September 28, 2017

Ms. Seema Verma
Administrator
Centers for Medicare & Medicaid Services
U.S. Department of Health and Human Services
Hubert H. Humphrey Building
200 Independence Avenue, S.W.
Washington, DC 20201

Re: Programmatic Alternative Payment Model overlap issues

Dear Administrator Verma,

The National Association of ACOs (NAACOS) writes this letter to raise an important issue concerning the growing overlap of CMS and Innovation Center programs focusing on value-based healthcare and delivery. NAACOS and its members are committed to transforming the way healthcare is delivered and paid for. Our members are at the forefront of this transformation effort and have invested significant time and resources to their success, which will ultimately improve care for Medicare beneficiaries and reduce costs for CMS. However, it has come to our attention that the numerous competing programs being released in rapid succession by the agency are imposing unintended consequences on existing program operations and goals, including those of the Medicare ACO programs. What's more, the increasing complexity surrounding how the agency operationalizes the overlap of these competing programs is growing at an alarming rate, causing troubling confusion and uncertainty for providers.

NAACOS is the largest association of ACOs, representing over 3.72 million beneficiary lives through 260 Medicare Shared Savings Program (MSSP) ACOs, Next Generation, and commercial ACOs. NAACOS is an ACO member-led and member-owned non-profit organization that works on behalf of ACOs across the nation to improve the quality of Medicare delivery, population health and outcomes, and health care cost efficiency. Our members, more than many other healthcare organizations, want to see an effective, coordinated patient-centric care process. Our recommendations reflect our expectation and desire to see ACOs achieve the long-term sustainability necessary to enhance care coordination and health outcomes for Medicare beneficiaries, reduce healthcare costs, and improve quality in the Medicare program.

We are also deeply concerned with the agency's lack of strategic planning and direction in addressing overlap issues. It appears to date; CMS has attempted to deal with overlap on a per-program basis rather than taking a coordinated and strategic approach. It is essential that the agency develop a more thoughtful approach to program overlap issues, particularly as CMS moves forward with implementation of the Medicare Access and CHIP Reauthorization Act (MACRA). By the agency's

estimates, the number of providers participating in APMs will grow dramatically in the coming years, compounding this problem. For example, CMS estimates the number of providers qualifying for Advanced APM bonuses will roughly double in the second year of the Quality Payment Program to total 180,000 to 245,000 for the 2020 payment year corresponding to 2018 performance. Therefore, it is critical that CMS address this issue now before the operational challenges grow exponentially and ultimately undermine the progress made to date by APMs currently in existence.

To date, CMS and the Innovation Center have not created a centralized place for ACOs, or other providers, to understand how certain programs interact with others. Instead, the agency and Innovation Center staff have repeatedly referred to one-another when these types of questions arise, resulting in confusion and a lack of transparency. For example, the Innovation Center's Bundled Payments for Care Improvement Initiative (BPCI) has its own set of rules regarding how BPCI expenses are attributed to ACOs when there is overlap in the patients these programs serve. When NAACOS staff asked the Innovation Center for detailed guidance regarding the overlap policies for this initiative, a Word document was provided with a complex policy which is not provided to the public or on the Innovation Center's website. Staff also often provide responses to policy questions in emails, but do not publish these clarifications in guidance documents available to the broader public. This lack of transparency makes it difficult if not impossible for ACOs to understand the impact of these overlapping programs on their ACO efforts. It also gives the impression that significant policies can be changed at any time without public input or even notification to the public and stakeholders deeply affected by such policy changes. As another example, the Innovation Center currently allows certain ACOs to participate in certain Innovation Center initiatives such as the Comprehensive Primary Care Plus initiative (CPC+). However, there are complex rules regarding how expenses are or are not attributed to an ACO and/or CPC+ primary care practice, many of which ACOs continue to seek clarification on. Without a clear understanding of how these costs will or will not be attributed, it is impossible for ACOs to plan for how the costs will impact the organization's broader goals and financial bottom line. For these reasons, CMS must create a centralized place for the public to access which provides open and transparent depictions of the policies concerning how overlap is handled for each of the programs that exist. All guidance must be made available to the public in a clear and concise manner.

Another very significant concern NAACOS has with the current approach by the Innovation Center is the lack of data provided to APM participants regarding the expenditures and other key data for patients involved in more than one APM. Specifically, we urge the agency to provide detailed information regarding the expenditures associated with bundled payment program patients for Medicare ACO participants including, but not limited to: identifying the overlapping patients; providing line item descriptions of the costs associated with such patients on a per program, per beneficiary basis; total quarterly impact of such expenditures; and the name of the other program(s)/entities involved. Further, they have little insight into the impact these expenditures will have on the ACO's spending. These expenditures are outside of the ACO's control but can have a significant impact on the ACO's bottom line, even causing the ACO to miss out on shared savings opportunities. At a minimum, CMS must be transparent about these costs by providing detailed information to ACOs both in quarterly and year-end reports. What CMS currently provides, one undescriptive line labeled "Assigned Beneficiaries with Non-Claims Based Payments" without any breakdown of what is included in the adjustment, is insufficient. In one instance, an ACO reported these overlap payments impacted 48,000 beneficiary years. For an ACO to have a negative adjustment and potentially miss their savings threshold but not be able to understand why is very discerning. This lack of transparency undermines the integrity of the program and if not fixed will lead to slower program growth at a minimum and may even lead to ACOs leaving the program.

As NAACOS has noted previously, the overlap of bundled and episode payment programs with ACOs creates conflicts when patients attributed to an ACO are also evaluated under a bundled payment program. Under current CMS policy, a bundled payment participant maintains financial responsibility for the bundled payment episode of care and any gains or losses during that episode are linked to the bundled payment participant and removed from ACO results following the close of the performance year. While CMS planned to test an alternative policy by excluding Next Generation and Track 3 ACO beneficiaries from certain episodes, this exclusion would not apply to Track 1 or Track 2 beneficiaries, which comprise the majority of ACO beneficiaries and ultimately, this experiment was later cancelled by the agency. The problem is exacerbated by the fact that ACOs are not permitted to participate as bundlers. ACOs focus on, and make considerable investments in care coordination and improving care transitions to manage post-acute care effectively. Many successful ACOs credit these efforts for allowing them to achieve shared savings.

With the onset of a number of new payment models being advanced by stakeholders in response to MACRA, NAACOS believes this is a crucial issue that must be resolved immediately. Without action by the agency, we risk losing valuable momentum gained by ACOs and others focusing on population health and total cost of care. While the call for new models continues, CMS has yet to fully evaluate the effects of overlap for existing bundled and episode payment model tests such as the BPCI. NAACOS has called on CMS to conduct a rigorous analysis to determine the effect of overlapping value-based programs, including the interplay between bundled payment programs and ACOs before moving forward with additional programs. For example, it is critical that CMS examine not only spending changes for the bundled payment or episode but also any potential changes in overall volume of these episodes. Further analysis on the effect of bundled and episode payment models must be done taking total cost and volume of services into account before expanding such models.

It is critical that CMS protect the goals of population health focused delivery models. These models, such as the ACO model, are just now gaining momentum and an evidence base to learn from. It is critical that we allow these models to realize their full potential. NAACOS supports the exploration of new payment models, which will ultimately benefit all who are working to reform health care delivery and payment models to better support patients and to contain costs while providing exceptional care. However new payment reform efforts must work in tandem with existing models to prevent impeding on the progress organizations such as ACOs have worked so hard to accomplish to date.

In closing, CMS must address the growing problem of program overlap. The complexities, lack of transparency and competing program goals have already made it difficult to evaluate and conclude which programs are responsible for achieving cost savings. We urge CMS to take immediate action to rectify these issues and would be happy to support the agency in devising solutions to these problems that will allow all who are interested and engaged in healthcare reform to be successful.

Respectfully,

Clif Gaus, Sc.D
President and CEO
National Association of ACOs