

November 6, 2013

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, DC 20201

**Re: Medicare Advantage Program—Systematic Failure to Provide Patients Adequate, Accurate, and Reliable Information on Modifications to Network and Lack of Transparency on Network Adequacy and Physician Due Process**

Dear Administrator Tavenner:

On behalf of the undersigned physician organizations, we urge the Centers for Medicare & Medicaid Services (CMS) to take immediate action to ensure that Medicare beneficiaries participating in Medicare Advantage (MA) plans have accurate and reliable information to make health insurance elections during the 2014 Open Enrollment period, and to address a lack of MA sponsor transparency on network adequacy. The American Medical Association (AMA) and a number of state medical associations and national medical specialty societies have been contacted by hundreds of physicians indicating that they have been terminated from 2014 MA plan networks of UnitedHealthcare (United) and other insurers in select markets. The terminations are “without cause” and have been timed in a manner that undermines the accuracy and reliability of the information Medicare beneficiaries are relying upon in order to make important health care decisions for 2014 health insurance coverage. The timing and process used to communicate the terminations and modifications to the networks are not consistent with CMS guidance and regulations.

Background

MA sponsors in certain markets have reduced physician networks in effort reportedly to “optimize” the network. To our knowledge in at least 11 states, MA sponsors have sent mass letters to physicians informing them that they have been dropped from one or more of the insurer’s MA products. While there are different versions of the notifications, in general the letters state that the network terminations are effective in early 2014, after the close of the 2014 open enrollment period which concludes in December 2013.

Patient Rights Undermined and Access Denied

The timing of the network modifications, the lack of accurate and reliable information, and lack of network transparency has significant negative ramifications for the Administration’s goal of reducing fragmentation of patient care. Indeed, there is widespread evidence that the proposed modification will disrupt long-established patient-physician relationships, interfere with existing physician referral networks, and undermine emergency department coverage in many hospitals. Both the continuity and

coordination of care will be negatively affected and treatment for certain types of care commonly provided by a very limited number of sub-specialists may no longer be available within the network.

The MA plan sponsors have not provided adequate notice in advance of the Open Enrollment period to patients that their physician(s) will no longer be a part of the plan's network next year. Notices to many patients apparently were sent by bulk mail only weeks before Open Enrollment began and in at least one state, it appears that beneficiaries have yet to receive any direct notice that their physician is being dropped from their plan. Those who called help lines to find out if and when their physician was being terminated report that they received incomplete and conflicting information. The lack of notice appears to be an ongoing failure as there is no indication that during the Open Enrollment period, plans have undertaken any additional initiatives to ensure that patients are aware of the changes in their network and rules. We also understand that plan websites have contained information on physician participation that has been inaccurate for part of the Open Enrollment period and it is still not clear that plans have informed beneficiaries who made an election based on inaccurate information on the public websites. In a few short months—after Open Enrollment has ended—many patients in MA plans will learn that they are unable to receive medical care from a physician with whom they have an established relationship.

Unfortunately, it appears that patients—intentionally or unintentionally—are being misled about whether their physicians have been terminated and what options are available if they wish to retain their current physician. Initially, some plans ceased identifying physicians as being in the network in public materials, but then subsequently added them back only to again delete the physicians from the public materials all during the ongoing Open Enrollment period. Some materials also imply that patients will be forced to pay the full charge of any physician dropped when in fact the patient could continue with that physician on an out-of-network basis with a higher co-payment. There is widespread confusion among physicians and patients where MA plan sponsors have waited to transmit these notifications in the period just prior to and during 2014 Open Enrollment.

Furthermore, there are reports that some MA plan sponsors issued the terminations effective February 1, 2014, which would reportedly relieve the plans of certain requirements designed to protect the rights of patients to make elections based on whether or not their treating physician(s) are part of a MA plan as of January 1, 2014. While these MA plans may maintain that they have complied with federal MA regulations and guidance, it remains to be seen whether these decisions were made in order to purposefully mislead Medicare beneficiaries into believing their physician would remain in the plan. At a minimum, to the extent CMS concludes that terminations were set for February 1, 2014 instead of January 1, 2014, this raises serious questions that CMS and state regulators should address.

Finally, the above issues and concerns have taken on an added dimension for underserved and minority populations who will be disparately impacted. Specifically, the size of the networks has been reduced to the point that, despite MA requirements, beneficiaries may not be able to access culturally competent care including care for those with limited English proficiency and diverse and cultural and ethnic backgrounds. In addition, beneficiaries with disabilities are likely to be adversely impacted based on the geographic distances that they will need to travel to obtain physician services. This has similar implications for beneficiaries with limited incomes. Because the patient and physician notification has not been handled in a way that ensures patients are aware of their treating physician's participation status, the adequacy of the network becomes an extremely important matter with regard to patient access and continuity of care.

### Lack of Transparency

Some of the MA plans that have reduced their networks have failed to provide a timely, transparent and clear means for physicians to challenge their terminations from the network. The MA terminations are “without cause.” Many physicians have been provided limited, if any, information on how to appeal the

decision. Some have received perfunctory denials of their appeal to remain in the network. Others are still waiting for a response, thereby leaving their status in limbo and creating a quandary for patients facing an Open Enrollment deadline.

Physician termination notices also were sent in unmarked envelopes as bulk mail and, in many instances, were mistakenly disregarded by busy practices. As a result, many physicians do not know and have not been able to determine whether they are still in plans. Also, although required by its contract with Medicare, there are reports that some MA plan sponsors are not providing the affected physicians with written notice of the reasons for the action that includes, among other things, the standards and profiling data used to evaluate the physician and the numbers and mix of physicians needed by the MA organization. Efforts to obtain the standards and profiling data as well as the mix of physicians needed by these MA plan have not been successful despite repeated requests by state medical societies.

Physicians, as a result, have been denied the opportunity to appeal the action because the basis for the determination is not clear. The deadlines for the appeals will run without physicians having adequate information on which to file the appeal. The MA plans, in some instances, have indicated that these appeals are a mere formality. Furthermore, it is also not clear that these appeals will be heard by a panel of peers as required by Medicare.

#### Recommendations

The undersigned organizations strongly urge CMS to extend the MA open enrollment period and to require MA plan sponsors that have reduced their networks to immediately:

- 1) Provide and document that patients received actual and accurate notice of whether their current physicians will be in the 2014 network;
- 2) Ensure that patients know that they can retain their physician by choosing fee for service or by choosing a product with an out-of-network benefit if their plan provides one.
- 3) Provide physicians information needed to challenge network adequacy based on CMS regulations and extend the appeals deadline until physicians receive such information;
- 4) Provide information on how many patients have been impacted and which physicians to state medical societies and the AMA; and,
- 5) Direct plans to hold all terminations initiated just prior to or during Open Enrollment in abeyance for cost year 2014.

Finally, the undersigned organizations are requesting that CMS provide information on the extent to which the agency evaluated MA plan sponsor compliance with the Title VI of the Civil Rights Acts and Section 504 of the Rehabilitation Act when evaluating the network modifications. We are also interested in the extent to which consideration was given to the impact on low and moderate income beneficiaries of the network modifications.

American Medical Association  
American Academy of Allergy, Asthma and Immunology  
American Academy of Dermatology Association  
American Academy of Facial Plastic and Reconstructive Surgery  
American Academy of Neurology

American Academy of Ophthalmology  
American Academy of Otolaryngology-Head and Neck Surgery  
American Academy of Sleep Medicine  
American Association for Geriatric Psychiatry  
American Association of Oral and Maxillofacial Surgeons  
American Association of Orthopaedic Surgeons  
American Association of Neuromuscular & Electrodiagnostic Medicine  
American College of Allergy, Asthma and Immunology  
American College of Cardiology  
American College of Mohs Surgery  
American College of Occupational and Environmental Medicine  
American College of Osteopathic Surgeons  
American College of Phlebology  
American College of Physicians  
American Society of Retina Specialists  
American College of Rheumatology  
American College of Surgeons  
American Congress of Obstetricians and Gynecologists  
American Osteopathic Association  
American Psychiatric Association  
American Society for Dermatologic Surgery  
American Society for Gastrointestinal Endoscopy  
American Society of Anesthesiologists  
American Society of Cataract and Refractive Surgery  
American Society of Dermatopathology  
American Society of Echocardiography  
American Society of Hematology  
American Society of Nuclear Cardiology  
American Society of Plastic Surgeons  
American Society of Transplant Surgeons  
American Urological Association  
Heart Rhythm Society  
Infectious Diseases Society of America  
Joint Council of Allergy, Asthma and Immunology  
Medical Group Management Association  
National Medical Association  
Renal Physicians Association  
Society Cardiovascular Angiography and Interventions

Medical Association of the State of Alabama  
Arkansas Medical Society  
California Medical Association  
Connecticut State Medical Society  
Medical Society of the District of Columbia  
Florida Medical Association Inc  
Medical Association of Georgia

Hawaii Medical Association  
Indiana State Medical Association  
Kentucky Medical Association  
Louisiana State Medical Society  
Maine Medical Association  
MedChi, The Maryland State Medical Society  
Massachusetts Medical Society  
Michigan State Medical Society  
Minnesota Medical Association  
Mississippi State Medical Association  
Missouri State Medical Association  
Montana Medical Association  
Nebraska Medical Association  
Nevada State Medical Association  
New Hampshire Medical Society  
Medical Society of New Jersey  
New Mexico Medical Society  
Medical Society of the State of New York  
North Dakota Medical Association  
Ohio State Medical Association  
Oklahoma State Medical Association  
Oregon Medical Association  
Pennsylvania Medical Society  
Rhode Island Medical Society  
South Dakota State Medical Association  
Tennessee Medical Association  
Texas Medical Association  
Utah Medical Association  
Medical Society of Virginia  
Washington State Medical Association  
West Virginia State Medical Association  
Wyoming Medical Society