January 14, 2019

Administrator Seema Verma
Centers for Medicare & Medicaid Services
Department of Health and Human Services
P.O. Box 8016
Baltimore, MD 21244–8013

Attention: CMS–2408–P

Dear Administrator Verma,

I write in behalf of the Association of Asian Pacific Community Health Organizations (AAPCHO) to provide comments on the proposed rule for Medicaid and Children's Health Insurance Program (CHIP) Managed Care (CMS-2408-P). AAPCHO strongly encourages the Centers to maintain strong consumer protections in Medicaid managed care plans.

AAPCHO represents 32 community-based health care organizations, 28 of which are Federally Qualified Health Centers (FQHCs), dedicated to improving the health status and care access of medically underserved Asian Americans, Native Hawaiians, and Pacific Islander (AANHPI) populations in the United States, its territories, and the Freely Associated States.

AAPCHO members provide services that are uniquely appropriate to their patient populations, including: comprehensive primary medical care, culturally and linguistically appropriate health care services, and non-clinical enabling services such as interpretation and case management. On average, AAPCHO's health centers have a higher percentage of patients age 65+ than other health centers (10% vs. 7%). Our members also have a much higher rate of patients who are Limited English Proficient (LEP) (50% vs. 23%), with some health centers serving as many as 99% LEP individuals. AAPCHO members also provide a higher average number of enabling service encounters (9274 vs. 4953) than other health centers in response to the needs of our patients (HRSA Uniform Data System, 2013).

<u>AAPCHO's comments on the proposed rule follow:</u>

AAPCHO is concerned the proposed rule weakens existing standards for making information available to enrollees and potential enrollees, and we oppose changes that make it more difficult for individuals to access health information. The proposed rule is especially concerning for individuals with Limited English Proficiency (LEP), individuals with disabilities, and individuals who are visually impaired. The proposed rule is a step backwards from current regulations.

AANHPI populations have high concentration of LEP individuals who require linguistically and culturally competent care and materials to access and fully participate in their health and wellness. Linguistically and culturally competent care supports an LEP patient's ability to ask questions and make fully informed choices, to understand their plan options and what is required of them, and to interact with providers in a culturally-sensitive manner. Similarly, people with disabilities need supports and services that allow them to fully interact with and access the health care system.

Ensuring full access for LEP patients and people with disabilities is critical to ensuring that a state's Medicaid program provides appropriate services to all AANHPI populations and those enrolled in managed care.

This is a significant step backwards and will put health and wellness out of reach for Medicaid-enrolled AANHPI patients, people with disabilities, and persons who are visually impaired.

§ 438.10(h)(1)(vii) - Provider Directories

Limiting information on cultural competency training

AAPCHO opposes the elimination of "whether a provider has completed cultural competency training" in the fee-for-service (FFS) provider directories in section §438.10(h)(1)(vii) of the proposed rule. As indicated previously, AANHPI populations have high concentrations of patients, including LEP individuals, who require linguistically and culturally competent care and materials to access and fully participate in their health and wellness.

AAPCHO supports the proposed rule's continued inclusion of information in the directory on the physician's or provider's cultural and linguistic capabilities, including the languages spoken by the physician or provider or by the skilled medical interpreter providing interpretation services at the physician's or provider's office. However, including information on a provider's completion of cultural competency training would provide patients with better information necessary for them to make decision for receiving culturally and linguistically sensitive care.

RECOMMENDATION: HHS should reject the proposed rule to eliminate the disclosure of information in the directory of "whether a provider has completed cultural competency training." AAPCHO supports maintaining the current standard of providing information on cultural and linguistic capabilities, as well as whether a provider has completed cultural competency training.

Limiting information on provider terminations in managed care plans

AAPCHO also opposes the proposed changes to §438.10(f)(1) that "would change the requirement that managed care plans issue notices within 15 calendar days after receipt or issuance of the [provider's] termination notice to the later of 30 calendar days prior to the effective date of the termination or 15 calendar days after the receipt or issuance of the notice." This proposed change could disproportionately affect LEP patients, as LEP patients may need significantly more time to find primary care and specialty providers at health care facilities that provide additional language services if their provider leaves the managed care network.

Under the proposed changes, if a provider provides notice on March 1 that they are leaving the managed care network effective July 31, rather than enrolled patients receiving notice that their provider is leaving the network within 15 calendar days of the provider's notice of termination, which would be by March 16, the plans would not be required to inform patients of this provider's termination until July 1 under the proposed changes, which substantially reduces the time that patients would have to find a replacement provider, which could result in a lapse in necessary health care, particularly for LEP patients who may require additional time to identify a new

provider that provides services in a patient's native language. As a result, it is important to maintain the requirement that plans must notify patients within 15 days after the receipt of notice of a provider's decision to leave the managed care network, so that, in particular, LEP patients have adequate time to find a replacement provider to prevent lapses in necessary health care.

RECOMMENDATION: HHS should reject the proposed rule shortening the reporting requirement for managed care plans to issue notice of a provider's termination. AAPCHO supports the current standard requiring managed care plans issue notices within 15 calendar days after receipt or issuance of the provider's termination notice.

§ 438.10(d)(2) - Information Requirements

Limiting information access through taglines

AAPCHO supports materials' "taglines" as an effective and cost-efficient manner of informing persons with disabilities and LEP individuals about plans. We oppose the proposed rule that would limit the use of taglines to written materials that are "critical to obtaining services." This standard is vague; it would not provide uniformity among plans but rather leave to plans the ability to determine what materials they deem "critical." This latitude could leave LEP individuals and people with disabilities at great risk of not being able to access plan materials that will help them in the process of plan selection.

For example, the proposed rule could enable plans to omit information on their coverage of certain services a potential enrollee may consider necessary for his or her heath. If a potential enrollee is unaware whether a plan does not cover a service he or she deems important to his or her health, the potential employee would be unable to accurately choose a plan that covers such service. Additionally the proposed rule does not address whether information "critical to obtaining services" would include services that a plan does *not* provide. This proposal opens the door to adverse selection whereby plans discourage enrollment by persons with significant health needs by failing to print critical information needed to make informed choices.

This proposal opens the door to adverse selection whereby plans discourage enrollment by persons with significant health needs by failing to print critical information needed to make informed choices.

Moreover, the proposed rule may create a competing standard established by Section 1557 of the Affordable Care Act and regulations published by the Department of Health and Human Services' Office for Civil Rights, requiring "covered entities" to provide taglines on all "significant" documents. The proposed rule would challenge entities covered by both regulations to ascertain how to comply--is a document significant yet not critical to obtaining services? Is it critical but not significant?

AAPCHO opposes any attempt to redefine the requirements under Section 1557 in a manner that directly conflicts with the final regulations issued by the Office for Civil Rights. The regulation issued by the Office of Civil Rights was carefully considered with input from stakeholders. The Centers should not create a less restrictive requirement solely for Medicaid managed care entities.

RECOMMENDATION: HHS must withdraw the proposed changes that would weaken information requirements for Medicaid managed care entities. AAPCHO supports the current standard for providing taglines and the current regulation should be maintained. Health plans must be accountable for making all materials accessible for LEP populations and people with disabilities and must not be permitted to pick and choose the materials they deem critical.

Access for persons who are visually impaired

AAPCHO opposes the proposed rule that would replace the current evidence-based standard for publishing materials for visually impaired individuals with a vague requirement for taglines to be "conspicuously visible."

Current regulations require taglines in large print no smaller than 18 point font (42 C.F.R. § 438.109d)(2)). In 2016, HHS based this standard on guidance from the American Printing House (APH) for the Blind (81 Fed. Reg. 27724). The APH established standards for print documents, including the minimum of 18 point font for large print, to allow "optimal usability for persons with low vision." The APH developed its standards for large print and other features for print document readability based on "research that originated from the study of the impact of print characteristics on readers."

HHS provides no information or description of what constitutes a "conspicuously visible" tagline; nor does HHS provide any evidentiary basis for how persons with low vision would be able to access health information under this new standard. The potential harm to persons with low vision under an ambiguously defined "conspicuously visible" standard far outweighs any possible benefit for insurers in reducing paperwork. HHS should withdraw this ill-advised proposal.

RECOMMENDATION: HHS should withdraw the proposed change that would adversely affect individuals who are visually impaired. AAPCHO supports the current standard for printing taglines at the APH-recommended minimum 18 point font, and the protections in the existing regulation should be maintained.

§438.68 - Network Adequacy Standards

AAPCHO opposes the revision of §438.68(b)(1) and (b)(2) that deletes "the requirements for states to set time and distance standards and adding a more flexible requirement that states set a quantitative minimum access standard for specified health care providers and long term services and supports (LTSS) providers." We oppose the replacement of time and distance standards with provider to patient enrollee ratios, as this would not directly address a patient's ability to access necessary health care.

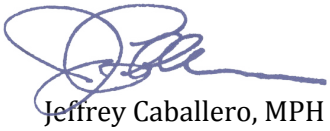
Instead, we support the continued inclusion of time and distance standards for measuring patients' access to primary and specialty care providers, by continuing to require states to develop maximum travel time or distance to providers, including primary care (adult and pediatric), OB/GYN, specialist (adult and pediatric), hospital, pharmacy, and pediatric dental. For adults and children requiring primary and specialty care, it is essential to place standards for how far or for how long an individual must travel in order to receive necessary health care.

Without requiring states to maintain these time and distance standards, patients may be forced to forgo essential primary or specialty healthcare, which may result in increased health system costs if patients do not receive low cost preventive health care services and are forced to receive care in hospital emergency departments, as well as decreased economic productivity for individuals unable to maintain good health, and poorer health outcomes.

RECOMMENDATION: HHS should withdraw the proposed change that would replace time and distance standards with patient enrollee rations. AAPCHO supports the current rule requiring states to develop maximum travel time or distance standards to a provider.

I appreciate the opportunity to provide comments on the proposed rule for Medicaid and Children's Health Insurance Program (CHIP) Managed Care. Should you have any questions, please contact Adam Carbullido, AAPCHO's Director for Policy and Advocacy, at acarbullido@aapcho.org.

Sincerely,



Jeffrey Caballero, MPH
Executive Director