



Submitted online at <https://www.regulations.gov/>

December 30, 2019

Seema Verma, MPH
Administrator
Centers for Medicare & Medicaid Services
U.S. Department of Health and Human Services
Attention: CMS-1720-P
P.O. Box 8013
Baltimore, MD 21244-8013

RE: Medicare Program; Modernizing and Clarifying the Physician Self-Referral Regulations (CMS-1720-P)

Dear Administrator Verma:

On behalf of the American Speech-Language-Hearing Association, I write to offer comments in response to the Medicare Program; Modernizing and Clarifying the Physician Self-Referral Regulations proposed rule.

The American Speech-Language-Hearing Association (ASHA) is the national professional, scientific, and credentialing association for 204,000 members and affiliates who are audiologists; speech-language pathologists; speech, language, and hearing scientists; audiology and speech-language pathology support personnel; and students.

ASHA understands that the Centers for Medicare & Medicaid Services (CMS) has identified the physician self-referral law as a potential barrier to alternative payment models, integrated delivery models, and efforts to incent improved outcomes and reduced cost. While we support the concept of reducing provider burden to encourage delivery system reform, ASHA is concerned that the proposed rule lacks specificity when determining what qualifies as value-based arrangements and value-based activities under §411.357 *Exceptions to the referral prohibition related to compensation arrangements*. This lack of clarity could have the unintended consequence of bad actors circumventing the self-referral regulation and harming Medicare patients for financial gain. Well-intended providers could mistakenly establish arrangements that do not meet the intent of the regulation.

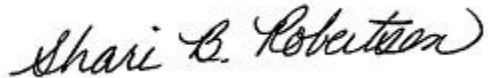
The physician self-referral law also exempts speech-language pathology services via an “*in office ancillary exception*” (IOASE) if the speech-language pathologist (SLP) is an employee or contractor of the physician. This exception allows a physician to refer a Medicare patient for speech-language pathology services to an employed SLP within their practice. ASHA recognizes this type of “in house” referral could lead to overutilization and discourage referrals to an unaffiliated SLP who may be more accessible and/or experienced to meet the patient’s unique needs. Therefore, ASHA strongly recommends that CMS implement metrics such as minimum quality standards or other guardrails that can serve as benchmarks for providers and value-based enterprises to prevent or discourage overutilization.

ASHA appreciates that CMS discusses an alternative proposal at proposed §411.357(aa)(3) in the rule that would prohibit remuneration that is conditioned on the volume or value of referrals of any patients to the entity. For the reasons mentioned above regarding the IOASE, ASHA supports this approach. However, we recommend that bona fide referrals related to a value-

based activity (e.g., care coordination) for a target population in a formalized value-based arrangement should be allowed only if measurable quality metrics and guardrails are established to protect Medicare patients.

Thank you for the opportunity to provide comments on the Medicare Program; Modernizing and Clarifying the Physician Self-Referral Regulations proposed rule. If you or your staff have any questions, please contact Daneen G. Sekoni, MHSA, ASHA's director of health care policy, health care reform, at dsekoni@asha.org.

Sincerely,

A handwritten signature in cursive script that reads "Shari B. Robertson".

Shari B. Robertson, PhD, CCC-SLP
2019 ASHA President