

The Honorable Marilyn Tavenner
Acting Administrator
Centers for Medicare and Medicaid Services
Department of Health and Human Services
Hubert H. Humphrey Building
Room 445-G
200 Independence Avenue
Washington, DC 20201

Dear Acting Administrator Tavenner:

On behalf of the undersigned organizations representing over 150,000 physicians, we are writing to seek clarification about a provision of the new health care law which is currently in effect.

Section 6003 of Public Law 111-148 (the Patient Protection and Affordable Care Act) requires referring physicians who provide advanced imaging services such as MRI, CT or PET scans to inform the patient in writing, at the time of the referral, that the patient may obtain the specific imaging services from other "suppliers (as defined in section 1861(d)) in the area in which the patient resides." This provision will also apply to any other designated health services that CMS ultimately deems appropriate in the future.

We believe this provision is intended to provide patients with transparency and choice in the health care marketplace, and we support that goal. However, we are requesting clarification as to the implementation of this provision given the statutory language and the complexities of treating patients from diverse geographic areas and corresponding legal liabilities associated with providing patients with this type of information. In addition, we request that CMS delay enforcement of this provision until implementing regulations can be promulgated via the rulemaking process to clarify these and other issues.

In cases where a routine patient sees a local provider, this disclosure requirement will be more easily met. However, in many practices, 25-50% of patients come from outside the local Metropolitan Statistical Area (MSA). In these cases, the new disclosure requirements may be difficult or impossible to meet.

- The patient may require an unusual level of service or care.
- There may be no appropriate service providers in the "area in which the patient resides."
- It is nearly impossible for a provider to know where all the suppliers are for these services particularly if the care is provided away from the patients' home area.
- The physician may be unfamiliar with service providers in the "area in which the patient resides," and therefore unable to make an informed recommendation.
- Patients may believe that the provision of a list of alternative suppliers implies an endorsement or referral, which can carry legal liability, to another provider with whom the treating physician has no contact or experience.

Further, it is likely that the relevant accrediting bodies have the most complete, up-to-date, and accurate lists of service providers within any given area. Therefore, consumers and providers may both find it useful and appropriate to allow for electronic (rather than written) communication of this information through use of a generic website or websites of the accreditation organizations. This would also address the issue of construed endorsement by allowing the proper accrediting bodies to offer a current list of suppliers in the patient's residential area should they wish to obtain services elsewhere.

In an attempt to comply with the requirements of Section 6003, many physicians have raised questions and suggestions about the effect and the implementation of these requirements, particularly for patients who are treated away from their home area:

1. How is "area in which the patient resides" to be defined?
2. Must the list include all providers in the designated area or just some? Can physician practices state that the list will include a minimum number of providers in the designated area?
3. In cases where such alternative providers are not available in the "area in which the patient resides" what efforts amount to compliance?
4. Will there be requirements to document disclosure?
5. In some practices, up to half of the patients are from outside the local area and in some cases from several thousand miles away. Providing a written list of other suppliers in the "area in which the patient resides" may require providers to list suppliers with whom they may not be familiar. Given the potential liability issues, would this practice be construed as a referral, and therefore an endorsement of such services?
6. As we move into the age of electronic medical records, could "written list" be construed to include electronic communication, such as a list from a website? Could offices provide a general laminated list for inspection and an individual copy upon patient request?
7. How will this apply to a medical group billing as a tax exempt physician group that is a separate billing entity from the hospital under a corporate parent?
8. How will this requirement apply to capitated network arrangements?
9. How will patients out of network be addressed in this requirement?

As always, your thoughtful and timely response to this request is greatly appreciated. As this change is technically effective January 1, 2010, we will continue to educate our memberships regarding compliance. However, we request that CMS delay enforcement of this provision until implementing regulations can be promulgated via the rulemaking process to clarify these and other issues.

Sincerely,

American Academy of Neurology
American Academy of Otolaryngology-Head and Neck Surgery
American Association of Clinical Urologists
American Association of Orthopaedic Surgeons
American College of Osteopathic Surgeons
American College of Rheumatology
American College of Surgeons

American Congress of Obstetricians and Gynecologists
American Osteopathic Academy of Orthopedics
American Society for Neuroimaging
American Society of Breast Surgeons
American Society of Cataract and Refractive Surgery
American Society of Colon and Rectal Surgeons
American Society of Nuclear Cardiology
American Society of Plastic Surgeons
American Urological Association
Cardiology Advocacy Alliance
North American Spine Society
Society for Cardiovascular Angiography & Interventions
Society of Cardiovascular Computed Tomography