Dr. John McInnes
Acting Director, Division of Practitioner Services
Centers for Medicare & Medicaid Services
Department of Health and Human Services
P.O. Box 8013
Baltimore, MD 21244-8013

Dear Dr. McInnes:

The National Academy of Elder Law Attorneys (NAELA) strongly supports the CMS proposal to pay for two new codes under the Physician Fee Schedule:

- CPT code 99497 (Advance care planning including the explanation and discussion of advance directives such as standard forms (with completion of such forms, when performed), by the physician or other qualified health professional; first 30 minutes, face-to-face with the patient, family member(s) and/or surrogate); and
- an add-on CPT code 99498 (Advance care planning including the explanation and discussion of advance directives such as standard forms (with completion of such forms, when performed), by the physician or other qualified health professional; each additional 30 minutes).

Per your further request for comment, we also support the payment for advance care planning as an optional element, at the beneficiary’s discretion, as part of the annual wellness visit (AWV) under section 1861(hhh)(2)(G) of the Act.

NAELA was founded in 1987 as a professional association of attorneys who are dedicated to providing legal advocacy, guidance, and services to enhance the lives of people with special needs and people as they age. NAELA embraces the principle that good health care decision-making requires a meaningful, ongoing process of communication among patient, family, and health care provider regarding present and future health care decisions, shaped primarily by the patient’s needs, values, and goals for how the individual wishes to live throughout life and as life’s end approaches.

Health care providers cannot know and honor patient’s values and wishes unless these care planning conversations take place. Incentives in Medicare right now work against focusing time on meaningful care planning discussions. The proposed codes will have the effect of acknowledging the critical importance of those conversations and providing at least a modest incentive to engage in them by reimbursing for the real time it takes to implement.
The Institute of Medicine in its recent report, *Dying in America*, \(^1\) supports this view, finding that:

Open, clear, and respectful communication between health care professional and patient is a precondition for effective advance care planning. It also is critical to developing a therapeutic relationship and negotiating and carrying out a treatment plan. \(^2\)

The report also noted that physician “time constraints and distractions” were one of the core obstacles to effective clinician-patient communication needed for advance care planning. \(^3\)

Instituting payment codes for these discussions will help overcome that barrier. Regarding the timing of these discussions, the IOM report proposed a “Life-Cycle Model of Advance Care Planning” in which the discussion and outcomes of the discussion change according to lifetime experiences and health changes. \(^4\) This model incorporates advance care into primary care, as well as advanced care, and supports our recommendation that CMS consider including advance care planning as an optional component of the Medicare annual wellness visits.

Finally, critical to meaningful implementation of these codes is training and quality assurance. Accordingly, we urge CMS to work with professional societies and other organizations, including the National Quality Forum and the Agency for Healthcare Research and Quality to establish quality standards for clinician-patient communication and advance care planning and to tie such standards to reimbursement.

NAELA appreciates this opportunity to provide input to the proposed physician fee schedule and stands ready to assist CME in advancing the goals of person-centered care.

Sincerely,

Shirley B. Whitenack, Esq.
President, National Academy of Elder Law Attorneys

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\(^1\) Institute of Medicine, *DYING IN AMERICA: IMPROVING QUALITY AND HONORING INDIVIDUAL PREFERENCES NEAR THE END OF LIFE*, National Academy of Sciences, 2014.

\(^2\) *Id.*, at 3-31.

\(^3\) *Id.*, at 3-33.

\(^4\) Institute of Medicine, *supra* n. 1, at 3-52 to 3-54.