

## **CMS Response to Public Comments Received for MAQI Demonstration – CMS-10673**

The Centers for Medicare and Medicaid Services (CMS) received comments from the public related to CMS-10673 for Medicare Advantage Qualifying Payment Arrangement Incentive (MAQI) Demonstration. This is the reconciliation of the comments.

### **Comment:**

The Centers for Medicare and Medicaid Services (CMS) received comments from two Medical Associations commending CMS for developing a demonstration project to allow physicians participating in innovative Alternative Payment Models (APMs) under Medicare Advantage (MA) to avoid penalties in the Merit-Based Incentive Payment System (MIPS) program. These organizations also included ideas and suggestions on how to increase the overall accessibility of the Quality Payment Program (QPP) for their providers. However, no comments were received pertaining to the proposed information collection itself.

### **Response:**

CMS appreciates the commenters' interest in the development of the MAQI demonstration, which was announced in the Calendar Year (CY) 2019 Physician Fee Schedule proposed rule. The MAQI Demonstration will remain under development until the CY 2019 Physician Fee Schedule proposed rule is finalized. CMS is currently soliciting comments and feedback on the development and design of the demonstration as part of the rulemaking process and will address comments and feedback on the proposed demonstration as part of the rule making process.

### **Comment:**

The Centers for Medicare and Medicaid Services (CMS) received comments and suggestions for design changes from a health services organization pertaining to development of the MAQI Demonstration. The main suggestion provided was that CMS should include Medicaid Managed Care Plan qualifying payment arrangements, in addition to Medicare Advantage Organizations (MAO), when considering applicable qualifying payment arrangements for the demonstration. No comments were received pertaining to the proposed information collection itself.

### **Response:**

CMS appreciates the commenter's interest in the development of the MAQI demonstration, which was announced in the Calendar Year (CY) 2019 Physician Fee Schedule proposed rule. The MAQI Demonstration will remain under development until the CY 2019 Physician Fee Schedule proposed rule is finalized. CMS is currently soliciting comments and feedback on the development and design of the demonstration as part of the rulemaking process and will address comments and feedback on the proposed demonstration as part of the rule making process.

**Comment:**

The Centers for Medicare and Medicaid Services (CMS) received comments and suggestions from a health organization on its proposed data collection forms, as well as feedback on design changes. The organization believes that the current structure of the demonstration will lead to a very limited number of participants and that results will be difficult to quantify with statistical accuracy. They suggest CMS provide a 5 percent bonus opportunity for participants and that the application deadline remain open until November 6, 2018. They also note concerns and suggestions related to the data collection, including:

MAQI applications are only accepted from individual clinicians rather than at the TIN or physician group level; the hours projected per clinician necessary to complete the application will cause undue burden; a PDF of both applications (threshold and qualifying arrangement form) should be inserted on the MAQI Demonstration webpage; and application should be modified and considerably shortened.

**Response:**

- CMS appreciates feedback on the design of the MAQI demonstration. Design comments are being solicited and addressed as part of the CY 2019 PFS rulemaking process and are therefore outside of the scope of this PRA approval. CMS cannot respond to comments on demonstration design as part of the PRA process.
- CMS appreciates the feedback provided about time and effort to complete the forms and CMS is preparing material to help minimize the burden for clinicians. The proposed hours for this data collection were estimated based on the level of effort clinicians need in completing QPP data collection instruments. In the meantime, CMS is urging health plans to assist individual clinicians in completing the qualifying payment arrangement application.
- In addition, CMS is exploring the option of utilizing the QPP submission process for the MAQI Demonstration for performance year 2019 and beyond. Also, CMS has plans to utilize the payer submitted QPA information in subsequent MAQI performance years to help reduce clinician burden.
- The information that CMS is requesting is necessary to make accurate determinations about Qualifying Payment Arrangements and clinicians' payment amount or the patient count threshold data for Merit-based Incentive Payment System (MIPS) exemption.

**Comment:**

The Centers for Medicare and Medicaid Services (CMS) received comments and suggestions from an organization about the proposed data collection forms, as well as feedback on design changes pertaining to the development of the MAQI Demonstration. This organization believes the proposed data collection process targets the wrong party (clinicians, not payers). They also feel that CMS has underestimated data collection time and effort requirements for clinicians who are completing the forms and suggested CMS should focus more on attestation from clinicians and follow-up from MA plans.

Finally, this organization commented that the current MAQI timeline and collections process contains conflicting timeframes for the 2018 application versus the public notice and comment periods for CMS-10673 and CMS-1693-P.

**Response:**

- CMS appreciates feedback on the design of the MAQI demonstration. Design comments are being solicited and addressed as part of the CY 2019 PFS rulemaking process and are therefore outside of the scope of this PRA approval. CMS cannot respond to comments on demonstration design as part of the PRA process.
- CMS appreciates the feedback provided about time and effort to complete the forms and is preparing materials to help minimize the burden for clinicians. In the meantime, CMS is urging health plans to assist individual clinicians in completing the qualifying arrangement application.
- In addition, CMS is exploring the option of utilizing the QPP submission process for the MAQI Demonstration for performance year 2019 and beyond. Also, CMS has plans to utilize the payer submitted QPA information in subsequent MAQI performance years to help reduce clinician burden.

CMS proposed timelines for MAQI data collection (CMS-10673) and CY 2019 PFS rule public comment are necessary to allow the demonstration to start in 2018, and are contingent on the 2019 PFS rule being finalized.

**Comment:**

The Centers for Medicare and Medicaid Services (CMS) received comments and suggestions on its proposed data collection forms, as well as feedback on design changes.

The organization is concerned that forms require clinicians to fill over a dozen narratives and clinicians may not possess the information requested (e.g. "Plan Name" in section 2). Furthermore, over reliance on multiple payers to complete the forms adds another layer of complexity. The organization feels that CMS is rushing implementation of the Demo. Expects the annual QPP rule to be issued in late October or early November and if approved, the MAQI Demo would proceed. It contends that current forms will discourage clinicians from applying to the Demo. The organization made a general comment about reducing administrative burden and also incentivizing clinicians to participate in the MAQI demonstration. Also, it suggests CMS simplify the submission process – forms require clinicians to fill in over a dozen text boxes asking for narrative responses.

**Response:**

- CMS appreciates feedback on the design of the MAQI demonstration. Design comments are being solicited and addressed as part of the CY 2019 PFS rulemaking process and are therefore outside of the scope of this PRA approval. CMS cannot respond to comments on demonstration design as part of the PRA process.
- CMS appreciates the feedback provided about time and effort to complete the forms and CMS is preparing materials to help minimize the burden for clinicians. In the meantime, CMS will continue

to urge health plans to assist individual clinicians in completing the qualifying arrangement application.

- CMS will utilize the payer submitted QPA information in subsequent MAQI performance years starting in 2019 to help reduce clinician burden.

**Comment:**

The Centers for Medicare and Medicaid Services (CMS) received comments and suggestions on its proposed data collection forms. The organization proposed design changes to help minimize the burden on clinicians and also add a 5% bonus payment as an incentive to providers. The organization is concerned that the submission forms, as drafted, do not adequately protect proprietary and confidential MA Plan information. They also commented that the information may be subject to Freedom of Information Act (FOIA) requests, and therefore recommend that CMS should notify clinicians and plans if FOIA request occurs. Another recommendation is for CMS to include additional classification to protect against disclosure of sensitive information that may lead to harmful market impact. They also recommend revising the data collection forms to require clinicians to attest that they have plan permission to share the information submitted. Finally, they suggest that CMS should keep the appropriate MA plan contact on file for FOIA requests and CMS pre-designate in the forms certain categories as proprietary and confidential – thus protected from release under FOIA.

**Response:**

- CMS appreciates the commenters' interest in the development of the MAQI demonstration, which was announced in the Calendar Year (CY) 2019 Physician Fee Schedule proposed rule. The MAQI Demonstration will remain under development until the CY 2019 Physician Fee Schedule proposed rule is finalized. CMS is currently soliciting comments and feedback on the development and design of the demonstration as part of the rulemaking process and will address comments and feedback on the proposed demonstration in the final PFS rule.
- We appreciate the commenters' concerns about sharing confidential and sensitive information. We reiterate that CMS will keep information submitted by clinicians under the MAQI Demonstration confidential to the extent permitted by federal law. Additionally, we note that records that a submitter marks as confidential will be protected from disclosure to the extent permitted by federal law.
- Specifically, Exemption 4 of the Freedom of Information Act (FOIA) authorizes us to withhold trade secrets and commercial or financial information obtained from a person and privileged or confidential (45 CFR 5.31(d)). A person who submits records to the government may designate part or all of the information in such records that they may consider to be exempt from disclosure under Exemption 4 of the FOIA. The person may make this designation either at the time the records are submitted to the government or within a reasonable time thereafter. The designation must be in writing. Any such designation will expire 10 years after the records were submitted to the government (45 CFR 5.41). If records provided by a submitter become the subject of a FOIA request, the agency will engage the submitter in the pre-disclosure notification

process, unless the agency determines that the information should be withheld, or the designation of “confidential” appears obviously frivolous. The pre-disclosure notification process can be found at 45 CFR 5.42.