June 11, 2012

Marilyn Tavenner
Acting Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-2370-P

Submitted electronically to: http://www.regulations.gov

Re: Medicaid Payments for Primary Care Services

Dear Ms. Tavenner:

AARP is pleased to respond to the request for comments on the proposed rule under which Medicaid payment for primary care services furnished by certain physicians in calendar years (CYs) 2013 and 2014 would be at rates not less than the Medicare rates in effect in those CYs or, if greater, the payment rates that would be applicable in those CYs using the CY 2009 Medicare physician fee schedule conversion factor.

Eligible Physicians

The Affordable Care Act (ACA) specified that the minimum Medicaid payment amounts in CYs 2013 and 2014 would apply to certain primary care services furnished by physicians with a specialty designation of family medicine, general internal medicine, or pediatric medicine. The Centers for Medicare & Medicaid Services (CMS) proposes to apply the policy not only to these specialties but also to all subspecialists related to them, in accordance with the American Board of Medical Specialties (ABMS) designations. Among other things, this would include the subspecialty of Geriatric Medicine under both Family Medicine and Internal Medicine. AARP supports this interpretation.

We agree that it would be a mistake to exclude these subspecialists from the Medicaid payment benefits mandated by Congress. We also believe that improvements in Medicaid payment could increase Medicaid beneficiary access to primary care services. We would, however, caution against any expectation that such increased payments will be a panacea, especially since many physicians already consider Medicare payment rates to be inadequate and the Medicaid-eligible population is more challenging to care for than the Medicare beneficiary population. Further, as the proposed rule itself notes, there is tremendous uncertainty regarding States' willingness to sustain the higher Medicaid payment rates after CY 2014.

Clinician Limitations

The proposed rule limits payments to certain physicians providing primary care services. Other clinicians, such as nurse practitioners and physician assistants are only eligible for these payments when services are furnished "under the personal supervision" of a physician and billed under his or her provider number. While CMS suggests that this provision "recognizes the important role that non-physician practitioners working under the supervision of physicians have in the delivery of primary care services," the rule disregards independently practicing clinicians who provide fundamental primary care services in more than a dozen states and the District of Columbia. These providers are trained and highly skilled in the provision of primary care and coordination—an important aspect of care noted by CMS. By making advanced practice registered nurses and physician assistants eligible CMS could increase the number of Medicaid beneficiaries—often the country's most vulnerable populations—who would have access to high quality primary care. Such use of primary care clinicians could reduce Medicaid beneficiaries' reliance on emergency rooms for their clinical care and thereby reduce costs to the coverage system.

Eligible Primary Care Services

As required by the ACA, CMS proposes that E&M codes 99201 through 99499 and vaccine administration codes 90460, 90461, 90471, 90472, 90473, and 90474 (or their successors) would be eligible for higher Medicaid payment. Among other things, these codes include the following: office or other outpatient services; nursing facility services; domiciliary, rest home (e.g., assisting living facility), or home care plan oversight services; home services; case management services; and care plan oversight services. Further, CMS proposes to include codes in the 99201-99499 code range for which the Medicare program sets and publishes relative value units (RVUs), even if Medicare payment is not actually made for the service. These latter services include preventive medicine services and non-face-to-face physician services.

AARP supports the approach proposed by CMS. We believe that increased access to the services mentioned above would help Medicaid beneficiaries avoid many hospital admissions and emergency department visits and lead to improved patient outcomes generally.

State Requirements and Implementation Timelines

The proposed rule would impose additional requirements on States. For example, CMS proposes to require States to determine which physicians are eligible for increased Medicaid payments. States would also be required to develop a methodology for determining the increment of Medicaid managed care capitation payments attributable to increased provider rates for primary care services and to submit this methodology for CMS' approval prior to the beginning of CY 2013. In fact, in one place, the proposed

rule says this submission would need to occur six months prior to the beginning of CY 2013, which would mean no later than July 1, 2012.

Since the public comment period on the proposed rule does not end until June 11, this timeline strikes us as unrealistic. AARP, therefore, urges CMS to be as flexible as possible as it works with the States to implement the increased Medicaid payments. Especially in the managed care context, we believe there should be opportunities to finalize necessary methodologies even after the start of CY 2013 while still allowing the primary care physicians who care for patients enrolled in Medicaid managed care plans to ultimately benefit from increased Medicaid payments.

Assessing Impact

Since the provision being implemented is time-limited, AARP believes that CMS should work with the States to develop a specific plan for assessing its impact. For example, information could be collected about changes in the number of primary care physicians willing to participate in Medicaid and in the number of primary care services furnished to Medicaid beneficiaries. It would also be helpful to assess other potential impacts, including changes in the utilization of inpatient hospital or emergency department services, including hospital readmission rates, and changes in patient outcomes. We believe this type of information would be essential in helping Federal and State policy makers assess the value of the increased Medicaid payments and determine whether these improved payments should be extended beyond CY 2014 and/or modified in some fashion.

In sum, we believe that CMS should use the final rule to make a public commitment to assess the impact of the new policy and provide periodic reports to both policy makers and the general public regarding this impact.

AARP appreciates the opportunity to comment on the proposed rule. If you have any questions regarding these comments, please do not hesitate to contact KJ Hertz on our Government Affairs staff at (202) 434-3732 or khertz@aarp.org.

Sincerely,

David Certner
Legislative Counsel and Legislative Policy Director
Government Affairs