On Wednesday, June 13, 2018, ADA members and stakeholders had the opportunity to visit more than 125 offices to meet with federal legislators and their staffs, as well as executive branch health policy experts to discuss the Audiology Patient Choice Act (APCA).

Based on the reception, information, and feedback ADA members received during their time in Washington D.C., ADA is more convinced than ever that the Audiology Patient Choice Act represents the best legislative pathway to improve Medicare patient access to audiology services and to achieve parity for audiology as a clinical doctoring profession within the Medicare program.

While discussion and debate about the merits and implications of the Audiology Patient Choice Act legislation should be welcomed and encouraged, we must not allow dishonest discourse to shape the conversation, particularly a conversation of such consequence to the future of our profession—and to the outcomes for the patients we serve.

Recently, the American Academy of Audiology (AAA) released a notice to members, directing them to an “FAQ” page.

Not only are many of the AAA statements contained there at odds with advancement of the profession of audiology, they are at odds with APCA facts. ADA is compelled to address misinformation recently disseminated by AAA to the public and to members of Congress. To that end, please find the AAA statements, below followed by ADA responses.

Which aspects of the bill does the Academy support?

- The Academy endorses the ability of Medicare beneficiaries to directly access the services of an audiologist without the requirement of a physician referral. Most individuals with private or federal government insurance already have this ability. Medical necessity would still be a requirement for reimbursement.
- The Academy supports legislation that seeks opportunities for audiologists to be paid for services within their scope of practice and commensurate with their level of education. This legislation does not seek to make changes to an audiologist’s scope of practice.

By virtue of this statement, it appears that AAA supports two key components of the Audiology Patient Choice Act (APCA). ADA is pleased that AAA has decided to make an official statement regarding the legislation, which was introduced in May 2017.

Despite repeated attempts by ADA over the
past five years to invite feedback by AAA on the Audiology Patient Choice Act legislative language, ADA has received no written feedback from AAA leaders. As AAA indicated in its FAQ, ADA answered a series of questions posed by AAA in 2017.3 Despite this, during the AAA Membership meeting on April 19, 2018, a member of the AAA board of directors falsely stated that AAA leaders had discussed recommendations for specific Audiology Patient Choice Act bill language modifications with ADA leaders. ADA took immediate action at that time to publicly refute the false statement.4

As of June 18, 2018 (a full two months since the AAA membership meeting and subsequent exchange), ADA still has not received any follow-up communication from AAA, much less any recommendations or requests from AAA with respect to the Audiology Patient Choice Act bill language. AAA has instead presented inaccurate information about the bill to legislative offices in an attempt to undermine its passage in the 115th Congress, despite AAA’s public assurances to the contrary.

ADA is committed to working with key stakeholders to advance advocacy objectives that elevate the profession of audiology and foster access to high quality audiologic care for patients. However, ADA believes that constructive collaboration requires an honest and accurate exchange of information.

ADA and history contend that, unless audiology first achieves limited license physician (LLP) status or similar standing within Medicare, neither an opt-out allowance nor the ability to receive payment for evaluation and management (E/M) services under Medicare will ever be achieved. Both CMS and Congress have set strong precedents in this regard. Only professions who have first been recognized as limited license physicians or limited license practitioners have previously been granted the authority to opt out of Medicare and/or the authority to receive payment for E/M codes.5

Professions listed under the definition of limited license physician or limited license practitioner are currently able to opt out of Medicare, with the exception of chiropractic medicine, which is only authorized to bill Medicare for a single service.6 It should be noted that chiropractors are advocating for reimbursement for the full scope of services that Medicare covers that they are licensed to provide. It is also important to note that chiropractors are advocating to be reimbursed for these additional services even though they cannot currently opt out of the Medicare program.7,8

Please see the following resources to view the Medicare advocacy initiatives that chiropractors are working to achieve:

- ACA Medicare Initiatives
- ACA Medicare Timeline (2015)

The same principles hold true for the coverage of evaluation and management (E/M) services under Medicare. Professions that are currently authorized to receive legitimate coverage...
for the appropriate provision of E/M codes under Medicare are listed under the definition of physician or non-physician, limited license practitioner.\(^5\) If the Audiology Patient Choice Act is passed, the ability for an audiologist to legitimately access Evaluation and Management services lies in:

1. The audiologist’s scope of practice defined at the state level; and
2. How the Medicare audiology benefit is written after the Audiology Patient Choice Act is passed.

According to CMS, “To receive payment from Medicare for E/M services, the Medicare benefit for the relevant type of provider must permit him or her to receive coverage for E/M services. The services must also be within the scope of practice for the relevant type of provider in the State in which they are furnished.”\(^5\)

ADA agrees with AAA that work with CMS and other organizations must occur to ensure that the audiology benefit is rewritten in a way that is favorable to audiology and does not compromise patient safety or access to care. Relying only on regulators to dictate audiology’s standing within the Medicare system has proven hopeless time and again. The Audiology Patient Choice Act will assure autonomy, recognition for diagnosis and treatment services, and commensurate standing with other clinical doctoring professions. These changes will immediately provide the audiology profession with improved standing to seek additional necessary regulatory changes as needed to continue to improve access and ensure professional parity. Without LLP status, audiology does not have such standing.

Please review the documents below for more information:

- [Evaluation and Management Code Use in Audiology](https://audiologyonlin.com)\(^9\)
- [List of Academy Questions and ADA Responses Regarding the Audiology Patient Choice Act](https://audiologyonline.com)\(^3\)

Simply put, while there is no guarantee that audiologists will be able to receive coverage for E/M codes if the Audiology Patient Choice Act passes, there is a far greater likelihood that they would be able to receive Medicare payment for the appropriate provision of E/M services. More importantly, it is all but certain that audiology will continue to be prohibited from receiving coverage for E/M services under the current Medicare regulations.

Please view more information here:

- [Department of Health and Human Services, Centers for Medicare & Medicaid Services: Evaluation & Management Services](https://www.cms.gov)\(^5\)

AAA has repeatedly stated that audiology must take an ‘incremental approach’ to achieving audiology’s long-term goals of better recognition and reimbursement under Medicare. AAA has also stated that it is advocating for audiologists to be able to receive coverage for E/M codes and to opt out of Medicare altogether if they so choose.

To reject Medicare LLP status, while at the same time advocating separately to opt out and/or to receive coverage for E/M codes is counter-productive and will be perceived by regulators and legislators as an affront to patient-centered care. In order to achieve AAA’s stated goals for the profession, the first steps must be to put audiology into the correct taxonomy with the other physician providers, to eliminate the unjust restriction of Medicare beneficiary access to audiology services, and to ensure that audiologists are recognized and reimbursed for all of the services that Medicare covers and that they are licensed to provide (by state licensure).

AAA has placed audiologists’ ability to opt out of Medicare at a higher priority than Medicare patient direct access to audiology services, reimbursement for services beyond diagnostics, and the proper classification of audiologists with other clinical doctoring professionals.
ADA urges AAA to reconsider. Not only does the ability to opt out of Medicare hinge on being classified appropriately to begin with, it is not all that it appears to be on its face.

It is important to recognize that almost none of the providers who are allowed to opt out of Medicare actually do.\textsuperscript{10,11}

View the following articles for more information:

- **Paying a Visit to the Doctor: Current Financial Protections for Medicare Patients When Receiving Physician Services** (Henry J Kaiser Family Foundation)\textsuperscript{10}
- **Opting out of Medicare** (DentalEconomics.com)\textsuperscript{11}

Providers who opt out of Medicare, cannot participate in Medicare Advantage (if one opts out of Medicare, s/he cannot be reimbursed for Medicare Part C/Medicare Advantage claims).\textsuperscript{10,12}

See below for more information:

- **Medicare Opt-Out Decision Matrix** (cms.gov)\textsuperscript{12}

Why does the Academy support streamlined, or direct access to audiologists as a legislative priority?

The Academy endorses the ability of Medicare beneficiaries to directly access the services of an audiologist without the requirement of a physician referral. Most individuals with private or federal government insurance already have this ability. In addition to decreasing costs for beneficiaries and the Medicare program, direct access is in line with recommendations by the National Academies of Sciences, Engineering, and Medicine (NASEM) to improve access to high quality hearing health care while improving the affordability of hearing health care. Additionally, with the pending legislation dictating the development of a new class of over-the-counter (OTC) hearing aids, which consumers will be able to access without a prescription, NASEM recommended the U.S. Food and Drug Administration (FDA) should remove the regulation that an adult seeking hearing aids be required to first have a medical evaluation or sign a waiver of that evaluation. This change begs the question if a physician referral should be warranted for a patient to have their hearing tested when they don’t need a referral to ultimately use a hearing device. The Academy strongly supports the ability of the patient to have straightforward, cost-effective access to high quality care from audiologists, who are the providers of choice for patients managing a hearing or balance concern.

ADA also strongly supports Medicare beneficiary direct access to audiology services, which is why direct access is expressly included in the Audiology Patient Choice Act. In addition to pursuing a legislative fix, ADA is also advocating aggressively for administrative/regulatory changes that will allow Medicare patients to have streamlined access to audiologic care.

ADA leaders met with the Deputy CMS Administrator over Medicare, Sean Cavanaugh (Obama Administration) in 2016 and Principal Deputy CMS Administrator & Director for the Center for Medicare, Demetrios Kouzoukas (Trump Administration) in 2017 to advocate for administrative/regulatory action to remove the physician order requirement for Medicare Part B beneficiaries seeking hearing or balance diagnostic services from an audiologist. More recently, in June 2018, ADA leaders and patient advocates were invited to meet with White House officials to advocate for direct access to audiology services.

ADA has also sought and obtained a legal opinion from Hogan Lovells attorney, Sheree Kanner, a renowned Medicare regulatory expert.\textsuperscript{13} ADA agrees that CMS/HHS can modify existing regulations to eliminate the physician order requirement through a rulemaking process. ADA will continue to pursue both
legislative and regulatory solutions to ensure streamlined access to audiology services for Medicare patients.

What is the position of members of Congress, the medical community, and other audiology organizations regarding this legislation?

Currently, this legislation is endorsed by the Academy of Doctors of Audiology (ADA) and the Hearing Loss Association of America (HLAA), as well as some other state and local organizations. The American Speech-Language-Hearing Association (ASHA) has remained neutral on the legislation, favoring their own legislative effort, the Medicare Audiology Services Enhancement Act, which aims to achieve comprehensive audiology benefits. The American Academy of Otolaryngology-Head and Neck Surgery (AAO-HNS) has directly opposed the Audiology Patient Choice Act, and specifically the attempt to achieve limited license physician status for audiologists. In addition to the AAO-HNS, more than 30 other medical societies, 44 state medical associations, and 57 state specialty associations have co-signed the letter of opposition. This opposition, combined with the current legislative and regulatory environment, make successful passage of this bill highly unlikely. Furthermore, discussions between Academy representatives and key House/Senate members have suggested this bill is not a priority as the current Congress comes to a close.

AAA has made recent public statements that after supporting the legislation in two recent Congresses, that it has taken no position on the legislation in the 115th Congress.\textsuperscript{14} Despite public statements affirming no position, the tone and tenor of this FAQ statement and recent statements made by AAA to Congressional offices seem to intentionally diminish and discourage support for the bill by understating the degree of support for the bill by the audiology and patient communities. AAA’s own members have overwhelmingly expressed support for the Audiology Patient Choice Act and have repeatedly urged AAA to support this landmark legislation.\textsuperscript{15,16}

AAA’s publicity about its own hosted advocacy visits to Capitol Hill never mentions advocacy related to the Audiology Patient Choice Act—and in fact AAA leaders recently expressly denied having discussed the bill with members of Congress.\textsuperscript{15,16} Now, AAA indicates that it has been meeting with Congressional offices regarding the Audiology Patient Choice Act, since the bill’s introduction in May 2017. There is no information about AAA visits to Capitol Hill to discuss the Audiology Patient Choice Act with members of Congress.

- Academy Board Visits Capitol Hill
- NOAC and Ohio University Students Visit Capitol Hill
- Texas Students Visit Capitol Hill for the First Time
- Nova Southeastern University’s SAA Travels to Capitol Hill

In the interest of transparency, ADA respectfully requests that AAA clarify its position and disclose advocacy activities that it has undertaken with Congress and others related to the Audiology Patient Choice Act.
It is incongruent with the facts to assert that a lesser legislative initiative will bring more success. Advocating for less, i.e. “only” Medicare direct access and reimbursement for treatment services has not proven more feasible. The AAO-HNS opposed previous AAA-shepherded direct-access only bills with as much vigor as they are now opposed to the Audiology Patient Choice Act. In fact, AAA-shepherded direct access legislation was opposed by AAO-HNS for more than a decade. Read the most recent AAO-HNS letter from 2014 opposing direct access. AAA abandoned the legislation at the close of 2014 and endorsed the Audiology Patient Choice Act in 2014 and 2015.

- ADA encourages audiologists to read the ADA issue brief to dispel the myths put forward by AAO-HNS.
- ADA also encourages audiologists to read the recent ENT Voice newsletter put forward by the AOA: which discusses financial repercussions as the core reason for AAO-HNS opposition to the legislation.

The Congressional climate has become more conducive for passage of the Audiology Patient Choice Act with each passing day. The fact is that the Audiology Patient Choice Act has advanced further in each consecutive Congress since its original introduction in the U.S. House of Representatives in late 2014. Public perception regarding allowing patient choice of qualified provider is gaining momentum and the need to remove unnecessary red tape and barriers to care is becoming widely adopted as common sense bi-partisan public policy.

ADA continues to work with the more than 55 consumer and audiology organizations who have endorsed the Audiology Patient Choice Act to execute strategies that will foster its passage as soon as an appropriate vehicle can be identified.

Why is the Academy concerned that this legislation does not include an “opt-out” and what does that mean?

Currently, doctors of dental surgery (DDS) or dental medicine (DMD), doctors of medicine (MD) and doctors of osteopathy (DO), and doctors of optometry (OD) may opt out of Medicare and privately contract with beneficiaries for the purpose of furnishing items or services that would otherwise be covered (Medicare Physician Guide, p21). Additionally, certain practitioners are also afforded this option. It is important to note chiropractors are not afforded the ability to opt out of the program, even though they have limited license physician status in the program. As a result, these providers must accept Medicare reimbursement rates for any services determined by Medicare to be a covered benefit. The current bill does not specifically provide audiologists the ability to opt out and many details of the regulatory changes that would occur subsequent to passage of the bill would not be determined until later. The Academy believes it is important that the ability to opt out be clearly defined in the proposed legislation before endorsement is possible.

According to Tacitus, “The desire for safety stands against every great and noble enterprise.” For the future of audiology, there is no more great and noble pursuit than that contained within the Audiology Patient Choice Act.

As noted above, the Audiology Patient Choice Act does not include any provisions that will preclude audiologists from opting out of Medicare. While there are no guarantees about the future, there is plenty of well-documented history, which clearly shows that the providers who are able to opt out of Medicare Part B are listed among limited license physicians or limited license practitioners.

Two acts of Congress are most responsible for granting providers with the ability to opt out of Medicare. The Balanced Budget Act of
What is the impact of the bill on patient choice and access to audiology services?

The positive aspect of this bill is that it has the potential to improve access to audiologists for Medicare beneficiaries. However, those benefits could also be realized by improving access to audiology services and expanding coverage of audiology and vestibular services without the LLP component. We believe an incremental approach would be more feasible in this political environment and also would allow the Academy to collaborate with stakeholders like CMS to position audiologists to achieve future goals relative to status under the Medicare program.

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By all accounts (even AAO-HNS’ account), the Audiology Patient Choice Act, if enacted, will improve access to audiologists for Medicare beneficiaries.

Audiology should not take an incremental approach to evidence-based care. The Audiology Patient Choice Act is designed to take today’s best practices in the delivery of hearing and balance services and codify them within the Medicare system. The Audiology Patient Choice Act has been 40 years in the making. It is better for the patient. It is better for the profession. It is better for the system. To delay its passage will amount to further delays in treatment for Medicare patients.

Based on AAA’s track record in the area of collaboration, ADA does not recommend that the profession of audiology suspend its efforts to achieve the Audiology Patient Choice Act while AAA is engaging CMS and other stakeholders.

Will the bill result in higher pay for audiologists?

There is no guarantee that this legislation would result in higher pay for audiologists. Audiologists may currently bill patients

1997 implemented a Medicare opt-out and included the following charter providers (all of whom were recognized as either limited license physicians or limited license providers under Medicare): medical doctors, doctors of osteopathy, clinical psychologists, clinical social workers, physician assistants, nurse practitioners, clinical nurse specialists, certified registered nurse anesthetists, and certified nurse midwives. The Medicare Prescription Drug Improvement, and Modernization Act of 2003 added podiatrists, dentists, and optometrists to the list of providers eligible to opt out, effective December 2003. These Congressional actions to create and expand the ability for providers to opt out of Medicare were part of broader packages and viewed as a pay-for for other provisions to improve Medicare.

Congressional staff have indicated to ADA leaders that the inclusion of a specific opt-out provision within the Audiology Patient Choice Act as a standalone bill will be met with resistance as it is counter-intuitive to the bill’s intention of improving access to audiology services for Medicare beneficiaries. However, unless the Audiology Patient Choice Act and specifically the LLP status is achieved, audiology will likely never be considered for eligibility to opt out of Medicare.

AAA states that it currently supports direct access and more expansive reimbursement opportunities for audiologists under Medicare, without the LLP provision of the Audiology Patient Choice Act. To do so expressly concedes the status required to mitigate the concerns expressed by AAA.

While LLP status doesn’t guarantee the authority to opt out—it is the only pathway to achieve it. AAA’s founders knew this 40 years ago. In fact, the founding purpose of AAA was to achieve all three objectives contained in the Audiology Patient Choice Act. Click here to view this important history.
directly for services that are not covered by Medicare. If enacted, this legislation would require audiologists to accept Medicare rates for services that they may have previously billed the patient for at their customary and reasonable rate. As written, this legislation would require the Medicare audiology benefit to be redefined through the regulatory process. While the bill specifically mandates that audiologists be given LLP status, it is silent on the exact regulatory changes that would be recommended or implemented. These changes could be extensive and complex and leave little certainty as to the impact of LLP status on the practice of audiology. As such, it is difficult to define specific outcomes, such as allowing access to E/M services. There are many variables that will determine payment rates for audiologists, making it difficult to ensure higher pay for audiologists.

The Audiology Patient Choice Act is not a panacea for the low salaries of audiologists relative to other clinical doctoring professions. There are a number of factors that go into the determination of salary and benefits. ADA has never asserted that passage of the Audiology Patient Choice Act will in and of itself increase the salaries of audiologists. The Audiology Patient Choice Act will place audiology into the correct taxonomy with the other physician providers under Medicare. This has positive implications that are deep and broad for better recognition by private insurers, improved opportunities for autonomy and better recognition by the public. All of these aspects will have a much better chance of improving reimbursement and pay for audiologists as commensurate with the valuable services that they deliver to patients.

Since AAA brought up the issue of pay for those with LLP status, below is a comparative look at the mean annual wage of the non-M.D./D.O. LLP (physician) providers recognized as physicians under Medicare, compared with audiologists:

<table>
<thead>
<tr>
<th>Professional</th>
<th>Mean Annual Wage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Audiologists</td>
<td>$80,040</td>
</tr>
<tr>
<td>Chiropractors</td>
<td>$83,350</td>
</tr>
<tr>
<td>Dentists</td>
<td>$174,110</td>
</tr>
<tr>
<td>Optometrists</td>
<td>$119,100</td>
</tr>
<tr>
<td>Podiatrists</td>
<td>$148,470</td>
</tr>
</tbody>
</table>

AAA infers that passage of the Audiology Patient Choice Act will create a regulatory landscape that is so enigmatic that it cannot be fathomed. This is simply not the case. There is an established process and decades of precedent for the treatment of limited license physicians within the Medicare system. AAA’s recommendation to hold audiology back because it can’t control every downstream regulatory change is tantamount to forfeiting the World Series because you can’t tell the umpire how to call the balls and strikes.

Audiology must not surrender its ambitions to fear. The profession must prepare for a future as a doctoring profession, with every expectation that audiology will be charged with increased responsibility and accountability for compliance and patient outcomes, as well as the increased autonomy and authority that is commensurate with doctoral-level education and training. To expect less, diminishes both the profession and the professionals.

Will the bill subject audiologists to new requirements in their practice?

Yes, audiologists will be subject to new requirements in their practice. We recognize that certain changes, specifically with regard to participation in the Quality Payment Program, will be forthcoming regardless of achieving LLP status, and the Academy has been active in both educating members and engaging with CMS to position audiologists to successfully adopt this new program. With LLP status, there may be more stringent reporting requirements than may/will be currently required for audiologists. We want to maximize opportunities for audiologists to successfully adopt new reporting requirements prior to
facing the same requirements as physicians who have been participating in the program since 2017.

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As AAA notes, audiologists may well be responsible for increased requirements for participation in electronic health records (EHR) and other reporting requirements as dictated by the Quality Payment Program as soon as 2019, regardless of the status of the Audiology Patient Choice Act, or whether they are included among the Medicare-defined list of physicians.\(^{34,35}\)

Further, as many as 36% of audiologists working in hospital settings and otolaryngology practices are already subject to these reporting standards.\(^ {34}\)

It is important to note that small practices with less than or equal to $90,000 in Medicare Part B allowed charges or less than or equal to 200 Medicare Part B beneficiaries are exempt from participation in the Merit Based Incentive Payment System altogether.\(^ {34}\)

The article “The ‘Miseducation’ of MIPS and Audiology”, written by Medicare reimbursement expert, Kim Cavitt, AuD, provides more information about the potential increased reporting requirements for audiologists if the Audiology Patient Choice Act is enacted.\(^ {34}\)

Finally, the Audiology Patient Choice Act legislative language states, “(c) EFFECTIVE DATE.—The amendments made by this section shall apply to items and services furnished on or after January 1 of the first year beginning more than 6 months after the date of the enactment of this Act.”\(^ 1\)

This will allow a minimum of 6 months and one day, and a maximum of 17 months and 31 days from the time that the bill is signed into law until the time that it is enacted, providing audiologists with ample time to prepare for any new reporting requirements that may result from achieving LLP status.

**Would passage of the bill guarantee audiologists the ability to access to E&M codes?**

While passage of the bill, including LLP status, might open doors for audiologists to utilize E/M codes, it is not a guarantee, and coverage of those codes would be determined on a state by state basis. Ultimately, coverage would be determined by CMS once the audiology benefit is rewritten. In other words, while passage of the bill would regulate the application of limited license status, the specifics of how it would be applied for audiologists would be determined by CMS.

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The door to receiving Medicare payment for E/M codes remains closed and locked to audiology today. Passage of the Audiology Patient Choice Act is an important step that will place audiology into the classification with providers who are authorized to use E/M codes when allowed by state licensure and when appropriate. Additional information on this subject can be found in previous sections.

**Will passage of this bill alter which services are covered for Medicare beneficiaries?**

Passage of the existing bill will not guarantee comprehensive coverage of audiology services. As is the case now, only those services that are medically necessary would be covered by Medicare. However, if this bill were to pass, the entire responsibility for determining and documenting medical necessity would fall to the audiologist. The Academy recognizes that audiologists are currently required to determine medical necessity before providing diagnostic tests and that members continue to contact the Academy with questions about determining medical necessity and other requirements for billing Medicare. The Academy continues to work with other audiology organizations to educate members on such topics and ensure compliance with
The Audiology Patient Choice Act specifically mandates the reimbursement for all of the Medicare-covered services that audiologists are licensed to provide by virtue of their state licensure.

The real downside for audiologists is what will likely occur if the Audiology Patient Choice Act does not pass. In ADA's view, audiologists will continue to be tasked with increased responsibilities and accountability dictated by Medicare, without the autonomy and other advantages permitted by LLP status.

AAA has indeed spent considerable time lamenting the plight of the chiropractor. Chiropractors are in fact seeking the ability to be reimbursed for additional services under Medicare.\(^7,8\) This is important to note, because as previously stated, they are not currently eligible to opt out.

In addition to the challenges faced by chiropractors within Medicare, AAA should also consider the success of optometry, dentistry, podiatry, and other providers with limited license physician and limited license practitioner status under Medicare. Audiologists are already providing more than a single service for reimbursement under Medicare and there is no rational basis for AAA’s concern that audiologists would be limited to a single service. If the Audiology Patient Choice Act were to be enacted today, audiologists would be eligible to bill for Medicare-covered, medically necessary diagnostic and treatment services as allowed by their scope of practice, including the following:

- audiologic and vestibular diagnostic services
- cerumen removal
- tinnitus treatment services
- vestibular rehabilitative services
- aural rehabilitation services

The fact is that most LLP providers are eligible to be reimbursed for the medically necessary services that Medicare covers, which fall within...
their scopes of practice. Audiologists are already reimbursed under the physician fee schedule (at the same rate as physicians). There is no reason to assume that application of LLP status would not apply to all services. AAA should not withhold support of the Audiology Patient Choice Act due to a position of fear.

Will passage of this bill guarantee an increase in salary and/or professional respect for audiologists?

Audiologists are already doctoral level health care providers, who are recognized as doctors by colleagues, peers, state licensure boards, members of the community, and patients. Medicare is a federal health insurance program that defines coverage for services for beneficiaries, but does not define professional scope of practice. There is also no guarantee that this legislation would result in an increase in salary for audiologists, and in fact, passage of this bill could result in lower reimbursement to audiologists for their services, as audiologists are required to accept Medicare rates for services previously billed directly to the patient. This would depend on Medicare payment rates, the final definition of covered services per the Medicare audiology benefit, and other factors such as the ability for audiologists to access E/M services and to opt out of the Medicare program. Additionally, CMS closely monitors utilization of services and has screens in place to identify services that exceed a certain utilization threshold. If utilization/billing increases for certain services, it is possible that CMS may request a review or resurveying of these codes by the AMA RUC and related specialties. In most cases, valuation for such codes tends to decrease after review. This is not specific to audiology, but has been seen across all specialties.

ADA strongly disagrees that audiologists are either commonly or properly recognized as doctoral-level health care providers. This issue has been a source of tremendous frustration among audiologists in recent years.

Medicare is the only federal health insurance program that universally requires a physician order for patients to seek reimbursable care from an audiologist. Medicare is the only insurance program that relegates audiology to a diagnostic-only profession, and in so doing marginalizes audiology’s value to the community.

ADA has conducted extensive research and has not found a single profession, currently categorized as physician or limited license practitioner within the Medicare system that is advocating to have the status removed. That is to say that as imperfect as Medicare reimbursement may be for those with LLP status, those professions fare better than those without some form of LLP status.

If AAA is genuinely concerned about the reduction in reimbursement for services, then why is AAA advocating strongly for direct access and reimbursement for treatment services under Medicare as it has repeatedly stated? The Audiology Patient Choice Act will place audiologists in the most strategic position to navigate the Medicare system going forward. It will allow audiologists more leverage with regard to payment policies.

Research clearly indicates that, given a choice, patients will choose the most efficient provider for care. The addition of audiologists to the reimbursement pool for the hearing and balance services that Medicare covers and that they are licensed to provide is not predicted to increase utilization significantly. Audiologists are already responsible for medical necessity under Medicare, which will also help prevent inappropriate billing.

Further, the direct access component of the legislation alone is expected to save Medicare some $240M over 10 years according to a study commissioned by AAA in 2012.
Might the bill have the unintended consequence of reducing reimbursement levels for audiology services?

Currently, audiologists can bill patients for non-covered services. For any services covered by CMS following passage of this bill, presumably those that are medically necessary and currently have CPT codes, audiologists would have to accept reimbursement rates set by CMS. For example, while services such as cerumen removal, vestibular rehabilitation, and aural rehabilitation are not currently covered benefits when provided by an audiologist, audiologists can bill patients directly for these services at a customary and reasonable rate determined by the audiologist. If these services were determined to be reimbursable by Medicare after passage of this bill, audiologists would be required to participate in Medicare and accept whatever reimbursement is deemed appropriate by Medicare. The Academy recognizes that this is a challenge that will need to be considered with any legislation that increases Medicare coverage of audiology services. However, the Academy believes that there may be opportunities to minimize this impact with strategic consideration of the manner in which comprehensive coverage is achieved.

Will audiologists have to see all Medicare beneficiaries?

This will depend. Currently there is no specific provision in this legislation to allow audiologists to “opt out” of the Medicare program. Opt-out is a contract between a provider, beneficiary and Medicare where the provider or beneficiary does not file a claim to Medicare. The physician or practitioner bills the beneficiary directly and is not required to follow the fee-for-service charges determined by Medicare. Audiologists are currently not included on the list of providers who are allowed to opt out of Medicare. If a patient requests that a claim be filed to Medicare for a covered service, the mandatory claims statute requires that the claim be filed.

Today, audiology is largely sidelined under Medicare, which impacts the way it is viewed by other insurers, providers, and the public. Audiology stands as a doctoring profession in name only with no clear pathway to professional parity or the true autonomy that should come with this level of requisite training and education.

Decisions about whether to support the Audiology Patient Choice Act should be based on facts reviewed in an objective manner using expert legal, legislative, and regulatory experts. They should not be based on “what-if” scenarios that are unlikely to occur or fears that border on the irrational.

The concerns expressed by AAA regarding the inability of audiologists to opt out of Medicare, juxtaposed against its concerns about potential implications inherent to achieving LLP status, demonstrates a fundamental lack of understanding about how the Medicare program functions. The Audiology Patient Choice Act represents the necessary elements that are fundamental to securing the ability to opt out of Medicare.

Audiologists should also practically consider that Medicare Part B excludes from coverage all services related to the dispensing and fitting of a hearing aid. Audiologists who primarily
With all due respect, if AAA’s communication with ADA is indicative of efforts and approaches to engage stakeholders toward productive legislative change, there is room for improvement. Since 2012, ADA has invited AAA to provide input and feedback into the development of Audiology Patient Choice Act language. ADA has not received any suggested written legislative language from AAA over the past 5.5 years. The bill language for the Audiology Patient Choice Act has not changed since its original introduction in July 2014.

ADA once again extends an open invitation to AAA and all stakeholders to collaborate towards shared goals. ADA welcomes the opportunity to meet in person, by phone, or to discuss ideas via email. Please contact Stephanie Czuhajewski at sczuhajewski@audiologist.org and she will be pleased to assist in coordinating a time to meet.

**Why does the current legislation not reflect a risk worth taking?**

Discussions with congressional leaders indicate that this bill is not a legislative priority in this congress. The Academy leadership felt that it would be disingenuous to sign on to a bill and not provide further advocacy; however, expending resources for further advocacy would not yield different results.

- Bloomberg prospectus and intel from congressional meetings suggest few, if any, vehicles remaining to pass health care legislation.
- This legislation will require considerable resources and political capital to advance this legislation
- Congressional staff recommends narrowing the focus of the legislation to improve feasibility of passage.
- This bill has only 26 co-sponsors on the House side and 1 co-sponsor on the Senate side.

**Might supporting this bill have a negative impact on key relationships that have the potential to move the profession forward in the future?**

The Academy has spent considerable time and effort to work with audiology, physician, payer, and government stakeholders across all fronts. Relationship-building has been a key priority in the past few years from our involvement with the FDA relative to OTC hearing aids and our efforts to serve as a ready resource with the Agency. The Academy works with audiology and physician groups in the context of the AMA CPT Editorial Panel and RUC and has established collaborative relationships with many specialty organizations whose support will be essential in advancing our own legislative and regulatory agenda. We continue to communicate with CMS on important policy matters relative to payment, quality reporting, communication, etc. and want to ensure we are having the right conversations with CMS with regard to making policy changes and the best way to accomplish this goal. We also continue to work with physician groups like AAO-HNS and others on other legislative and regulatory matters to work towards common goals in the health care arena.

The Academy has built these relationships to lay the groundwork to advance the goals that have previously challenged us, namely direct access and expanding coverage for audiology services. We believe an incremental approach that engages, rather than alienates these stakeholders is the most productive path forward. We also believe that sometimes the approach can be equally important as the policy itself.
AAA is, by its own account, expending significant resources to support the Medicare Telehealth Parity Act of 2017, H.R. 2550. ADA also supports this legislation, which if enacted will add audiologists to the list of providers who can receive Medicare coverage for telehealth services. AAA’s support of this bill runs counter to its rationale above for not supporting the Audiology Patient Choice Act.

The Medicare Telehealth Parity Act of 2017 currently has fewer co-sponsors in the House of Representatives than does the Audiology Patient Choice Act, and there is no Senate companion bill.

H.R. 2550 faces the same limited opportunities for advancement during this election year as does the Audiology Patient Choice Act—and all health legislation—and yet AAA does not negatively view expending resources towards this initiative. Ironically, had audiology been properly classified with other clinical doctoring professions, it would not be necessary now to add audiologists to the list of providers who can be reimbursed for telehealth services under Medicare.

ADA has not asked AAA to expend a single resource towards advancing the Audiology Patient Choice Act beyond providing a letter of support for the legislation, just as it has in the previous two Congresses. To infer that supporting the Audiology Patient Choice Act would require significant expenditures is disingenuous at best.

An expansive legislative approach is open to greater opposition by physician groups. Physician groups have already indicated to the Academy an intention to oppose the Audiology Patient Choice Act specifically. If the Academy signs on to the bill, we are confident that the opposition will become more visible and pronounced. The Academy recognizes vulnerabilities for the profession, such as variability of educational programs, that will likely be targets by the physician community, as evidenced by the AMA Scope of Practice Series and their various approaches in opposing expansive legislation for other health care disciplines. We believe that the profession needs to be prepared in common messaging to address those vulnerabilities. As well, we believe that we are more likely to achieve legislative success through eliciting support from a broader stakeholder community than only the audiologists. A political reality is that there are 68 actively licensed physicians for every audiologist in the United States.

Physician groups have opposed the Audiology Patient Choice Act with the same frequency and vigor as direct-access-only legislation. At the same time, the Audiology Patient Choice Act has enjoyed the support of individual physicians and continues to gain additional support from physician advocates. The most prominent physician support that the bill has received comes from its original republican Senate co-sponsor, Dr. Rand Paul, an ophthalmologist by background. Dr. Paul has committed to help advance the Audiology Patient Choice Act and to dispel myths that have been wrongly perpetuated by physician organizations seeking to limit competition and patient choice—not to protect the patients, but to protect their profits.

Along with the LLP designation comes expectations similar to those for physicians. The Academy wants to ensure that it’s members are fully prepared to adopt this status and realize the associated responsibilities. Some examples of those responsibilities include:

- Audiologists will bear sole responsibility in demonstrating medical necessity for covered services
- Audiologists could be expected to fully-participate in CMS’ new Quality Payment Program, including increased requirements for utilization of electronic health records and more stringent
Further, as many as 36% of audiologists working in hospital settings and otolaryngology practices are already subject to these reporting standards. It is important to note that small practices with less than or equal to $90,000 in Medicare Part B allowed charges or less than or equal to 200 Medicare Part B beneficiaries are exempt from participation in the Merit Based Incentive Payment System altogether.

The article "The ‘Miseducation’ of MIPS and Audiology", written by Medicare reimbursement expert Kim Cavitt, AuD, provides more information about the potential increased reporting requirements for audiologists if the Audiology Patient Choice Act is enacted.

Finally, the Audiology Patient Choice Act legislative language states, "(c) EFFECTIVE DATE.—The amendments made by this section shall apply to items and services furnished on or after January 1 of the first year beginning more than 6 months after the date of the enactment of this Act."

To be clear, if Doctors of Audiology are added to the physician definition under the Medicare statute, this LLP designation will come with expectations that are identical to those for physicians. ADA is confident that audiologists have the education and training to carry out these responsibilities, which will include sole responsibility in demonstrating medical necessity, just as audiologists do each and every day for other insurers.

Those responsibilities would include participation in the QPP program including requirements for the utilization of electronic health records. As AAA notes, audiologists may well be responsible for increased requirements for participation in electronic health records (EHR) and other reporting requirements as dictated by the Quality Payment Program as soon as 2019, regardless of the status of the Audiology Patient Choice Act, or whether they are included among the Medicare-defined list of physicians. Further, as many as 36% of audiologists working in hospital settings and otolaryngology practices are already subject to these reporting standards. It is important to note that small practices with less than or equal to $90,000 in Medicare Part B allowed charges or less than or equal to 200 Medicare Part B beneficiaries are exempt from participation in the Merit Based Incentive Payment System altogether.

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Why did the Academy previously endorse the legislation but has now opted not to support?

Since 2014, the Academy has been in discussion with ADA and ASHA regarding the content of this bill. The Academy did agree to support the bill when ADA introduced it in a previous congress, and the bill was not successful. When ADA mentioned reintroducing the bill for the 115th Congress, the Academy requested reconsideration of the bill language. In January 2017, the Academy submitted a series of questions to ADA; responses to these questions were received from ADA in July 2017, two months after they introduced the bill in May 2017. By this time, the Academy had conducted extensive outreach to congressional offices regarding this legislation, including the committees with jurisdiction over the legislation. The opinion
of the Board and Academy representatives following this investigative process concluded that the legislation, as currently written, is too broad and far-reaching to be successful in the current political climate. As such, the Academy did not provide an endorsement of the legislation, rather we agreed not to actively oppose. It is important to recognize that decisions regarding legislation are not binary (support/oppose). Rather, the Academy continues to evaluate and assess opportunities to collaborate and to further our agenda. Refer to the Academy’s timeline of events for more information.

AMERICAN ACADEMY OF AUDIOLOGY

This entirety of this statement supports ADA’s assertions about AAA’s mixed messages related to outreach to Congressional offices regarding the Audiology Patient Choice Act. ADA looks forward to learning more about the AAA legislative agenda.

ADA did answer AAA questions regarding the Audiology Patient Choice Act, and ADA stands by the answers to those questions. Had ADA known that they were intended for public consumption, ADA would have issued them on letterhead and included additional important and relevant background information, which was unfortunately omitted by AAA.

AAA rightfully labeled its timeline document, “Academy’s timeline”, as they also omitted many key details in the history of the legislation. Please review the accurate timeline of events related to the Audiology Patient Choice Act- starting in 1949.39

What legislation would the Academy be interested in supporting at this time?

The Academy strongly supports streamlining access to audiology services and being recognized and reimbursed for performing our full scope of practice under the Medicare program and across private payers. We view these two goals as critical in supporting

the autonomous practice of audiologists. Advancing these two goals reflects an incremental approach that we feel is more politically feasible at this time given the current climate on Capitol Hill, communications with congressional staff, and discussions with other stakeholders, including other audiology professional organizations and hearing health care specialty societies. The Academy is working to identify a legislative approach that will meet these two goals and represent a sound legislative strategy based on the feedback we have received from Capitol Hill.

Furthermore, the Academy is interested in cultivating new and ongoing collaborative relationships with other professional stakeholders, consumers, and legislative resources to identify incremental legislation that furthers our ultimate objectives of improving the practice of audiology for members without causing undue compromise or sacrifice by our members.

The Academy remains active before federal agencies and on Capitol Hill advancing a number of other legislative and regulatory initiatives. To learn more about these initiatives, visit:

• Advocacy Priorities, including the 2017 Advocacy Year in Review
• Government Relations News
• Reimbursement News

The Academy is interested in supporting legislation that allows us to advance the profession of audiology while improving access to hearing healthcare but seeks an opportunity that

ADA is also interested in supporting legislation that allows members to advance the profession of audiology while improving access to hearing healthcare but seeks an opportunity that
allows ADA to do so on our terms and allows us to set the tone as regulatory changes are implemented. That is precisely why ADA supports the Audiology Patient Choice Act.

The Academy has indicated that improving access to audiology care and getting reimbursed for performing our full scope of practice under the Medicare program and across private payers are the two primary goals for the Academy. What is the Academy doing to advance this goal and increase payment and access for audiology services?

The Academy has long advocated for improved payment for audiologists across private payers, most recently convening a payer summit in October to foster relationships with private payers and express audiologists concerns over issues like not being able to bill payers for E/M services.

Hopefully, AAA will further investigate the mechanism to achieve the ability to receive coverage for E/M services under Medicare and reconsider support for the Audiology Patient Choice Act.

Since the start of the Quality Payment Program (QPP), the new CMS quality payment system, the Academy has met with and continues to communicate with CMS on inclusion of audiologists in this new payment system and how best to position and prepare our members for this new program, including opportunities to incentivize audiologists for adoption of EHR technology. We recognize that there are changes on the horizon for audiologists and we want to ensure members are prepared by providing educational resources and advocacy before CMS.

If AAA recognizes that audiologists are going to be responsible for increased requirements under QPP, then why doesn’t AAA advocate for the Audiology Patient Choice Act to ensure that audiology is in the very best position possible in the same classification with other clinical doctoring professions under Medicare? 

Academy representatives have long advocated that audiologists be awarded an independent seat on the American Medical Association’s (AMA) Resource Value Scale Update Committee (RUC) Health Care Professionals Advisory Committee (HCPAC). Previously, both audiology and speech-language pathology did not hold separate “seats” and were dually represented by ASHA. The RUC process results in recommendations made to CMS regarding reimbursement rates for codes under the Medicare Physician Fee Schedule. The Academy views representation on this body as critically important for audiology to have an independent voice with regard to Medicare payment. No other audiology organization supported this effort at the time.

The purpose of this statement is not clear. What does this have to do with the Audiology Patient Choice Act or AAA’s current position on the bill? Please elaborate.

Through the AMA RUC and CPT Editorial Panel, the Academy is working with other audiology and physician stakeholders to improve coding and valuation for audiology services by revising the audiology code set.

Academy leaders and lobbyists have met directly with Republican and Democratic leadership to discuss options and opportunities for improving access to care.

The Academy submitted comments to the House Ways and Means Committee, Health Subcommittee in August to respond to their request to reduce red tape within the Medicare program and has continued that outreach by meeting regularly with both House and Senate offices. These comments addressed access issues within the Medicare program and the need for audiologists to be able to bill E/M services.

If AAA sincerely wishes to collaborate toward the best legislative pathway forward, AAA should consider sharing these comments with members and stakeholders.
The Academy will be meeting with CMS to discuss regulatory opportunities to achieve direct access and explore options for expanding coverage for audiology services under the Medicare program. The Academy will also discuss LLP status to better understand the implications for our members.

AAA has indicated that it conducted an extensive analysis on LLP status and, as a result, it chose not to endorse the Audiology Patient Choice Act because of regulatory implications and the potential for unintended consequences. Here, AAA concedes that AAA does not have a good understanding about what the impact will be if the Audiology Patient Choice Act is passed.

The Academy has commented extensively to CMS on payment matters including the Medicare Physician Fee Schedule, the Quality Payment Program, the Hospital Outpatient Prospective Payment System, and the CMS Innovation RFI for improving innovation and care models within the Medicare program. The Academy works with other stakeholders like ASHA, physician groups, manufacturers, and the AMA RUC on such comments to advance the profession.

What can I do in my practice to better position audiology for long-term advancement in the legislative and regulatory environment?

- Advocate for the Audiology Patient Choice Act
- Unbundle your services to increase transparency so that patients understand the value of audiologist services as separate from hearing devices
- Don’t give services away for free
- Be vigilant in appropriate identification and documentation of medical necessity and appropriate billing practices

ADA encourages audiologists and other stakeholders to review the following documents.

- H.R. 2276, the Audiology Patient Choice Act House Bill
- S. 2575, the Audiology Patient Choice Act Senate Bill
- Audiology Patient Choice Act Fact Sheet
- Medicare Law Impedes Competition
- Know the Facts Issue Brief
- Direct Access Legal Opinion presented to CMS: Kanner Memo
- Audiology Patient Choice Act and LLP Status Timeline
References


