

## **Proposed Rules Would Substantially Reduce Impact of MACRA in Year 2 and Beyond**

### Overview

CMS has issued proposed regulations (the MACRA Proposed Rule) to implement the Quality Payment Program in 2020 (2018 performance year), and these regulations, if adopted as proposed, would substantially reduce the overall impact of the new program. The maximum negative adjustment under MIPS in 2020 will be 5% of Medicare allowable amounts. Prop

The most significant proposed change would expand the low-volume threshold: Under the proposal, those physicians with \$90,000 or less in Medicare Part B allowed charges OR 200 or fewer Medicare Part B patients would be exempt from the Merit-based Incentive Program (MIPS). Under this new standard, only 37% of clinicians who bill Medicare will be subject to MIPS.

In addition, the MACRA Proposed Rule includes a number of changes that would significantly benefit practices of 15 or fewer clinicians. For example, the proposal makes small practices eligible for bonus points under MIPS scoring and makes them eligible for a hardship exemption from the Advancing Care Information (previously Meaningful Use (MU)) MIPS category. Small practices are eligible for these exemptions and bonuses regardless of Medicare billings and regardless of location (e.g. rural or urban), and we anticipate that some practices that operate freestanding radiation oncology centers may qualify.

Other provisions of the MACRA Proposed Rule will benefit all physicians, regardless of practice size. For example:

- CMS is proposing to refrain from allocating any weight to the cost component in determining payment adjustments in 2020, a continuation of the current policy.
- With regard to ACI/MU, CMS will continue to allow the use of 2014 edition of certified electronic health records technology (CEHRT) and will permit physicians to continue to report on Modified Stage 2 MU measures in 2018, rather than Stage 3 measures.
- With regard to the quality category of MIPS, which will comprise 60% of most physicians' 2020 MIPS scores, CMS is proposing to maintain the current 50% standard for data "completeness" (rather than increasing the standard to require reporting on 60% of applicable patients) and to retain a "floor" (three points for small practices and one point for other practices) for reported quality measures that do not meet the completeness standard. Physicians will get three points for each quality measure meeting the completeness standard.
- Physicians will continue to be able to simply attest to performance of Clinical Improvement Activities (CIAs), a MIPS category that accounts for 15% of a physician's score. Of particular note for AFROC members who order nuclear, CT, MRI or PET studies, CMS is proposing a new "high weight" CIA for physicians who utilize

a CMS- approved Clinical Decision Support Tool to order all advanced diagnostic imaging services (e.g. CT, MRI, PET and certain other nuclear tests)

Overall, only 15 points will be required in order for physicians to avoid a negative payment adjustment in 2020. While this is significantly higher than the three point threshold that applies this year, this threshold is likely to be achievable by those willing to actively participate in the new program.

#### So what does all this mean for you?

Overall, CMS estimates that only 3,049 radiation oncologists will be eligible for participation in MIPS in performance year 2018, over 96-97% of whom are expected to receive a neutral or positive adjustment and only approximately 3% of whom are expected to receive a negative adjustment. CMS further projects that over 80% of radiation oncologists will be eligible for “exceptional performance” bonuses, which require 70 points under the MACRA Proposed Rule. This having been said, however, it appears that the assumptions underlying CMS projections are fairly rosy.

There are numerous pathways for AFROC members to avoid a negative payment adjustment (i.e. to meet the 15 point threshold set forth in the MACRA Proposed Rule). For example:

- Submitting the maximum number of improvement activities could qualify for a score for 15 points (40 out of 40 possible points for the CPIA component, which is worth 15 percent of the final score).
- Submitting all six required measures meeting data completeness standards could earn a physician 18 points. (Please note, however, that relying on quality measure submission alone to meet minimum threshold requirements may be a high risk strategy, since data must be submitted for a minimum of 50% of eligible patients (which include both Medicare and non-Medicare patients for some submission methods)).
- Meeting the “core measure” MU requirements under the Advancing Care Information (ACI) MIPS category will satisfy the 15 point threshold.

The least burdensome pathway to avoid a negative payment adjustment for 2020 will depend on each physician’s practice setting, technological capabilities, and other factors. Hospital-employed radiation oncologists and those employed by large faculty practice plans or other large group practices have a number of advantages, arising from the resources that such entities generally have available to meet the administrative challenges imposed by the new system. For example, radiation oncologists employed by a hospital or hospital-owned entity that typically meets MU requirements may avoid a negative payment adjustment if a responsible individual attests to MU on behalf of the group, and CPIA attestation or quality measure submission may not be necessary for these radiation oncologists to avoid a negative adjustment. Moreover, as under current rules, a radiation oncologist who practices primarily in a hospital outpatient setting

(whether the hospital's center is located on or off campus) is eligible for a MU hardship exemption, on the grounds that the physician has not control over the hospital's IT system.

Smaller radiation oncology practices will not be able to fall back on hospital or large practice resources to address MIPS challenges. For these practices, one of the first decisions to be made is whether group practice members should participate in MIPS as an individual physicians or whether the practice should opt for "group reporting." On the one hand, quality reporting using claims submission is the most popular form of quality reporting, and is available only for physicians reporting individually. For groups that are willing to move away from claims reporting, and whose members are willing to share the same MIPS score, reporting as a group may hold several advantages: For example, only one designated individual is required to attest to meeting ACI/MU requirements, and a CPIA performed by one member in the group is attributed to all group members. In addition, the group as a whole is required to report on six quality measures, and may be able to avoid reporting on measures on which it is likely to do poorly. Individual reporting provides no "cover" for poorly performing physicians.

Regardless of whether physicians choose group or individual reporting, attesting to the required number of CPIAs may be a good strategy for avoiding the 2020 penalty. Generally, physicians must score 40 "points" to get 100% credit on this category, and this can be achieved by reporting some combination of medium weighted (10 point) and heavily weighted (20 point) CPIAs. The MIPS Proposed Rule opens a pathway for use of a CMS-approved clinical decision support tool for ordering advanced imaging to "count" as a heavily weighted CPIA, and this option may be of interest to some AFROC members and their practices, since use of such a tool will be required by CMS in 2019 in any event. Current CPIAs can be found at:

<https://qpp.cms.gov/mips/improvement-activities>.

For those AFROC members that have dedicated considerable resources to participation in the current CMS quality reporting and MU programs, the MACRA Proposed Rule is a mixed blessing. Because of flexibility provided by the CMS proposal and the exclusion of so many smaller practices through the more liberal low volume threshold, CMS projects that relatively few practices will be subject to negative payment adjustments in 2020. That means that the "pool" available for positive adjustments is likely to be relatively small in 2020, and positive adjustments will be harder to achieve.

We urge AFROC members to avoid being lulled into complacency by the flexibility of the proposed rule for MIPS performance year 2018 . Effective in the 2019 performance year, MIPS thresholds likely will increase sharply and scoring will become considerably more demanding. Effective in performance year 2019, CMS is required to not only take costs into account but to weight performance on this category at 30% of a physician's total score. In addition, in that year, CMS loses statutory flexibility to establish a low threshold to avoid negative payment adjustments. Potential penalties increase as time moves on, so it would be prudent for AFROC members and their practices to use the time between now and 2019 to put in place systems and processes intended to maximize performance on all MIPS performance categories.