November 16, 2009

Charlene Frizzera
Acting Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Mail stop C5-11-24
7500 Security Boulevard
Baltimore, MD 21244

Dear Ms. Frizzera,

The undersigned organizations are writing to express our concerns and recommendations to remedy a new Medicare enrollment policy, under which Medicare will not pay claims for services when the referring or ordering physician or health care practitioner is not in the Provider Enrollment, Chain and Ownership System (PECOS) database.

Since October 5, 2009, hundreds of thousands of otherwise acceptable Medicare claims have been marked for nonpayment merely because physicians and other health care practitioners ordering or referring an item or service enrolled in Medicare before 2003 when the PECOS database was developed. Implementing this policy as scheduled will cut off access to care for millions of Medicare beneficiaries, interrupt reimbursement for legitimately provided items and services, interrupt care coordination, and add unfunded administrative mandates on a significant portion of physicians and other health care practitioners who provide care to Medicare beneficiaries.

The impact of this policy has not been adequately considered by the Centers for Medicare and Medicaid Services (CMS) or explained to contractors, physicians, other health care practitioners, and beneficiaries. We ask CMS to take the following immediate steps:

1. **Take action to ensure that otherwise acceptable claims are paid without delay or need for appeals;**
2. **Indefinitely suspend the plan to deny these claims and instead wait at least until all practicing Medicare physicians, other health care practitioners, and residents can be revalidated and reenrolled or enrolled for the first time;**
3. **Focus its efforts on ensuring a smooth and efficient revalidation process, which will require physicians and other health care practitioners to re-enroll in Medicare if they have not done so since 2003; and,**
4. **Convene a high-level meeting with stakeholders to discuss concerns about ordering and referring physicians and other health care practitioners, and collaboratively develop a feasible and appropriate plan and timetable for addressing these concerns.**

Background

CMS quietly announced the above mentioned policy in Change Requests 6417 and 6421. Despite being enrolled in Medicare, if physicians and other health care practitioners are not in the PECOS database or in some cases contractor files, those physicians, suppliers, and other health care practitioners to whom they refer and order services will not be paid. A physician or health care practitioner who enrolled in Medicare prior to 2003 when CMS began using PECOS will be required to re-enroll if they want to continue referring and ordering. As of July 2008, there were 793,346 physicians and other health care practitioners enrolled in Medicare. According to data from an October 2009 Office of Inspector General (OIG) report, there were 559,235 physicians and other health are practitioners in PECOS. Therefore, as many as 200,000 or 30 percent of all Medicare physicians and other health care practitioners are not in PECOS and will need to re-enroll. The repercussions for this ill-advised policy are enormous.

Section 1833(q) of the Social Security Act, on which this policy is based, requires claims to include National Provider Identifier (NPI) of the referring/ordering physician or other health care practitioner, if any. Since obtaining an NPI is not connected to Medicare enrollment, the law clearly does not require that the ordering/referring physician or other health care practitioner be enrolled or have reenrolled in Medicare recently enough (since 2003) to be in PECOS. Furthermore, requiring the foregoing is well beyond the discretion conferred on HHS to administer the program.

The first phase of this policy took effect October 5, causing considerable confusion, even panic, among our members, and a lot of time is being wasted by physician office staff, supplier personnel and even Medicare contractor staff, as they attempt to sort things out. There are a number of practical problems this policy creates:

- Services ordered or referred by residents will be denied. Residents are not eligible to enroll, but they are a critical component of the US healthcare system and commonly order and refer for tests and services.
- A Medicare contractor reported 300,000 warning edits were issued the first day of the policy. The warnings suggest the claims are rejected, alarming our members.
- Some contractor personnel have informed physicians and other health care practitioners that claims must be appealed before they could be paid, creating more confusion for our members.
- Only electronic claims are receiving warnings; paper claims will just stop being paid in 2010 with no effective warning.
- Providers and suppliers have no practical or convenient way to check whether the physicians or other health care practitioners who send them patients with orders or referrals are included in PECOS or other contractor enrollment records. CMS has tried to address this particular concern, but thus far the solutions have been cumbersome. The downstream providers and suppliers of the referred/ordered services/items are at risk of nonpayment, even though they are not responsible for the enrollment/reenrollment of physicians and other health care practitioners who legally order and refer patients to them for items or services.

- Even if the ordering/referring physician is in PECOS, a claim can be rejected if the physician's full name is not given in capital letters on the claim. Also, nicknames and apostrophes, dashes, and other characters will prevent a match.
- Those who traditionally have not been required to enroll in Medicare, such as residents, dentists, Tricare physicians, and other public health practitioners, will now be required by CMS to do so if they want to make orders or referrals to the Medicare program.

Focus on Revalidation

CMS has begun to "revalidate" the enrollment information of Medicare physicians and other health care practitioners, requiring those not in PECOS to re-enroll. CMS has promised to revalidate 2,500 physicians (50 per state) before January when the full policy is scheduled to go into effect. This is only a fraction of the physicians and other health care practitioners who are not yet in PECOS. It is impractical to require potentially hundreds of thousands of physicians and other health care practitioners to reenroll in Medicare by the end of 2009. The process is most problematic for physicians and other health care practitioners who have been providing care to Medicare beneficiaries for many years because they do not realize that their history of participation will be ignored until they re-submit every required form and document in its entirety.

Many physicians and other health care practitioners fear their cash flow will be interrupted for months (a problem that was widespread under the NPI transition) and that Medicare will punish them for any small omission or mistake. Medicare enrollment is widely regarded by the physician community as extremely burdensome. CMS' own Medicare Provider Satisfaction Survey ranks enrollment consistently near the bottom of contractor services. CMS should focus its resources on revalidating all practicing Medicare physicians and other health care practitioners in a systematic and thoughtful manner with appropriate outreach rather than disrupting Medicare coverage and payment with a poorly designed policy on referring and ordering items and services.

Conclusion

We understand that CMS is under considerable pressure to reduce fraud and abuse in the Medicare program and support those goals. However, we do not believe the new policy to be consistent with statutory authority, nor is it an effective or appropriate approach to achieve its desired goal. Implementing this new policy will negatively impact the vast majority of physicians, suppliers, and other health care practitioners engaged in the legitimate delivery of health care and the Medicare patients they serve. Orders and referrals are fundamental components of quality health care delivery that should not be discouraged or hamstrung merely for administrative needs that do not justify the corresponding administrative and financial burden on physicians and other health care practitioners. We believe the new policy impedes patient access to care, bogs down the enrollment system further, and presents significant workflow challenges to physicians and other health care practitioners who will have little way to be sure whether another physician is in the PECOS database. We appreciate your consideration of these concerns and welcome the opportunity to discuss this further with you. Please contact Rodney Peele of the American Optometric Association at rpeele@aoa.org / (703) 837-1348 or Mari

Savickis of the American Medical Association at mari.savickis@ama-assn.org / 202-789-7414 with any questions.

Sincerely,

American Academy of Audiology
American Academy of Dermatology Association
American Academy of Family Physicians
American Academy of Home Care Physicians
American Academy of Hospice and Palliative Medicine
American Academy of Neurology Professional Association
American Academy of Ophthalmology
American Academy of Orthotists and Prosthetists
American Academy of Otolaryngology—Head and Neck Surgery
American Academy of Physician Assistants
American Association of Clinical Endocrinologists
American Association of Neurological Surgeons
American Association of Orthopaedic Surgeons
American Chiropractic Association
American College of Cardiology
American College of Chest Physicians
American College of Emergency Physicians
American College of Obstetricians and Gynecologists
American College of Osteopathic Surgeons
American College of Physicians
American College of Radiation Oncology
American College of Surgeons
American Gastroenterological Association
American Geriatrics Society
American Medical Association
American Occupational Therapy Association
American Optometric Association
American Orthotic & Prosthetic Association
American Osteopathic Association
American Osteopathic Academy of Orthopedics
American Podiatric Medical Association
American Psychological Association
American Society for Gastrointestinal Endoscopy
American Society of Breast Surgeons
American Society of Plastic Surgeons
American Society for Radiation Oncology
American Society of Cataract and Refractive Surgery
American Society of Clinical Oncology
American Society of Hematology
American Speech-Language Hearing Association

American Thoracic Society
American Urological Association
Association of American Medical Colleges
College of American Pathologists
Congress of Neurological Surgeons
Heart Rhythm Society
Joint Council of Allergy Asthma and Immunology
Marshfield Clinic
Medical Group Management Association
National Association for the Advancement of Orthotics and Prosthetics
National Association of Social Workers
Renal Physicians Association
Society of Hospital Medicine
Society of Nuclear Medicine
The Endocrine Society
The Society of Thoracic Surgeons