as ventilated patient moving to a long-term acute care hospital for respiratory care or a patient recovering from a fractured hip transferring to an inpatient rehabilitation facility to receive intensive physical therapy services. When these requirements are relaxed, patients will move within hours from when the next site of care is chosen, freeing up much needed bed space in acute care facilities for Covid patients. Medical teams should have the flexibility to determine the best site of care for their patients with little to no interference from third parties.
- Due to the ongoing labor issues that health care providers are experiencing, bed space is even more scarce, and will continue to be in the future. This makes current prior authorization policies an undue burden on hospitals and should be taken into account.
- Many state Medicaid programs offered varying degrees of waiving prior authorizations for moving patients from acute care facilities, this proved to be very successful for the beneficiaries in those states and gave hospitals the much-needed space as surges came and went throughout the past two years. States should be required to have the same requirements for other types of payers as they do for their Medicaid plans.
- Changes to the prior authorization would not waive medical necessity for the appropriate level of care, rather we think that the appropriate site of care should be determined in conjunction with the medical team quickly to allow for continuity of care.

Medical teams need the ability to make calculated decisions for the welfare of their patients without interference of third parties. The public health emergency has only exasperated the ongoing issues with prior authorization that shows how this policy hinders the ability of providers to work together to deliver the continuity of care that Americans deserve. It is imperative that during any public emergency prior authorization requirements be waived in favor of patient safety.

Thank you for the opportunity to comment on this request for information, we look forward to working with you on this and other issues related to patient safety and care.