

November 22, 2013

Kathleen Sebelius
Secretary
Department of Health & Human Services
200 Independence Ave, SW
Washington, DC, 20201

Marilyn Tavenner
Administrator
Centers for Medicare & Medicaid Services
7500 Security Blvd
Baltimore, MD 21244

Jocelyn Samuels
Acting Assistant Attorney General
US Department of Justice
Civil Rights Division
950 Pennsylvania Avenue, NW
Office of the Assistant Attorney General, Main
Washington, DC 20530

RE: Medicare Advantage Program—Widespread and Inappropriate Network Terminations of Retina Specialists Threaten Access to Care for Patients with Retinal Diseases

Dear Secretary Sebelius, Administrator Tavenner, and Acting Assistant Attorney General Samuels:

On behalf of the American Society of Retina Specialists (ASRS) and the American Academy of Ophthalmology (The Academy), our members, and patients, we urge the Centers for Medicare & Medicaid Services (CMS) to immediately suspend the systematic Medicare Advantage (MA) network termination of retina specialists and all ophthalmologists that has left many patients without access to appropriate eye care. We also recommend that CMS extend the Medicare open enrollment period and that both CMS and the Department of Justice conduct a thorough investigation to evaluate the appropriateness and impact of these mass terminations. We also request a meeting with your office and your staff that oversee the Medicare Advantage program.

The ASRS is the largest retinal organization in the world, representing over 2500 fellowship-trained members. Retina specialists are board-certified ophthalmologists who have completed

fellowship training in the medical and surgical treatment of retinal diseases. Only retina specialists receive appropriate fellowship training to perform procedures such as pars plana vitrectomy, and to manage many complex conditions including diabetic macular edema and age-related macular degeneration (AMD). Without adequate treatment by retina specialists, many patients face a significantly higher risk of blindness.

The American Academy of Ophthalmology (The Academy) is the largest association of eye physicians and surgeons – Eye M.D.s – in the world with more than 22,000 members in the United States and more than 10 percent who focus primarily on retina disease. The mission of The Academy is to advance the lifelong learning and professional interests of ophthalmologists to ensure that the public can obtain the best possible eye care.

Terminations Leave Medicare Beneficiaries without Access to Covered Services

CMS explicitly mandates that MA plans provide enrollees with coverage for all Original Medicare covered services, except hospice services.¹ By terminating all (or the majority) of providers who are adequately trained to perform certain covered services, MA plans violate this law.

For example, in Gainesville, Florida, UnitedHealthcare (United) terminated all retina specialists in a 50-mile radius of the city and failed to provide adequate referrals to displaced patients. In fact, one patient of a terminated retina specialist was told recently by United to visit a general ophthalmologist who was still in-network. Not only did the recommended alternative ophthalmologist not specialize in retina disease, but he had been retired since the middle of 2012.

This termination of all providers of a certain type and the dissemination of incorrect information is not exclusive to Gainesville. Per an October 23 letter addressed to Marilyn Tavenner from the Connecticut State Medical Society, “[i]n the City of Norwalk, Connecticut, United has unilaterally terminated all practicing cardiologists. The cardiologists that remained listed as ‘active’ on United’s provider roster are retired physicians, semi-retired physicians or physicians that are either deceased or no longer provide care to patients.”² ASRS and the Academy are very concerned that MA organizations are not maintaining accurate provider rosters and are referring retina patients to general ophthalmologists who are not trained in retina care, who may not be in practice, and who may not even be alive.

The MA organizations have not provided beneficiaries with sufficient notice prior to the open enrollment period that their retina specialist will no longer be in the plan’s network in 2014. Also, retina specialists were not given sufficient lead time to allow for processing an appeal prior to the start of the open enrollment period. Several retina specialists received termination

¹ 42 CFR §§422.100(a-c)

² <https://www.csms.org/upload/files/PDF/ltr%20to%20cms%20from%20csms.pdf>

letters from MA organizations that were mailed after October 15, the start of the open enrollment period. Termination notices were sent in unmarked envelopes via bulk mail, and were likely misplaced or discarded before many providers even read the letters. Whether or not intentional, the result of little or no advance notice is mass confusion for MA beneficiaries. ASRS and the Academy request that the open enrollment period be extended so patients have sufficient notice and appeals have enough time to be decided on before the end of the open enrollment period.

Use of Inappropriate Metrics for Physician Profiling

ASRS has been notified by many retina specialists that they are being systematically dropped from MA programs for having a “higher cost of care relative to other network providers.” These terminations are a result of insurers using inappropriate metrics to compare subspecialists’ billings to all ophthalmologists’ per-capita costs and caseloads.

Unfortunately, existing grouper metrics are not adequately specific, and do not properly adjust for high-risk patients. Per a 2010 study conducted by the RAND Corporation for the US Department of Labor, “a large fraction of physicians were misclassified as low-cost when they were actually not, or vice versa. Our findings raise concerns about the use of cost-profiling tools because consumers, physicians, and purchasers are at risk of being misled by the results.”³

These systems, for example, cannot accurately adjust for the cost of a retina specialist treating diabetic retinopathy in an affluent suburb where patients have reasonably good glucose control relative to another retina specialist who practices in a predominantly poor, inner-city locale where patients have poor glucose control and many missed appointments. The complexity of the typical diabetic patient seen by a retina specialist will be greater than the typical diabetic patient seen by a general ophthalmologist, so utilization of imaging (ie, optical coherence tomography), laser treatments, and other costly services will be justifiably higher.

In some instances, MA plans have terminated retina specialists largely due to their use of high-cost, FDA-approved anti-VEGF drugs for treatment of wet AMD, macular edema following retinal vein occlusion (RVO) and diabetic macular edema (DME). In doing so, MA organizations across the country are contradicting CMS instructions⁴ and regulations⁵ by using the threat of termination to steer physicians’ choice of medication. These Medicare Part B-covered drug costs are fixed, regardless of whether they are provided by a retinal specialist or by a general ophthalmologist. Retina specialists should not fear choosing medications they believe are best for a patient based on the patient’s unique risk factors, clinical appearance, economic requirements, and the availability of compounded drugs.

³ http://www.rand.org/content/dam/rand/pubs/technical_reports/2010/RAND_TR799.pdf

⁴ http://www.asrs.org/content/documents/cms_step_therapy_memo_091712-2.pdf

⁵ 42 CFR §§ 422.206

Disabled and Other Vulnerable Patients Are Disproportionately Affected

Many Medicare beneficiaries with retinal diseases are designated as qualified individuals with a disability due to the status of their vision and/or other qualifying conditions and thus are protected by Section 504 of the Rehabilitation Act of 1973 (the Act).^{6, 7} The Act prohibits organizations from denying individuals with disability an equal opportunity to receive program benefits and services and further may not deny access to services and benefits as a result of physical barriers. ASRS and the Academy believe the MA network terminations will, in effect, deny disabled patients access to services and benefits they are entitled to as Medicare Advantage patients. In particular, disabled patients will face severe hardship when trying to secure transportation to their monthly treatments for retinal diseases in areas of the country that no longer have an in-network retina specialist.

Specific Medicare Advantage Plans Reported by Retina Specialists

We recommend CMS investigate the following Medicare Advantage plans, as retina specialists have notified ASRS of being terminated by United, Blue Cross Blue Shield (BCBS) Affiliates and/or Humana in the following states:

2013 ASRS Medicare Advantage Terminations by Insurer/State

State	BCBS Affiliate	United	Humana
California	X		
Connecticut		X	
Florida		X	
Indiana	X	X	
Kentucky			X
Montana			X
Nevada			X
New Jersey		X	
New York	X		
Ohio		X	
Rhode Island		X	
Tennessee	X		
Texas		X	
Utah			X
Wyoming			X

⁶ <http://www.hhs.gov/ocr/civilrights/resources/factsheets/504.pdf>

⁷ <http://www.ada.gov/cguide.htm>

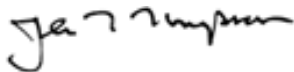
Conclusion

ASRS and the Academy recommend CMS immediately suspend MA terminations for retina specialists and all ophthalmologists until a thorough investigation can be conducted to evaluate appropriateness and impact on access to treatment. Also, the open enrollment period should be extended to give patients sufficient time to evaluate their coverage options. Finally, we would appreciate a face to face meeting as soon as schedules allow to further discuss this urgent matter.

Many MA beneficiaries will be unable to access original Medicare covered services for retinal diseases, which is a de facto violation of CMS regulations. Profiling and terminating individual retina specialists using inappropriate metrics is dangerous and will disproportionately affect disabled and other vulnerable retina patients. Without retina specialists in MA provider networks, patients will be left without appropriate retina care.

If you have any questions, please do not hesitate to contact the ASRS through Jill Blim, ASRS Executive Vice President, at 312-578-8760 or jill.blim@asrs.org, and the Academy through Cherie McNett, Academy Director of Health Policy at 202-737-6662 or cmcnett@aaodc.org. Thank you for your consideration.

Sincerely,



John T. Thompson, M.D.
ASRS President



David W. Parke, II, M.D.
Academy EVP and CEO

CC: Ms. Danielle R. Moon, J.D., MPA, Director, Medicare Drug and Health Plan Contractor Group
Leon Rodriguez, J.D., Director, Office for Civil Rights, HHS
James L. Madara, M.D., EVP and CEO, American Medical Association