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October 21, 2011

Donald Berwick, MD  
Administrator  
Centers for Medicare & Medicaid Services  
Department of Health and Human Services  
Attention: CMS-9982-NC  
Room 445-G  
Hubert H. Humphrey Building  
200 Independence Avenue SW  
Washington, DC 20201

Submitted electronically at Regulations.gov

Subject: Summary of Benefits and Coverage and Uniform Glossary (76 Fed. Reg. 52475  
(August 22, 2011).)

Dear Dr. Berwick,

The American Optometric Association (AOA) submits these timely comments in response to the proposed rule that would establish a uniform glossary of insurance terms as required by the Affordable Care Act. The AOA agrees with the Department of Health and Human Services (HHS) that many consumers don't have access to accurate information in plain English to help them understand their insurance coverage and benefits, and the AOA is pleased that HHS is taking steps required by the Affordable Care Act (ACA) to standardize some of the terminology used in health insurance materials. However, the glossary, as recommended by the National Insurance Commissioners Association (NAIC) and proposed by HHS, to accompany plan documents will further confuse consumers because the definitions of several key terms have been co-opted to mislead the public. We encourage you not to facilitate this anticompetitive behavior, and to revise several terms in the glossary to better reflect law and medical practice.

The AOA represents approximately 36,000 doctors of optometry, optometry students and paraoptometric assistants and technicians. Optometrists serve patients in nearly 6,500 communities across the country, and in 3,500 of those communities are the only eye doctors. Doctors of optometry provide more than two-thirds of all primary eye and vision health care in the United States.

HHS proposed that the term "physician services" means "Health care services a licensed medical physician (M.D. – Medical Doctor or D.O. – Doctor of Osteopathic Medicine) provides or coordinates." According to notes from the NAIC meetings, in July 2010 they "[d]iscussed the term 'physician services' and whether this term should encompass other licensed health care

professionals beyond doctors of osteopathic medicine and medical doctors. The Team decided that ‘physician’ is a term of art that does not include other licensed health care practitioners.” The concept of a “term of art” is a term that has a specific, precise meaning in law. Indeed, the term physician indeed has a specific, precise meaning in law, and that meaning was misstated at the NAIC meetings. Section 1861(r) of the Social Security Act (42 USC 1395x(r).) defines “physician” as doctor of medicine or osteopathy, a doctor of dental surgery or of dental medicine, a doctor of podiatric medicine, a doctor of optometry, or a chiropractor. Meanwhile, the American Medical Association’s own studies confirm that most Americans think optometrists are physicians along with those other practitioners. A more general understanding of the term “physician” is someone skilled in the art of healing. Physicians diagnose and treat patients. Optometrists report their services using the same medical terminology as MDs and DOs. Nearly all of the comments recorded by the NAIC and submitted in writing to the NAIC by many parties suggested that the terms “physician” and “physician services” are broader than the term as limited to MDs and DOs. During one NAIC meeting, the AMA admitted that it came up with the limited definition itself of a physician as an MD or DO only. The AMA nakedly seeks to restrict other qualified professionals from providing physician services. Thus, whether you consider the term “physician” as a term of art or in the sense of a consumer, or take the advice of most of the parties that weighed in with the NAIC, the term “physician services” is more broad than what was proposed by the NAIC on behalf of the AMA. Furthermore, Section 1861(q) of the Social Security Act (42 USC 1395x(q).) defines “physician services” as professional services provided by physicians. This is similar to the recommended definition of the NAIC without relying on the restrictive, unnatural definition of “physician” as only an MD or DO, a position promoted by the AMA to limit the market for providing physician services. There is no indication that the NAIC considered the actual Social Security Act definitions of these terms. Most people understand that when they see an optometrist, they are seeing an eye doctor, a physician. Many people might not even realize that optometrists and podiatrists practice allopathic medicine, and are trained in the same medical care and techniques as medical school students, but they understand that optometrists are doctors. Optometrists provide medical care, and the services optometrists provide are best described as physician services. To our knowledge, the well-intentioned NAIC did not receive feedback from any physician organizations besides the AMA. The AOA cannot believe that in today’s health care market where costs are increasing and access to care is at risk, the federal government would intend to reduce competition to provide physician services and attempt to tilt the market to unfairly benefit MDs and DOs merely because that would please the AMA. **HHS must revise its proposed glossary definition of “physician services” to recognize that optometrists are physicians who provide physician services.**

HHS proposed that the term “primary care physician” means “A physician (M.D. – Medical Doctor or D.O. – Doctor of Osteopathic Medicine) who directly provides or coordinates a range of health care services for a patient.” While the proposed definition of physician services was too narrow, this proposed definition of primary care physician is potentially broad. The parenthetical limited the term “physician” to MDs and DOs only, as explained previously, is misleading. Since the American public understands that optometrists are physicians, consumers would be confused by a definition of primary care physician that includes virtually any MD or DO but not other types of physicians. The parenthetical for MD/DO only should be removed. If HHS wishes to limit the term “primary care physician” to some physicians, then the best

approach is to limit it to those who actually provide primary care services regardless of their reported medical specialty or degree. Physicians of any specialty who are front line providers and whose practices are dominated by evaluation and management services, rather than procedural services, should be considered primary care. Some of the feedback to the NAIC stressed that physicians who are the initial contact for many patients are performing primary care. The Institute of Medicine has recognized that optometry is a primary care specialty. Optometrists provide and coordinate a range of medical eye care services, including pre- and post-op care. Optometrists serve an important role in the ongoing care and treatment of patients with chronic diseases such as diabetes. Optometrists also recognize and diagnose many systemic conditions and refer patients to other health care providers for necessary care. Optometrists see many patients who have not been treated by other physicians, so we are an entry point into the health care system and we serve as primary care providers. **Optometrists are primary eye care providers and should be acknowledged in the definition of “primary care services.”**

HHS proposed that the term “provider” means “A physician (M.D. – Medical Doctor or D.O. – Doctor of Osteopathic Medicine), health care professional or health care facility licensed, certified or accredited as required by state law.” HHS also proposed that the term “primary care provider” means “A physician (M.D. – Medical Doctor or D.O. – Doctor of Osteopathic Medicine), nurse practitioner, clinical nurse specialist or physician assistant, as allowed under state law, who provides, coordinates or helps a patient access a range of health care services.” Again, HHS proposes definitions from the NAIC that serve the anticompetitive goals of the AMA to restrict the professional services of non-MD/DO practitioners, particularly optometrists and other physicians. The broader definition of a “provider” to include individuals and entities licensed, certified, or accredited by state law is appropriate only if the definition does not include the improper parenthetical restriction on who can be a physician.

On behalf of our membership and the tens of millions of Americans who receive physician services from our members, we thank CMS, the Internal Revenue Service, and the Employee Benefits Security Administration for considering these comments and using the feedback to help improve the glossary of health insurance terms for consumers. The AOA urges you to not to implement a power grab by one branch of the physician community, and instead defer to your own Medicare program which views optometrists as physicians and as providers of physician services. Please contact Rodney Peele, Esq., Assistant Director for Regulatory Policy and Outreach at [rpeele@aoa.org](mailto:rpeele@aoa.org) or (703) 837-1348 if you have questions or need additional information about these comments.

Sincerely,



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President