

United States Senate

WASHINGTON, DC 20510

October 12, 2022

Chiquita Brooks-LaSure
Administrator
Centers for Medicare & Medicaid Services
U.S. Department of Health and Human Services
7500 Security Boulevard
Baltimore, MD 21244-8016

Dear Administrator Brooks-LaSure:

We write regarding the Calendar Year 2023 Medicare Physician Fee Schedule proposed rule that would use the Centers for Medicare & Medicaid Services' (CMS) existing administrative authority to allow patients limited access to audiology services without a physician order. We support removal of the physician order requirement and appreciate CMS's recognition of its authority to make that change without further statutory authority. However, the remaining conditions of the proposal still pose burdens on patients seeking audiology services. We urge CMS to streamline access to audiology services by removing the physician order requirement entirely for Medicare Part B beneficiaries, as reflected in the bipartisan Medicare Audiologist Access and Services Act (MAASA).

Access to hearing health services is a critical part of overall health care. While hearing loss is common, access to hearing health services is not. Nearly 38 million Americans experience some degree of hearing loss.¹ Older Americans are particularly affected, with nearly one in three people between the ages of 65 and 75² and around half of adults 75 or older reporting difficulty hearing.³ Americans with hearing loss are at a greater risk of developing Alzheimer's disease and Alzheimer's disease related dementias,⁴ and they are also more likely to experience feelings of loneliness and isolation, which the COVID-19 pandemic has only exacerbated.⁵ Although Medicare covers a range of hearing health services, outdated regulations prevent many beneficiaries from actually accessing these services. Medicare is an outlier among most federal and private insurance providers in requiring a physician order for

¹ The New York Times, "Hearing Aids for the Masses," Shira Ovide, April 12, 2021, <https://www.nytimes.com/2021/04/12/technology/hearing-aids.html>.

² National Institute on Aging, "Hearing Loss: A Common Problem for Older Adults," November 20, 2018, <https://www.nia.nih.gov/health/hearing-loss-common-problem-older-adults>.

³ *Id.*

⁴ U.S. Department of Health and Human Services, "National Plan to Address Alzheimer's Disease: 2021 Update," December 27, 2021, <https://aspe.hhs.gov/reports/national-plan-2021-update>.

⁵ NPR, "Untreated Hearing Loss Linked To Loneliness And Isolation For Seniors," Rochelle Sharpe, September 12, 2019, <https://www.npr.org/sections/health-shots/2019/09/12/760231279/untreated-hearing-loss-linked-to-loneliness-and-isolation-for-seniors>; The Seattle Times, "For older adults, isolation can lead to overwhelming loneliness," Paige Cornwell, September 19, 2021, <https://www.seattletimes.com/seattlenews/mental-health/for-older-adults-isolation-can-lead-to-overwhelming-loneliness/#:~:text=The%20Mental%20Health%20Project%20is,mobility%20for%20children%20and%20families>.

coverage of audiology services. The Department of Defense, the Veterans Health Administration, and a majority of plans offered through the Federal Employees Health Benefit system allow direct access to covered audiology services without a physician referral.⁶ Many private insurance plans and Medicare Advantage plans similarly allow direct access.

We were glad to see CMS recognize and use existing authority to expand access to audiology services by removing the burdensome requirement for a physician order. The requirement for a physician order for a diagnostic test was only put in place with the 1996 regulations and only refers to the statutory prohibition in the Social Security Act against Medicare paying for items or services that “are not reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member.”⁷ Therefore, this language in no way requires a physician referral for audiology services, but rather prohibits paying for unnecessary services.⁸

While we support your acknowledgement that there is no statutory language to prohibit Medicare from allowing direct access to audiologists, the current proposal is complex and limited. The proposed rule creates an unnecessary barrier for patients by allowing direct access to an audiologist without a physician referral only for certain “non-acute” hearing assessments and only once every 12 months.⁹ Allowing beneficiaries direct access to audiologists in all cases could reduce the number of appointments and referrals needed before a patient receives care, increase provider choice, and lower program costs and out-of-pocket expenses for patients.

Streamlining beneficiary access to services provided by audiologists – both through improved access to the full range of Medicare covered services audiologists are expertly qualified to provide, and through enactment of MAASA – will support the Food and Drug Administration’s recent actions to make hearing aids available over-the-counter (OTC) for approximately 30 million Americans with mild to moderate hearing loss.¹⁰ Now, providing more robust direct access to audiology services could make it even easier for older Americans considering OTC or prescription hearing aids to obtain expert audiological assessments to determine the best product for their specific type of hearing loss.

This proposal is a welcome first step. However, CMS has the authority to allow Medicare beneficiaries streamlined access to audiology services by removing the physician order

⁶ National Academies of Sciences, Engineering, and Medicine, “Hearing Health Care for Adults: Priorities for Improving Access and Affordability,” 2016, p.128, <http://www.nationalacademies.org/hmd/Reports/2016/Hearing-Health-Care-for-Adults.aspx>.

⁷ 42 USC 1395y.

⁸ Memorandum from Sheree Kanner, Hogan Lovells, to Academy of Doctors of Audiology, “Medicare Coverage of Diagnostic Audiology Services,” October 14, 2016, https://www.audiologist.org/_resources/documents/news/Scope-of-Practice-Patients-Over-Paperwork.pdf.

⁹ Center for Medicare and Medicaid Services, Calendar Year (CY) 2023 Medicare Physician Fee Schedule Proposed Rule, July 7, 2022, <https://www.cms.gov/newsroom/fact-sheets/calendar-year-cy-2023-medicare-physician-fee-schedule-proposed-rule>.

¹⁰ Tweet by the White House, September 26, 2022, https://twitter.com/WhiteHouse/status/1574530518233894912?s=20&t=XtMeiUN_KUikmgbm94A7Gg.

requirements. Therefore, we urge CMS to use existing authority to fully eliminate the physician order requirement to help improve access to critical hearing health care services.

Sincerely,



Elizabeth Warren
United States Senator



Rand Paul
United States Senator