

## Committee Bylaws

### **Physician-Focused Payment Model Technical Advisory Committee**

**Approved and adopted as revised by PTAC on October 4, 2019.**

The following Bylaws and Operating Procedures (“Bylaws”) will govern the operations of the Physician-Focused Payment Model Technical Advisory Committee (the Committee).

#### **Section I: Purpose.**

The purpose of the Committee is to:

- A. Review proposals submitted by individuals and stakeholder entities for physician-focused payment models (PFPMs); and
- B. Provide comments and recommendations to the Secretary of Health and Human Services (the Secretary) regarding whether each proposal meets criteria for PFPMs established by the Secretary.

#### **Section II: Authority.**

The Committee was created by Congress at section 101(e)(1) of the *Medicare Access and CHIP Reauthorization Act of 2015* (MACRA), and is subject to the Federal Advisory Committee Act (FACA), as outlined in its Charter, filed with the Congress on January 5, 2016.

#### **Section III: Committee Structure and Scope.**

The Committee shall be structured and operate in accord with its Charter.

#### **Section IV: Role of Committee Officials and Members.**

- A. **Designated Federal Officer (DFO).** Consistent with the duties of the DFO specified in 41 CFR Part 102-3.120 and the Committee’s charter, the DFO shall:
  - 1. approve or call all meetings of the Committee and subcommittees;

2. approve Committee meeting and subcommittee agendas. The DFO will consult with the Chair, Vice Chair, and Committee members prior to final approval of the agendas;
3. attend all meetings;
4. adjourn Committee and subcommittee meetings when the DFO determines such adjournment is in the public interest;
5. chair meetings of the Committee in the absence of the Chair and Vice Chair;
6. ensure the preparation of the minutes of all meetings of the Committee's deliberations, including any subcommittee activities;
7. maintain official Committee records and records of all meetings;
8. prepare and manage all reports, including the annual report as required by FACA; and
9. designate a 'DFO alternate' to serve in the role of DFO when the DFO is unable to attend a scheduled Committee or subcommittee meeting.

**B. Committee Chair.** The Committee Chair shall:

1. Work with the DFO and Vice Chair to:
  - a. identify and prioritize issues to be addressed by the Committee,
  - b. schedule meetings as necessary to carry out the work of the Committee, and
  - c. develop proposed agenda items for Committee meetings with input from the Committee Members;
2. Preside at and conduct all Committee meetings in accord with the published agenda. In the absence of the Chair, the Vice Chair will serve as Chair. In the absence of the Chair and Vice Chair, the Chair will appoint either a Committee member or the DFO to preside and conduct the meeting in accord with the published agenda;
3. Ensure that all rules of order and conduct are maintained during each session;
4. Call on individuals for opinions and comments, terminate any discussion which is felt to be unnecessary, and call for a vote, if required or requested by Committee Members;
5. Manage public participation during the open portion of meeting;
6. Certify the accuracy of the minutes of each Committee meeting within 90 days after the meeting has been held; and
7. Appoint Committee Members to Subcommittees as needed to efficiently carry out the work of the Committee.

**C. Vice Chair.** The Committee Vice Chair shall:

1. Work with the Chair and DFO to:
  - a. identify and prioritize issues to be addressed by the Committee;
  - b. schedule meetings as necessary to carry out the work of the Committee, and

- c. develop proposed agenda items for Committee meetings with input from the Committee members; and
2. In the absence of the Chair, carry out the duties detailed in Section IV. B.2-7 above.

**D. Committee Members.** Committee members shall:

1. Serve as a source of independent expertise and advice on matters addressed by the Committee as described in the Committee charter;
2. Make every effort to attend scheduled meetings of the full Committee in their entirety and, as appropriate, any meetings of Subcommittees of which he/she is a member; and notify the DFO or other designated official, well in advance, of any changes in personal schedule that may prevent his/her presence at all or part of a scheduled meeting;
3. Review required material before meetings to allow effective discussion, commenting, and voting on issues brought before the Committee;
4. Make recommendations on proposals brought to the Committee in the manner prescribed by the Committee;
5. Serve on Subcommittees at the request of the Chair or Vice-Chair;
6. Read, understand and adhere to provisions related to conflicts of interest, ethics, and confidentiality and, as appropriate, complete necessary forms relating to these areas;
7. Protect and maintain as confidential any privileged information;
8. Refrain from discussing outside of the Committee meetings information obtained during any closed sessions; and
9. Complete necessary paperwork to ensure compensation for approved travel.

**Section V: Ethics.**

**A. Background.** Members typically hold positions and are professionally involved with many entities and organizations other than PTAC. Their selection to serve on PTAC is based in substantial part on the developed expertise they bring from their individual professions and experiences. MACRA specifies, “The Membership of the Committee shall include individuals with national recognition for their expertise in physician-focused payment models and related delivery of care.” MACRA also permits some members of the Committee to be providers of services or suppliers or representatives of providers of services or suppliers. Therefore, it is anticipated that some members may have been involved in the development of proposed PFPMs or may be affected by proposed PFPMs if approved.

Viewpoint biases that flow from diversity of expertise are inevitable and integral to the design of advisory committees. Viewpoint biases are naturally shared in the course of deliberation and are themselves a force for collective balance in that they counter the dominance of any one perspective. However, biases driven by opportunities for financial

gain or other personal advantage are not necessarily apparent and, rather than fulfilling the statutory mandate of the Committee, risk undercutting it. Therefore, members agree that both actual and perceived conflicts of interest should be avoided. Members agree that the process should not be perceived as being “biased” as a result of a member’s organizational affiliation or contractual arrangements.

Members shall comply with all applicable laws and regulations. As directed by MACRA, members shall disclose financial and other potential conflicts of interest in accordance with the system for public disclosure developed by the Comptroller General. Additionally, although the Committee has been instructed that they are not Special Government Employees, the Committee has decided to adopt conflict-of-interest policies and procedures similar to those of other advisory committees and commissions to the extent practicable.

**B. Guiding Principles.** The following agreed upon principles underlie the Committee’s conflict-of-interest policies and procedures. These principles will guide members as they make disclosures and recusal determinations.

1. Members should not participate in the Committee’s review of their own work.
2. While serving on PTAC, members should not accept offers to engage as technical advisors on models that are intended for submission to PTAC.
3. Members should not participate in any particular matter before the Committee that could directly and predictably affect their personal financial interest.
4. In general, members can participate where a conflict of interest arises from an employment or consulting arrangement as long as the matter under discussion will not have a special or distinct effect on the individual or their organization other than as part of a class.

**For example:** an oncologist employed by a large academic medical center in the Midwest is appointed to serve on the Committee. A small oncology practice in New England submits a proposal to PTAC to change the way that Medicare pays for oncology services. The oncologist may participate in the Committee’s review of the proposal because her employer would only be affected by the proposal as part of the class of all oncology care providers.

5. There may be circumstances which, although not constituting a financial conflict of interest, may raise questions regarding a member's impartiality. Members should apply the following rule of thumb: Members should not participate if a reasonable individual would view there to be a conflict of interest or an inability to remain impartial.

**C. Disclosures.** Disclosures assist members with recusal determinations. Having a disclosure does not necessarily mean that a member has a conflict of interest or inability to remain

impartial.

1. If a member believes that he or she may have a conflict of interest or partiality with respect to a matter to be addressed by the Committee, the member should disclose it.
2. Regardless of whether a member believes that he or she may have a conflict of interest or partiality with respect to a matter to be addressed by the Committee, he or she should disclose the following:
  - a. Any role the member has played in the development of a proposal, a proposed PFPM, or a similar model;
  - b. Any prior personal or professional relationship with the person(s) or organization(s) submitting a proposal;
  - c. Any likely impact that the Committee's disposition on a proposal could have on the member or that the proposed PFPM could have on the member if approved; and
  - d. Any reasons that the public or the person(s) or organizations(s) submitting a proposal might have concerns about the member's ability to remain impartial.
3. Disclosures should be made to the Committee in writing prior to participating in any Committee work related to the matter.
4. During each meeting, members shall read out their written disclosures on any proposals to be reviewed, deliberated, and/or voted on by the Committee; any decisions with respect to members' participation shall also be read out.

#### **D. Recusal Determination.**

1. The Committee shall determine on a case-by-case basis whether a member should be recused. The Committee shall discuss with the member his or her disclosures and/or any additional information which other members might raise. Afterwards, he/she shall:
  - a. have the opportunity to voluntarily recuse himself or herself with respect to the matter at issue, or
  - b. leave the room or call while the recusal determination is voted upon.
2. Committee decisions described above shall be made by polling at a meeting or administrative session (or, if necessary, by email). Committee decisions shall be made by a vote by all members in attendance. The Committee's decision shall be that representing at least a two-thirds supermajority of votes of members in attendance.

3. The Committee's review of disclosures does not relieve members of their ongoing responsibility to be mindful of the influence their interests may exert on their performance of Committee functions.

#### **E. Recused Members.**

1. Whether a member voluntarily recuses himself or herself or is recused based on the finding of the Committee, that member:
  - a. Shall not serve on the Subcommittee reviewing the proposal.
  - b. Shall not participate in the review, deliberation, or voting on the matter from which he or she is recused.
  - c. Shall be present at meetings to read his/her disclosure but shall leave the table (or the room if the member prefers) while the Committee is reviewing, deliberating, and voting on a proposal.
  - d. Shall not provide oral or written input on the report to the Secretary.
  - e. Shall not try to influence the Committee directly or indirectly on matters from which they are recused.
  - f. Shall not express opinions that would influence the Committee's position on matters from which they are recused.
  - g. Shall not come before the Committee to advocate for a proposal, even if fully recused.
2. When Committee work involves matters for which a member has been recused, these matters may be intertwined with other work being discussed. Other members shall be informed/cognizant of a particular member's disclosure and recusal and shall not ask the member to provide views on matters for which the member has been recused.
3. During Committee/subcommittee meetings or administrative sessions the chair/Subcommittee lead is responsible for ensuring that the above procedures are implemented properly.

#### **Section VI: Communications.**

- A. Though not explicitly constrained to do so by the enabling legislation, the Committee has historically functioned as a collegial body, focusing the members' disparate views into a common position. For this reason, it is inappropriate for an individual member to attempt to interpret Committee positions or actions, except as authorized by the Committee and specifically with regard to proposals reviewed by the Committee.

Except as noted below, individual members are always free, as individuals, to interact and communicate with other parties. It should always be clear that the member is not representing the Committee and is functioning as an independent expert/entity. It is inappropriate for a member to use the latitude provided in this paragraph to undermine a declared Committee position.

- B.** Where requests for interpretation of PTAC positions are received, judgment should be used. Requests from Congress should normally be honored by referral to the Chair and Vice Chair. If an individual member is asked for an opinion, the member should respond, but with emphasis on the fact that the individual members do not speak for the Committee. Requests from the media require more circumspection. The guiding principle is that a member should not undermine or reinterpret a Committee position, but is under no obligation to profess agreement with the Committee majority. The right to disagree does not imply the right to reinterpret.
  
- C.** To the extent that individual members engage in activities and communications outside of but related to the work of the Committee, and which could be inadvertently mistaken for representing the work or opinion of the Committee, the Committee adopts the following expectations:
  - 1. Members who have prepared papers, presentations, and other media that reference PTAC or proposals submitted to PTAC should share them with the full Committee sufficiently in advance of their release such that revisions could be made in response to comments from the Committee if the member chooses to make such revisions, and Committee members should be given at least 48 hours to respond with suggestions or express concerns on PTAC-related content. Such content shall include a disclaimer that the member is not representing the Committee.
  - 2. Members who are recused from a given proposal shall also include a disclaimer noting their recusal on the proposal.
  
- D.** Except for discussions taking place as part of the Committee's or Subcommittee's review of a proposal, members shall refrain from discussing with a submitter:
  - 1. The submitter's proposal (or information related to the proposal) that is pending submission or has been submitted to the Committee, unless the Member has announced to the submitter and the Committee his or her recusal from Committee and Subcommittee work on the proposal.
  - 2. The Committee's processes surrounding the Committee's receipt, review, deliberation and voting on the submitter's proposal that is pending submission to the Committee or has been submitted to the Committee.

**Section VII: Committee Meetings:** The Committee will meet as often as necessary to timely complete its work. Meetings will be called by the DFO in consultation with Committee Chair and Vice Chair and operate as follows:

- A. Quorum.** No meeting shall be held in the absence of a quorum. A quorum is a majority of the Committee's appointed membership. (The quorum is six members if all eleven members have been appointed.)
- B. DFO attendance.** The DFO or the alternate DFO designated by the DFO must be present at each Committee meeting.
- C. Agenda.** Each meeting of the Committee shall be conducted in accordance with an agenda approved by the DFO. The DFO will distribute the agenda to the Members prior to each meeting and will publish an outline of the agenda with the notice of the meeting in the Federal Register. Items for the agenda may be submitted to the DFO and/or the Chairman by any member of the Committee.
- D. Minutes and Records.** The DFO will prepare minutes of each meeting and will distribute copies to each Committee member. Minutes of open meetings will be available to the public upon request. Minutes of closed meetings will also be available to the public upon request, subject to the withholding of matters about which public disclosure would be harmful to the interests of the Government, industry, or others, and which are exempt from disclosure under the Freedom of Information Act (FOIA). The minutes will include a record of the persons present (including the names of Committee members, names of staff, and the names of members of the public from whom written or oral presentations were made) and a complete and accurate description of the matters discussed and conclusions reached, and copies of all reports received, issued or approved by the Committee. All documents, reports, or other materials prepared by, or for, the Committee constitute official government records and must be maintained according to United States General Services Administration policies and procedures governing FACA committees.
- E. Committee Deliberations.** Committee deliberations on PFPs, evidence pertaining to such models and proposals, and comments and recommendations regarding such proposals including whether such models meet criteria established by the Secretary for PFPs, shall be open to the public, except where a closed or partially-closed meeting has been determined proper and consistent with the exemption(s) of the Government in the Sunshine Act, 5 U.S.C. 552b(c), as the basis for closure.

**F. Committee Decision-Making.** Committee decision-making (other than that described in section V, B above, on Ethics) will include both decisions on recommending a PFPM model to the Secretary, and other decisions which will be considered procedural decisions.

1. Committee decisions on recommendations to be made to the Secretary shall be made in accord with the procedures established by the Committee regarding proposal review.
2. Other procedural decisions will be made by the Chair first seeking to determine if consensus exists on the question under discussion. If consensus does not exist, the Chair will request a motion for a vote. Any member, including the Chair, may make a motion for a vote. No second after a proper motion will be required to bring any issue to a vote. If a quorum exists, a majority vote of the members present will be sufficient to approve a motion.

**G. Openness.** In compliance with the provisions of the Federal Advisory Committee Act (FACA), unless otherwise determined in advance, all meetings of the Committee will be open to the public and follow relevant policies and procedures of FACA as specified in the Code of Federal Regulations at 41 CFR Parts 101-6. All materials brought before, or presented to, the Committee during the conduct of an open meeting, including the minutes of the proceedings of an open meeting, will be available to the public for review no later than seven days after the meeting.

Members of the public may attend any meeting or portion of a meeting that is not closed to the public and may, at the determination of the Chair or acting Chair, offer oral comment at such meeting. Members of the public may be asked to preregister for the meeting and reasonable accommodations will be provided to those members of the public needing such accommodations. If the number of meeting registrants exceeds the seating capacity of the meeting location, a wait list will be created and other options such as a teleconference line may be provided. The Chair or DFO may decide in advance to exclude oral public comment during a meeting, in which case the meeting announcement published in the Federal Register will note that oral comment from the public is excluded and will invite written comment as an alternative. Members of the public may submit written statements to the DFO at any time.

**H. Closed Meetings.** Meetings of the Committee will be closed only in limited circumstances and in accordance with applicable law. In addition, requests for closed meetings must be approved by GSA's Office of General Counsel (OGC) 30 days in advance of the session. Where the DFO has determined in advance that discussions during a Committee meeting will involve matters about which public disclosure would be harmful to the interests of the government, industry, or others, an advance notice of a closed meeting, citing the applicable exemptions of the Government in the Sunshine Act (GISA), will be published in the Federal Register. The notice may announce the closing of all or just part of a meeting. If, during the

course of an open meeting, matters inappropriate for public disclosure arise during discussions, the Chairman, Acting Chair, or DFO will order such discussion to cease and will schedule it for closed session. Notices of closed meetings will be published in the Federal Register at least 15 calendar days in advance.

- I. Subcommittees.** Subcommittees may be established with the approval of the Secretary of HHS or designee to address specific issues. Subcommittee members will be composed of Committee Members. A majority of the appointed Subcommittee members shall constitute a quorum and no Subcommittee shall meet unless a quorum of the Subcommittee is present. The work of the Subcommittees will be directed by the Chair. Subcommittees may convene or communicate in person or via any combination of teleconference, videoconference, or email. Subcommittees will make their recommendations to the full Committee for deliberation; no action by a Subcommittee will be considered an action by the Committee unless it has been approved by the full Committee. The DFO or the alternate DFO designated by the DFO must be present at each subcommittee meeting. If simultaneous subcommittee meetings are to be held, each subcommittee shall have a DFO or alternate DFO in attendance.

### **Section VIII: Staff Support**

The Office of the Assistant Secretary for Planning and Evaluation (ASPE) of the Department of Health and Human Services is responsible for the provision of technical and operational support for the Committee, which may occur through the use of a contractor. The Office of the Actuary of the Centers for Medicare and Medicaid Services shall provide actuarial assistance to the Committee as needed.

### **Section IX: Amendments**

These Bylaws may be amended as needed by a vote of the members of the Committee. A simple majority vote in favor of amending the bylaws shall constitute approval of the amendment.