AMERICAN
SPEECH-LANGUAGE-
HEARING
ASSOCIATION

December 22, 2017

Seema Verma, MPH
Administrator, Centers for Medicare and Medicaid Services
Department of Health and Human Services
7500 Security Boulevard
Baltimore, MD 21244-1850

Dear Administrator Verma:

On behalf of the American Speech-Language-Hearing Association, I write to offer comments on the proposed rule entitled, "Contract Year 2019 Policy and Technical Changes to the Medicare Advantage, Medicare Cost Plan, Medicare Fee-for-Service, the Medicare Prescription Drug Benefit Programs, and the PACE Program."

The American Speech-Language-Hearing Association (ASHA) is the national professional, scientific, and credentialing association for 191,500 members and affiliates who are audiologists; speech-language pathologists; speech, language, and hearing scientists; audiology and speech-language pathology support personnel; and students.

This letter includes ASHA's comments regarding two areas:

1. Tightening the process by which an individual who becomes newly eligible for Medicare can be enrolled in a Medicare Advantage Plan by default.
2. Reversing a previously finalized requirement for Medicare Advantage providers to enroll via the Medicare enrollment process beginning January 1, 2019.

**Default/Passive Enrollment Opportunities for Medicare Advantage Plans**

Medicare Advantage (MA) plans are currently allowed to provide "seamless" continuation of coverage for individuals who are enrolled in other health plans offered by the MA organization, such as commercial or Medicaid plans. The continuation of coverage occurs by automatically enrolling them in that company's MA plan upon the beneficiary's initial eligibility for Medicare. In the proposed rule, the Centers for Medicare & Medicaid Services (CMS) notes that it has received ongoing complaints about this enrollment process despite initiating policies to prevent negative or unintended consequences of passive enrollment into MA plans (e.g., the MA plan has utilization limits on rehabilitative therapy services or a drug formulary that does not meet the patient's needs). CMS now proposes to limit this type of enrollment to dual eligible special needs plans (D–SNPs) that meet five criteria. Additionally, CMS proposes to establish a new and simplified "opt in" process, which would be available to all MA organizations for enrolling Medicaid or other non-Medicare plan members in its MA plan.

Overall, ASHA is supportive of CMS's efforts to limit the ways in which newly eligible Medicare beneficiaries are automatically enrolled in a MA plan without their knowledge. As structured, these proposals will allow Medicare beneficiaries to make educated decisions about their health care coverage. **ASHA encourages CMS to finalize the proposals to ensure informed consent prior to enrollment in MA plans**. We also encourage CMS to continue to monitor the negative and/or unintended consequences of default or passive enrollments used by MA plans.

**Medicare Enrollment of MA Providers**

In the 2016 rulemaking cycle, CMS finalized a proposal that required MA providers to enroll in fee-for-service (FFS) Medicare. However, in the proposed rule, CMS suggested that instead of requiring FFS enrollment, it would use the preclusion list to identify and exclude MA-only providers. CMS proposes to move to the preclusion list, rather than Medicare enrollment, because many MA-only providers had not enrolled in FFS Medicare. According to CMS data in the proposed rule, 933,000 MA providers are also enrolled as FFS Medicare providers, but approximately 120,000 MA-only providers have failed to enroll in FFS Medicare to comply with federal regulations.

ASHA has two concerns regarding CMS's proposal to use the preclusion list rather than require MA-only providers to enroll in FFS Medicare. First, based on CMS's estimates, approximately 10% of providers would be negatively impacted by a requirement to be enrolled in FFS Medicare. CMS does not disclose if losing 10% of providers would cause an access issue for Medicare beneficiaries or if there is some additional rationale to justify eliminating the requirement for enrollment. **Without additional justification, ASHA believes it would be inappropriate to remove the enrollment requirement at this time**.

Second, as validated by a Government Accountability Office (GAO) study published in 2015, CMS currently provides insufficient oversight of MA provider networks. According to the study, between 2013 and 2015, CMS only reviewed 1% of MA provider networks. Additionally, this review relied upon MA plan reported data, and there is no mechanism in place to assess the accuracy of the information submitted to CMS. Further, the GAO found that CMS does not require MA plans to routinely submit updated network information for review, but may only learn of adequacy issues through its broader oversight of plans through beneficiary complaints. Given these issues, FFS provider enrollment may provide a mechanism to assist CMS with ensuring the important beneficiary protection of network adequacy.

A challenge associated with FFS provider enrollment for MA-only providers is the CMS policy that would terminate a provider's enrollment in FFS Medicare if at least one claim is not submitted within a 12-month period. However, if a provider has no intention of treating FFS Medicare beneficiaries, then the provider would have to undertake the administrative burden of re-enrolling with FFS Medicare on an annual basis. **ASHA believes it would be helpful to identify a solution to address this issue. One recommendation is to modify the 855 enrollment form to allow a provider to indicate that he or she only intends to treat MA beneficiaries, thus eliminating the need for the provider to re-enroll.**

**Conclusion**
Thank you for the opportunity to provide comments on the proposed rule. ASHA looks forward to working with CMS to ensure that the MA program ensures access to appropriately qualified audiologists and speech-language pathologists. If you or your staff have any questions, please contact Sarah Warren, MA, ASHA's director of health care regulatory advocacy at swarren@asha.org.

Sincerely,

Gail J. Richard, PHD, CCC-SLP
2017 ASHA President