

April 6, 2020

The Honorable Demetrios Kouzoukas
Principal Deputy Administrator & Director
Centers for Medicare & Medicaid Services
Hubert H. Humphrey Building
200 Independence Avenue, S.W., Room 445-G
Washington, DC 20201

RE: CMS-4190-P, Contract Year 2021 and 2022 Medicare Advantage and Part D Proposed Rule, (Vol. 85, No.32), February 18, 2020.

Dear Principal Deputy Administrator Kouzoukas:

On behalf of our nearly 5,000 member hospitals, health systems and other health care organizations, our clinician partners – including more than 270,000 affiliated physicians, 2 million nurses and other caregivers – and the 43,000 health care leaders who belong to our professional membership groups, the American Hospital Association (AHA) appreciates the opportunity to comment on the Centers for Medicare & Medicaid Services' (CMS) proposed regulation regarding policy and technical changes to Medicare Advantage (MA) and Part D prescription drug program for Contract Years 2021 and 2022.

CMS proposes several operational and technical modifications to the requirements for health plans under the MA and Part D prescription drug programs for 2021 and later years. As such, the proposed rule addresses a number of areas of importance to hospitals and health systems, including those that sponsor MA plans. **The AHA supports CMS's efforts to provide plans with additional flexibilities to facilitate innovation under the MA program to meet the unique and complex needs of the Medicare population. We, however, have concerns regarding several proposals addressing network adequacy in the proposed rule.**

Provider networks are critical to ensuring beneficiary access to care, and when structured appropriately, can support improvements in quality and beneficiary experience of care. Integrated delivery systems have shown, for example, to achieve a number of these objectives through enhanced provider/plan communication, care



coordination and data sharing, and we have previously acknowledged how plans operated by such systems warrant unique consideration with respect to network adequacy rules. **However, the AHA strongly believes that the core MA network requirements must remain sufficiently strong to ensure beneficiary access to care and choice among providers, no matter their location, diagnosis or preference for in-person visits.** As such, we are concerned about several of CMS's proposed changes to loosen network adequacy standards and provide detailed comments on those proposed provisions below.

Network Adequacy Credit for Telehealth

CMS proposes to give MA plans a 10-percentage point credit for certain provider specialty types when they contract with telehealth providers in those specialties. Specifically, the proposed rule would permit a credit toward the percentage of beneficiaries meeting time and distance standards when telehealth benefits are offered in the following areas: dermatology, psychiatry, cardiology, neurology and otolaryngology.

The AHA is concerned that these proposed changes would weaken network adequacy standards for certain specialties when plans contract exclusively in some markets with these specialists for telehealth services. While CMS indicates this credit would apply only to select specialties that are well documented to have physician supply (or access) deficiencies (dermatology, psychiatry, cardiology, neurology and otolaryngology), it does not account for geographic variation in these deficiencies. As a result, this policy may unintentionally encourage plans to use telehealth services as substitutes for existing in-person services, even in areas where provider availability and beneficiary access are strong. It is essential that enrollees continue to have the choice to obtain in-person services where possible and that enrollees without access to the necessary technologies or those that prefer face-to-face encounters are not left without access. **Therefore, the AHA urges CMS to either refrain from implementing this provision or, alternatively, limit the 10-percentage point credit to only those counties with identified access deficiencies for these specialties.** In addition, if this policy is adopted in limited geographies, the AHA requests that CMS closely monitor plan use of telehealth services to ensure that beneficiary access to care and experience of care is not compromised.

Network Adequacy Credit in Areas with Certificate of Need (CON) Requirement

CMS proposes to award MA plans a 10-percentage point credit towards the percentage of beneficiaries residing within required maximum time and distance standards in a state with CON laws, or other "state imposed anti-competitive restrictions." **The AHA is concerned that CMS's proposal may hinder enrollee access to and choice of providers based on faulty assumptions regarding the impact of CON policies on the supply of providers.**

CMS, in the proposed rule, summarized the research literature to note that CON laws have resulted in either no reduction in health care costs or increased costs. The agency, therefore, concluded that the removal of CON restrictions would lead to better access to higher quality providers. According to the National Conference of State Legislatures, however, the effectiveness of CON programs continues to be a heavily debated topic with many states considering CON programs as one way to control health care costs and, moreover, increase access to care.¹ Other research suggests that most MA insurers already pay providers at or near the traditional Medicare fee-for-service (FFS) provider payment amounts, suggesting that CON laws do not result in higher average costs for MA plans.² CMS's policy appears to suggest that CON laws restrict provider supply, resulting in higher costs, at the expense of patient choice.

There is no evidence that CON rules have any bearing on whether health plans or enrollees have adequate provider choice, and, therefore, this policy appears to have no basis. In fact, CMS seems to contradict its own premise regarding the effect of CON on cost and access by allowing MA plans to further restrict beneficiary access in areas they purport already experience a shortage of available provider options. **In light of these concerns, the AHA encourages CMS not to adopt its proposal to provide a 10-percentage point credit toward maximum time and distance standards in CON states.**

In addition, CMS also proposes to provide the 10-percentage point credit in CON states in addition to the telehealth credit (10 percentage points) discussed above. As a result, some MA plans would be permitted a 20-percentage point credit towards time and distance standards that define network adequacy. A change of this magnitude would have significant adverse impacts on provider access and choice, particularly for enrollees residing in rural and other historically underserved areas.

Out-of-network Telehealth as Covered Basic Benefit

CMS solicits comment as to whether the agency should permit MA plans to offer additional telehealth benefits (ATBs) through out-of-network providers. The AHA shares CMS's commitment to identifying and implementing innovative approaches to enhancing communication and access to care for Medicare beneficiaries. However, we are concerned this proposal may have unanticipated impacts that may ultimately impede quality of care.

Specifically, we are concerned that MA plans may be unable to monitor the quality and performance of non-contracted providers as rigorously as network providers to ensure that quality of care is commensurate with MA program requirements and standards. **We strongly encourage CMS to reconsider its proposal to permit MA**

¹ <https://www.ncsl.org/research/health/con-certificate-of-need-state-laws.aspx>

² The Urban institute, "Why Do Medicare Advantage Plans Have Narrow Networks," Skopec, L, Berenson, R, Feder, J.; Nov. 2018 https://www.urban.org/sites/default/files/publication/99414/why_do_medicare_advantage_plans_have_narrow_networks.pdf

The Honorable Demetrios Kouzoukas
April 6, 2020
Page 4 of 4

plans to offer ATBs through out-of-network providers. MA plans would still be permitted to offer telehealth services with out-of-network providers as supplemental benefits.

The AHA appreciates your consideration of these recommendations. We look forward to continued engagement with CMS to ensure that the MA program works for patients and the providers who care for them. Please contact me if you have questions, or feel free to have a member of your team contact Molly Smith, vice president of coverage and state issues forum, at mollysmith@aha.org.

Sincerely,

/s/

Ashley Thompson
Senior Vice President
Public Policy Analysis and Development