

February 12, 2015

Marilyn B. Tavenner  
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, D.C. 20201

Dear Administrator Tavenner:

The undersigned organizations are writing to request that the Centers for Medicare & Medicaid Services (CMS) increase patient protections in the Medicare Advantage (MA) plan offerings in the forthcoming draft 2016 Call Letter. The 2015 Call Letter reflected a willingness by CMS to make changes to requirements regarding adequate notice to patients about provider networks in these plans and offer options for seniors who have had changes imposed upon them during the benefit year. While we appreciate your attention to this matter, we believe that more must be done to provide potential and existing enrollees with adequate information to make decisions about MA plans.

Over the past two years, physicians throughout the country have been removed “without cause” from MA plan networks during the benefit year, which needlessly disrupts patients’ care. Allowing plans to lock seniors into a plan that meets their needs and then removing physicians from their network, disrupting their care, should not be permitted. Further, numerous studies<sup>1, 2, 3, 4</sup> have indicated that network directories provided to patients when selecting a plan inflate the number of physicians available to them through the plan, which is misleading to seniors when they are trying to make an informed decision about their health care needs. Therefore, in the 2016 Call Letter, we urge you to: (1) prevent no-cause terminations throughout the plan year; and (2) ensure that physician network directories are accurate, up-to-date, and provide the information that patients need to make informed choices during the annual open enrollment period. Specifically, these network lists need to be heavily revised for accuracy and be readily available to beneficiaries. This will allow MA enrollees to select a plan with a physician network that meets their needs. It will also give MA enrollees security in knowing that their physicians cannot be dropped from the network during the benefit year.

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<sup>1</sup> *JAMA Dermatology*, The Accuracy of Dermatology Network Physician Directories Posted by Medicare Advantage Health Plans in an Era of Narrow Networks Jack S. Resneck Jr, MD; Aaron Quiggle, BA, MS; Michael Liu, BS; David W. Brewster, BA, December 2014, Vol. 150, No. 12.

<sup>2</sup> *California Department of Managed Care*, Non-Routine Survey of Anthem Blue Cross.

<sup>3</sup> *California Department of Managed Care*, Non-Routine Survey of Blue Shield of California.

<sup>4</sup> *Psychiatric Services In Advance*, Availability of Outpatient Care From Psychiatrists: A Simulated-Patient Study in Three U.S. Cities, January 2015, Vol. 66, Issue 1.

In addition to prohibiting MA plans from dropping physicians during the benefit year, we have several suggestions that we believe are necessary to provide fairness to seniors and also should be included in the 2016 Call Letter.

**Continuity of Care Provision.** CMS should not allow MA plans to “narrow their networks” during the open enrollment period, and if a network is narrowed mid-year, should allow beneficiaries to stay with their physicians at the in-network benefit level until the next open enrollment period, upon the physician’s consent. These requirements protect beneficiaries without causing undue hardship to MA plans. When physicians are terminated “without cause,” there is no reason to assume this was due to quality of care concerns.

**Network Adequacy Certification.** Before any MA plan is allowed to narrow its network, CMS should require the health insurer to document the resulting network, including the remaining specialists and subspecialists as well as primary care physicians, and certify its accuracy. Health insurers should not be able to rely on after-the-fact complaints and appeals as the mechanism for assessing network adequacy, nor should they be able to take advantage of beneficiaries’ rights to transfer to original Medicare or another MA plan with impunity. The provision of health insurance is not simply a calendar year transaction, particularly for those with chronic conditions or acute conditions that continue beyond December 31st.

**Directory Accuracy.** CMS should provide patients an opportunity to disenroll and enroll in a new plan if they have selected a network based on incorrect directory information. As acknowledged through multiple studies recently conducted by academic physicians, the California Department of Insurance, and the Department of Health and Human Services Office of Inspector General,<sup>5</sup> network directories are frequently inaccurate and inadequate for patients to properly determine who is in-network. Patients should be able to rely on the information in a plan’s provider directory to make informed decisions about their health insurance. If a patient determines that he or she selected a plan because a physician with whom they have an existing relationship was inaccurately listed as being in-network, that patient must have an opportunity to select a new plan with a network that includes their physician.

**Patient Notification.** CMS should require that MA plans make a good faith effort to provide a written notice of a termination to all covered patients who have seen that physician on a regular basis. Notification should be provided to any patient who has seen that physician in the past one (1) year or in the time the patient has been with the insurer. CMS should also ensure that new patients to the plan are properly notified of changes in the network that result in the removal of a physician with whom they have a pre-existing patient-physician relationship.

**Look-Back Studies.** There is concern that narrowing of networks may be a covert methodology to eliminate coverage for sick and elderly patients. To address this, CMS should conduct a “look-back” study to evaluate whether beneficiaries who transferred to other MA plans or back to the original Medicare program after United Healthcare or other plan’s “network narrowing” were disproportionately sicker and/or older.

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<sup>5</sup> *Health and Human Services Office of Inspector General, Access to Care: Provider Availability in Medicaid Managed Care.*

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**Network Adequacy Assessment.** The formula used by CMS to determine network adequacy is flawed and requires increased transparency. CMS evaluated network adequacy using a physician-to-covered-persons ratio analysis but does not appear to assess the Full-Time Equivalent (FTE) of those physicians. Physicians frequently practice part-time in multiple locations, thereby distorting the physician-to-covered-persons ratio. CMS should require that the insurer calculate the FTE of physicians so that the physician-to-covered-person ratio is properly analyzed.

We urge CMS to ensure that MA plans provide adequate networks, that frail elderly patients are not being disproportionately discriminated against when plans terminate physicians, and that they continue to have an adequate network available. When CMS is assessing a significant change in network we urge a thorough assessment of its impacts, particularly the repercussions for patients. Thank you for your consideration.

Sincerely,

American Academy of Allergy, Asthma & Immunology  
American Academy of Dermatology Association  
American Academy of Family Physicians  
American Academy of Neurology  
American Academy of Ophthalmology  
American Academy of Otolaryngic Allergy  
American Academy of Otolaryngology—Head and Neck Surgery  
American Academy of Pediatrics  
American Association of Clinical Endocrinologists  
American Association of Neurological Surgeons  
American College of Cardiology  
American College of Mohs Surgery  
American College of Osteopathic Surgeons  
American College of Physicians  
American College of Radiology  
American College of Rheumatology  
American Medical Association  
American Osteopathic Academy of Orthopedics  
American Osteopathic Association  
American Psychiatric Association  
American Society for Clinical Pathology  
American Society for Dermatologic Surgeons Association  
American Society of Cataract and Refractive Surgery  
American Society of Hematology  
American Society of Retina Specialists  
American Urological Association  
College of American Pathologists

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Congress of Neurological Surgeons  
Heart Rhythm Society  
Medical Group Management Association  
Society for Cardiovascular Angiography and Interventions