



September 10, 2018

The Honorable Seema Verma, Administrator  
Centers for Medicare & Medicaid Services  
U.S. Department of Health and Human Services  
Hubert H. Humphrey Building, Room 445-G  
200 Independence Avenue, SW  
Washington, DC 20201

**Re: Medicare Physician Fee Schedule for CY 2019 (CMS-1693-P)**

Dear Administrator Verma:

Thank you for the opportunity to comment on the Centers for Medicare and Medicaid Services (CMS) proposed cuts to evaluation and management (E/M) codes in the Medicare Physician Fee Schedule for 2019. While we commend the agency's goal to reduce paperwork and unnecessary administrative tasks, we are concerned that the proposal to consolidate payments will devalue specialty care, especially for those with chronic conditions such as epilepsy, and create additional access barriers.

The Epilepsy Foundation is the leading national voluntary health organization that speaks on behalf of at least 3.4 million Americans with epilepsy and seizures. We foster the well-being of children and adults affected by seizures through research programs, educational activities, advocacy, and direct services. Epilepsy is a medical condition that produces seizures affecting a variety of mental and physical functions. Approximately 1 in 26 Americans will develop epilepsy at some point in their lifetime, and people living with epilepsy must have meaningful and timely access to physician-directed care and specialists, to avoid breakthrough seizures and related complications and costs.

Epilepsy is a complex chronic condition that requires individualized expert neurological care. Epilepsy, also referred to as seizure disorders, is the fourth most common neurological disorder and it affects people of all ages. Characterized by unpredictable seizures, epilepsy is a spectrum condition with a wide range of seizure types and control varying from person to person. Many people with epilepsy have more than one type of seizure and may have other symptoms of neurological problems as well. Knowing if a person is having a seizure and diagnosing the type of seizure or epilepsy syndrome can be difficult. Treatment of epilepsy and seizures depends on an accurate diagnosis which can require a team of specialized care providers and comprehensive testing. Further, treatment of epilepsy is not "one size fits all" and includes a broad range of options including over 20 prescription medications, surgical and device therapies, and dietary therapies. Often individuals must try multiple treatment options before achieving seizure control, and physicians must pay particular attention to side effects both related to comorbidities (psychiatric side effects in individuals with depression) and generally



(reproductive issues). One third of people living with epilepsy cannot achieve seizure control with available treatment options. For this population, specialty ongoing care is needed to strive for better seizure control.

Individuals living with epilepsy also experience a high rate of comorbidities. Examples of comorbidities include depression (60%) and anxiety (45%) in addition to cardiovascular (18.3%) and respiratory (5.5%) disorders.<sup>1</sup> Comorbidities can affect treatment choice due to the associated side effects of certain antiepileptic medications, and it is critical that individuals and their providers recognize existing comorbidities. Depressive symptoms are different in people with epilepsy and may not fulfill DSM criteria for major depression. Despite the high prevalence (60%), depression in individuals living with epilepsy can go unrecognized. People living with epilepsy must have access to a broad range of specialty and complementary care services to adequately treat their condition.

In addition to a high prevalence of comorbidities, individuals with epilepsy—especially those with little to no seizure control—experience a high rate of unexpected death. Sudden unexpected death in epilepsy (SUDEP) is the most common cause of epilepsy-related death and occurs at all ages with an annual incidence of approximately 1 in 1,000 persons with epilepsy.<sup>2</sup> Among those with no or poor seizure control, the incidence of SUDEP rises to 6.3 to 9.3 per 1,000 persons.<sup>3</sup> Caring for individuals with epilepsy must include time to assess and treat both comorbidities and mortality risks.

Medicare provides health insurance for Americans age 65 and older, and to younger people with disabilities. More than 570,000 adults age 65 and older live with epilepsy, and that number is rising rapidly as the baby boomer generation enters retirement. Additionally, many individuals under age 65 living with epilepsy are Medicare beneficiaries due to their disability status.

The Epilepsy Foundation is concerned with the unintended consequences the proposed policy change would have on specialty care for individuals with complex chronic conditions like epilepsy. By collapsing E/M levels 2-5 into one payment, CMS offers to reduce some administrative burdens. While we applaud this intent, this policy effectively devalues complex care. Offering a flat fee for each office visit with an individual, regardless of their medical complexity or length of visit, will negatively impact individuals living with epilepsy and their families. We are concerned that providers may stop taking Medicare beneficiaries altogether

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<sup>1</sup> Kadima, Norbert T, et al. "Comorbidity in Adults with Epilepsy - United States, 2010." *Morbidity and Mortality Weekly Report (MMWR)*, Centers for Disease Control and Prevention, 1 Nov. 2013, [www.cdc.gov/mmwr/preview/mmwrhtml/mm6243a2.htm](http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6243a2.htm).

<sup>2</sup> Tomson, T, et al. "Sudden Unexpected Death in Epilepsy: A Review of Incidence and Risk Factors." *National Center for Biotechnology Information*, Epilepsia, 2005, [www.ncbi.nlm.nih.gov/pubmed/16393182](http://www.ncbi.nlm.nih.gov/pubmed/16393182).

<sup>3</sup> Tomson, T, et al. "Sudden Unexpected Death in Epilepsy: A Review of Incidence and Risk Factors." *National Center for Biotechnology Information*, Epilepsia, 2005, [www.ncbi.nlm.nih.gov/pubmed/16393182](http://www.ncbi.nlm.nih.gov/pubmed/16393182).



as a result of this change. This would create an additional barrier for these individuals and their families to access quality care.

We are also concerned that the proposal to consolidate services devalues the time of physicians who treat individuals with epilepsy. This negative impact is likely to be large for faculty physicians and major teaching hospitals who treat a disproportionate share of these individuals. While consolidating these codes could reduce paperwork for some physicians, the creation of the add-on codes would also create a new and significant paperwork requirement for specialists such as neurologists and epileptologists. This will undermine the underlying, positive intent of the proposed rule to reduce administrative burdens on clinicians and could reduce the time spent treating patients. Due to the complex and individualized nature of epilepsy and the related comorbidities, physicians' time would be much more valuable spent with a patient rather than on burdensome administrative requirements.

We are worried about the consequences the new payment model will have by not capturing the full spectrum of complex and complementary care necessary to sufficiently treat individuals with chronic conditions like epilepsy. In order to help individuals living with epilepsy achieve seizure control with the fewest side effects possible, specialists must not be tied down by new administrative burdens and they must be adequately reimbursed for the amount of time spent evaluating, diagnosing, and treating their patients. For people living with epilepsy, inadequate or untimely care can result in breakthrough seizures, accidents, injury, or even death.

The Epilepsy Foundation commends the intentions behind this proposal, but we urge you to consider the needs of individuals living with complex conditions like epilepsy and how these changes will affect the quality of care they receive, and their access to it. We appreciate your consideration of our concerns. Please do not hesitate to contact Abbey Roudebush, Government Relations Manager, at 301-918-3784 or [aroudebush@efa.org](mailto:aroudebush@efa.org) with questions or follow up.

Sincerely,

A handwritten signature in black ink that reads "Philip M. Gattone".

Philip M. Gattone, M.Ed.  
President & CEO  
Epilepsy Foundation