

# CMS Request for Information Presents Rare Opportunity for Medicare Stakeholder Engagement

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On 14 April 2017, the Centers for Medicare & Medicaid Services (CMS) published the fiscal year (FY) 2018 Medicare Hospital Inpatient Prospective Payment System (IPPS) and Long Term Acute Care Hospital (LTCH) Prospective Payment System (PPS) proposed rule. The proposed rule includes a request for information (RFI) of unusual breadth. The primary focus of CMS's RFI is on ways for reducing burdens on providers and patients. The RFI goes beyond the scope of the IPPS/LTCH PPS to seek public comment on virtually any way in which CMS, within its existing authority, can increase flexibility and efficiency in the Medicare program and potentially the nation's health care system more generally, while reducing unnecessary burdens on providers, suppliers, patients and their families.

The broad scope of the agency's solicitation offers an opportunity for any stakeholder potentially to shape CMS's agenda as the Trump Administration's leadership takes the reins. CMS's RFI could serve as a particularly useful opportunity for engagement by stakeholders in those areas where CMS has significant discretion to make regulatory or sub-regulatory changes to reduce burdens under the Medicare program without compromising other agency objectives, and where there may not be a timely alternative vehicle.

Responses to the RFI should focus on ways for reducing burdens on providers, suppliers, patients and others—especially when doing so would improve quality of care, decrease costs, improve program integrity, or make the healthcare system simpler and more accessible. Within the broad confines of burden-reducing proposals, CMS makes clear that it is willing to consider virtually any proposal for regulatory or sub-regulatory change, cutting across the entire Medicare program and potentially beyond. This includes, but is not limited to, payment system redesigns; changes to monitoring, documentation, or reporting requirements; simplification of CMS's practices for issuing regulations or guidance; and any other means of enhancing Medicare operational flexibility or efficiency. CMS may, for example, be receptive to calls for “modernizing” Medicare with respect to the use of new technologies or new modalities of delivery of care. CMS may also have an interest in Medicare Code Editor (MCE) edits and reforms that encourage more efficient and less burdensome administration of the Medicare program.<sup>1</sup> CMS also notes an express interest in proposals for incentivizing organizations, professionals, and paraprofessionals to provide

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<sup>1</sup> In a separate RFI, CMS encourages public input regarding the purpose and function of the MCE with respect to the [International Classification of Diseases, Tenth Edition \(ICD-10\)](#).

screening, assessment, and evidence-based treatment for individuals with opioid use disorder and substance use disorders.

CMS's request is for informational and planning purposes and does not guarantee agency action. CMS explicitly states that it does not plan to respond to comments submitted in response to the RFI in the FY 2018 IPPS/LTCH PPS final rule. CMS's overture in making the request nonetheless underscores the agency's potential willingness to entertain burden-reducing reforms even in areas that may have drawn relatively little attention during prior CMS rulemakings. It is possible that submitted comments may serve as a catalyst for CMS action at a later date, and the agency notes that it may contact individual responders to solicit clarification regarding their proposals, and may publicly post the comments it receives, or a summary of them.

CMS is likely to be most responsive to specific, concise proposals to eliminate regulatory red tape that does not clearly benefit patient care or enhance the Medicare program's integrity. The agency also signals that it may be more receptive to those comments that are supported by concrete data or empirical studies. CMS has indicated that any recommendations that include novel legal questions should also include appropriate legal analyses and examples of specific changes that can be implemented by the agency, where appropriate.

Stakeholders will need to act quickly in preparing comments in response to CMS's request. Comments must be submitted by no later than 5 p.m. EDT on 13 June 2017.

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