

September 18, 2017

Ms. Martique Jones

Director, Regulations Development Group

Office of Strategic Operations and Regulatory Affairs

Centers for Medicare and Medicaid Services

Room C4-26-05

7500 Security Boulevard

Baltimore, Maryland 21244-1850

Attention: CMS-10652

Re: CMS-10652 Virtual Groups for Merit-based Incentive Payment System (MIPS)

Dear Ms. Jones:

The Physicians Advocacy Institute (PAI) appreciates the opportunity to provide comments on the Centers for Medicare and Medicaid Services’s (CMS’s) Collection of Information Request on CMS-10652, Virtual Groups for Merit-based Incentive Payment System (MIPS).

PAI is a not-for-profit organization that was established to advance fair and transparent policies in the health care system to sustain the profession of medicine for the benefit of patients. As part of this mission, PAI seeks to better understand the challenges facing physicians and their patients and to educate policymakers about these challenges. PAI also develops tools to help physicians prepare for and respond to policies and marketplace trends that impact their ability to practice medicine. PAI’s Board of Directors is comprised of CEOs and former CEOs from nine state medical associations: California Medical Association, Connecticut State Medical Society, Medical Association of Georgia, Nebraska Medical Association, Medical Society of the State of New York, North Carolina Medical Society, South Carolina Medical Association, Tennessee Medical Association, and Texas Medical Association, and a physician member from Kentucky. As a physician-based organization, PAI is equipped to provide comments and insight into many of the challenges facing the medical profession.

The collection of information request is related to the virtual group election process outlined in the CY 2018 Quality Payment Program proposed rule. The 2018 MIPS performance period is the first period that eligible clinicians (ECs) and groups will be able to participate in MIPS using the virtual groups’ option. This option allows solo practitioners and groups of ten or fewer MIPS ECs to form a virtual group for collectively reporting and meeting the MIPS reporting requirements. In the CY 2018 QPP proposed rule, the agency proposed criteria for virtual groups composition, scoring and payment adjustment, election process, and agreements. As part of these processes, CMS will use the data collected from virtual group representatives to determine eligibility to participate in a virtual group, approve formation of the virtual group, assign a virtual group identifier to the virtual group, and to assign a performance score to each tax identification number/national provider identifier (TIN/NPI) in the virtual group.

PAI is supportive of the virtual groups reporting option for individual practitioners and small group practices. We believe this option will allow ECs and small groups to collaborate and share the responsibility and burden of participation, but still be eligible to have a “stake in the game” and earn a positive payment adjustment, collectively. In this collection of information request, CMS is specifically requesting approval of the virtual group election process to meet the statutory requirement that the process start prior to the beginning of the performance period (i.e., Fall of 2017). Overall, PAI recommends as much flexibility for virtual groups election process as possible to reduce the burden for participants. Furthermore, we are supportive of CMS beginning this process as soon as possible to allow interested ECs and groups as much time prior to the beginning of the performance period “to form, to begin internal staff training and to have their formal written agreements in place.” PAI also approves of the draft Virtual Group Agreement Template CMS has published, as we believe this provides interested parties with the ability to tailor the agreement to the ECs and groups involved in the election process for each individual virtual group.

For the first year of the virtual group election process, virtual group representatives will be required to submit election data via an e-mail, and approval and assignment of the virtual group identifier will also occur via e-mail correspondence. If feasibly possible, PAI would encourage the agency to develop an online registration that provides a step-by-step guide for submitting virtual group election data. Alternatively, if not feasibly possible for the Fall 2017 election period, PAI would urge the agency to develop forms/templates that could be completed, and other materials, that clearly specify the information and data that must be submitted via e-mail. Additionally, PAI requests that further guidance be issued on what grounds the formation of the virtual group will be approved or denied.

CMS has stated that it expects that some practices electing to join virtual groups will qualify for small business status under the Small Business Administration (SBA) standards, which are $11 million in average receipts for an office of clinicians and $7.5 million in average receipts for an office of other health practitioners. In addition to the small business status, PAI believes that it is important to extend the application of the Federal Trade Commission (FTC) and Department of Justice (DOJ) Statement of Antitrust Enforcement Policy Regarding Accountable Care Organizations (ACOs) Participating in the Medicare Shared Savings Program (MSSP) to virtual groups. This policy statement provides clarity on antitrust issues and guidance on forming procompetitive ACOs. The policy statement applies a rule of reason analysis to determine if an ACO is likely to have anticompetitive effects, and if so, whether its efficiencies are likely to outweigh those effects. PAI believes that virtual groups will likely incur and address similar antitrust issues, and it is important that these be resolved at the beginning rather than mid-year, which would create an obstacle to participation in virtual groups and MIPS. The agency should also be mindful of other laws and regulations that could be impediments or obstacles to the formation of virtual groups, and that appropriate exemptions should be extended and applied to virtual groups, for example, Stark Law exemptions that are similar to those for group practices.

Since CMS has received feedback from stakeholders stating that they need at least three to six months to form virtual groups and establish agreements, CMS assumes that virtual group participation will be relatively low the first year. Specifically, CMS estimates that 16 virtual groups will participate in 2018, and the total annual burden hours per virtual group will be about 10 hours, with a cost of $832.04 per virtual group. While PAI agrees with other stakeholders that it will take some time for virtual groups to form and execute agreements, we believe that the agency has underestimated the total burden hours and costs associated with forming and executing virtual groups agreements. This is based on our understanding and feedback from members on executing similar agreements (for example, for the formation of entities for alternative payment models). To decrease the burden on ECs and groups interested in forming virtual groups, and to potentially help increase the number of virtual groups that can be formed and participate in the 2018 performance year, PAI recommends 1) that the agency allow independent physician associations (IPAs) and other third parties can help facilitate and support the formation of virtual groups, and 2) to extend the election process into early 2018, similar to process for establishing and approving qualified clinical data registries (QCDRs) and qualified registries. PAI also recommends that the agency utilize a multi-stage approval process to notify applicants of their application status at intervals before they invest further time and resources required in pursuit of the virtual groups options.

PAI understands that an IPA cannot participate in the virtual group itself as a MIPS participant. However, since no restrictions are being proposed that participants in virtual groups must be in the same geographic area or of the same specialty, an outside party could support this process. These organizations could help bring the appropriate ECs and groups together and assist them in ensuring that they have met all requirements necessary to form virtual groups and that the virtual group participants have the required infrastructure and processes in place to support their participation in MIPS. PAI encourages the agency to not restrict or limit the valuable role and service that could be provided by IPAs and other third parties. Additionally, by extending the election process to align with QCDRs and qualified registries, we believe that this would provide the additional time required to form virtual groups and increase the number of virtual group participants in the 2018 participation year. The greater the number of virtual group participants in the first year, the more data will be available to CMS and participants for evaluating virtual group participation, success, and identify opportunities for improving this participation option for future performance years.

Lastly, PAI would recommend that CMS provide timely and substantive performance feedback reports for the overall virtual group and each individual practice. This is a critical tool that would allow physicians and other virtual group participants identify their gaps in care, target improvements in their performance, and reduce inefficiencies and burdens going forward.

Overall, PAI supports CMS’s efforts to streamline and reduce unnecessary burdens placed on physician practices as part of the virtual groups participation option. PAI and the medical associations represented on the PAI Board of Directors welcome the opportunity to work with the agency to further implement and advance virtual groups and the QPP, more generally, in a meaningful and impactful way. If you have any questions, please contact me at [rseligson@ncmedsoc.org](mailto:rseligson@ncmedsoc.org), or Kelly C. Kenney, PAI’s Executive Vice President and CEO, at [k2strategiesllc@gmail.com](mailto:k2strategiesllc@gmail.com).

Sincerely,

Robert W. Seligson, MBA, MA

President, Physicians Advocacy Institute