January 14, 2019

Seema Verma
Administrator
Centers for Medicare and Medicaid Services
Department of Health and Human Services
Attn: CMS-2408-P
P.O. Box 8016
Baltimore, MD 21244-8013

RE: Medicaid Program: Medicaid and Children's Health Insurance Plan (CHIP) Managed Care (83 FR 57264, November 14, 2018).

Dear Administrator Verma:

The American Association of Nurse Practitioners (AANP), representing more than 248,000 nurse practitioners (NPs) in the United States, appreciates the opportunity to provide comment in response to the Medicaid and CHIP managed care proposed rule.

NPs are advanced practice registered nurses who are prepared at the masters or doctoral level to provide primary, acute, chronic and specialty care to patients of all ages and walks of life. Daily practice includes: assessment; ordering, performing, supervising and interpreting diagnostic and laboratory tests; making diagnoses; initiating and managing treatment including prescribing medication and non-pharmacologic treatments; coordinating care; counseling; and educating patients and their families and communities. NPs practice in nearly every health care setting including clinics, hospitals, Veterans Affairs and Indian Health Care facilities, emergency rooms, urgent care sites, private physician or NP practices (both managed and owned by NPs), nursing homes, schools, colleges, retail clinics, public health departments, nurse managed clinics, homeless clinics, and home health. NPs hold prescriptive authority in all 50 states and the District of Columbia. It is important to note that 86.6% of NPs are certified in primary care, the majority of whom see Medicare and Medicaid patients. NPs complete more than one billion patient visits annually.

CMS has requested comment on this proposed rule related to the Medicaid and CHIP managed care programs. Below we provide comment on provisions related to pass-through payments, network adequacy standards, appeals and grievances procedures, and continued flexibility for managed care organizations to increase access to necessary health care services.

Pass-Through Payments

CMS regulations regarding pass-through payments currently state they apply to hospitals, nursing homes and physicians. This proposed rule would authorize States to make pass-through payments for network hospitals, nursing facilities and physicians when a beneficiary is transitioning from fee-for-service to managed care, as long as certain enumerated criteria are met. We request that CMS change the

terminology from "physician" to "provider" to ensure that all healthcare providers, including nurse practitioners, that have patients meeting the requirements are eligible for the pass-through payments.

Network Adequacy Standards

For the purposes of determining network adequacy standards, CMS proposed to allow states to define "specialist" at their discretion. We request that CMS clearly instruct states that their definitions of specialist, and any network adequacy standards, must be consistent with the Medicaid Managed Care non-discrimination regulation which prohibits MCO's from discriminating against providers based on their licensure or certification.[1]

Appeals and Grievances

CMS is proposing to remove the requirement that a beneficiary's oral appeal be followed by a written, signed appeal. The rationale behind this decision is that many beneficiaries do not complete the written appeal and it is a barrier to beneficiaries exercising their appellate rights. We agree with CMS that the appeals and grievances process should be streamlined to reduce burden and confusion for beneficiaries. However, the written appeal does serve the purpose of ensuring that the beneficiary meant to file an oral appeal and creates a record of the appellate process. Thus, we request that if the written appeal requirement is removed, managed care organizations must clearly receive affirmation from the beneficiary that their intent is to file an oral appeal. Without obtaining this clear consent a beneficiary may inadvertently exhaust a level of appeal resulting in greater likelihood of claim and benefits denials.

Managed Care Organization Benefit Flexibility

We continue to encourage CMS to provide managed care plans with regulatory flexibility to structure their benefits as long as the services offered are no less in amount, duration and scope of services offered to fee-for-service patients.[2] For example, CMS could clearly recognize that an MCO may authorize nurse practitioners to certify and establish a patient's plan of care under the home health benefit without requiring a physician signature. This would increase access to patient care and is consistent with the principles that an MCO has the authority to create its own benefit structure as long as it is not more restrictive, or does not offer lesser benefits, than fee-for-service Medicaid.

This regulatory relief would assist plans in meeting Medicaid regulatory requirements related to availability and timely access to services[3], assurances of adequate capacity and services,[4] coordination and continuity of care,[5] and the patient's right to their provider of choice under 1902(a)(23)(A). This is also consistent with CMS' initiative to reduce regulatory red tape, and the White House Report on Reforming America's Healthcare System Through Choice and Competition[6] which recommended full practice authority nationwide for nurse practitioners. The Report highlighted the need for nurse practitioners to alleviate the primary care shortage and noted that unnecessary supervision and collaborative practice requirements raise the cost of APRN-provided services.[7]

[1] 42 CFR § 438.12.
[2] 42 CFR § 438.210.
[3] 42 CFR § 438.206.
[4] 42 CFR § 438.207.
[5] 42 CFR § 438.208.
[6] https://www.hhs.gov/sites/default/files/Reforming-Americas-Healthcare-System-Through-Choice-and-Competition.pdf.
[7] *Ibid., at pages 34-35.*

We thank you for the opportunity to comment on this proposed rule. We look forward to an ongoing dialogue to ensure NPs and their patients are equal participants in Medicaid and CHIP managed care programs. Should you have comments or questions, please direct them to MaryAnne Sapio, V.P. Federal Government Affairs, msapio@aanp.org, 703-740-2529.

Sincerely,

David Hebert
Chief Executive Officer