

CANCER LEADERSHIP COUNCIL

A PATIENT-CENTERED FORUM OF NATIONAL ADVOCACY ORGANIZATIONS
ADDRESSING PUBLIC POLICY ISSUES IN CANCER

July 28, 2021

The Honorable Janet Yellen
Secretary
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

The Honorable Xavier Becerra
Secretary
Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

The Honorable Chiquita Brooks-LaSure
Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
7500 Security Boulevard
Baltimore, MD 21244

Re: Patient Protection and Affordable Care Act; Updating Payment Parameters, Section 1332 Waiver Implementing Regulations, and Improving Health Insurance Markets for 2022 and Beyond Proposed Rule

Filed electronically at <http://www.regulations.gov>

Dear Secretary Yellen, Secretary Becerra, and Administrator Brooks-LaSure:

The undersigned cancer organizations of the Cancer Leadership Council are patient direct service, education, and advocacy organizations; professional societies; and research foundations. Our organizations and their members deliver high-quality cancer care; fund and conduct research and development efforts that produce life-saving new cancer treatments; provide direct patient services to cancer patients, their families, and their caregivers; provide evidence-based educational support; and advocate for access to high-quality care for all cancer patients.

The Affordable Care Act (ACA) has provided access to insurance coverage to some of the people we represent, who might otherwise have no insurance coverage at all. A cancer patient has a pre-existing condition from the moment of diagnosis, and the protections of the ACA have been critically important to them. Access to quality cancer care for all will only be achieved if patients have access to adequate and affordable insurance. We appreciate the opportunity to comment on the proposed rule setting out standards for ACA plans for 2022. Many of the provisions of this proposed rule will strengthen the exchanges and provide more protections to consumers; we explain our support for those provisions below.

Revision of Navigator Program Standards

We support the proposal to amend §155.210(e)(9) to reinstitute the requirement that Navigators in the federally facilitated exchanges provide information regarding certain post-enrollment topics. The proposed rule would require Navigators to help consumers in understanding the process of filing appeals of Exchange eligibility determinations, ensure consumers understand the premium tax credit (PTC) reconciliation process, and assist consumers in understanding basic concepts and rights related to health coverage and how to use it. We realize that the proposed rule does not permit Navigators to provide tax assistance or advice. However, reinstating certain post-enrollment Navigator responsibilities will be of benefit to cancer patients.

Financial toxicity is a serious side effect of cancer and is experienced by far too many cancer patients. We understand that the restoration of certain Navigator responsibilities will not resolve all financial difficulties confronted by cancer patients. However, providing consumers assistance in understanding their coverage and how to use it is an important step in helping them address the financial challenges associated with their cancer care.

Repeal of Exchange Direct Enrollment Option

We commend the Centers for Medicare & Medicaid Services (CMS) for reevaluating the Exchange Direct Enrollment (DE) option for state exchanges, state-based exchanges on the federal platform, and federally facilitated exchange and for making the decision to repeal the Exchange DE. This option would have permitted state exchanges to move toward a private sector enrollment model in 2022 and permitted other exchanges to do so in 2023. The private enrollment model, which would have relied on insurers, web-brokers, and agents and brokers for direct plan enrollment, posed risks to cancer patients. We were concerned, when direct enrollment was proposed, that cancer patients in such a system might purchase non-qualified health plans that would not cover their pre-existing conditions and that they also might not receive reliable information about Medicaid eligibility and advance premium tax credit (APTC) eligibility.

In a small study of the marketing of Affordable Care Act (ACA)-exempt plans, the Government Accountability Office (GAO) found troubling sales tactics by some insurance sales representatives.¹ We are pleased that the Exchange DE option has been eliminated, as that may

¹ Government Accountability Office to Senators Robert Casey and Debbie Stabenow, Private Health Coverage: Results of Covert Testing for Selected Offerings, August 24, 2020. Accessed on July 22, 2021, at

also help to address the possibility of questionable sales practices in a system that relies on web-brokers and agents and brokers.

Section 1332 Standards/Guardrails

We support the decision of the Departments to restore the guardrails that must be met by any waiver application under Section 1332 of the ACA. These guardrails include requirements that coverage be as affordable as it would be without the waiver; coverage must be as comprehensive under the waiver as it would be without the waiver; coverage must be provided to a comparable number of people under the waiver as without the waiver; and the waiver must not increase the federal deficit. A 2018 waiver guidance document and part 1 of the NBPP for 2022 had reinterpreted the guardrails to require waiver applicants to assess the number of people who have access to affordable comprehensive coverage under the waiver rather than the number of people who enroll in coverage. This interpretation would likely have allowed states to steer potential enrollees into short-term, limited durations plans or association health plans and would have resulted in inadequate coverage for cancer patients.

The Section 1332 guardrails as defined in this proposed rule are consistent with the ACA and will reestablish standards for waiver applications that will protect cancer patients and others who need access to comprehensive coverage for their complex conditions.

Open Enrollment Period Extension

We support the extension of the open enrollment period from the current 45-day period to a 75-day period. The longer enrollment period will provide consumers more time to receive assistance from Navigators or other assisters. Those of us who provide direct patient services know that the 45-day enrollment period has presented challenges to consumers, barely providing them time to obtain information about plans, receive assistance from Navigators, and make informed decisions about adequate and affordable coverage.

We recommend that the 75-day enrollment period be a floor for all marketplaces and that state-based marketplaces that prefer a longer enrollment period be permitted to have that longer period.

Special Enrollment Period for Low-income Individuals Eligible for APTC

We support the establishment of a special enrollment period (SEP) for those with a household income less than 150 percent of the federal poverty level who are eligible for advance payments of the premium tax credit (APTC). These individuals may not have enrolled in marketplace coverage because they are unaware of their options and may also believe that they cannot afford coverage. The SEP may serve to encourage enrollment of uninsured individuals who qualify for free coverage but have not enrolled to date. It is estimated that as many as 1.3 million people fall in this category.

The Biden Administration health equity efforts may be advanced by the SEP. The insured who are eligible for substantial assistance to purchase coverage include significant numbers of Hispanic non-elderly adults, non-native English speakers, and Black non-elderly adults.² If these individuals can be encouraged to enroll during the SEP, the Administration may be able to reduce the rate of the uninsured in these populations.

We understand that CMS intends to undertake extensive outreach and engagement efforts to low-income individuals who are APTC-eligible. We believe that these efforts are necessary and have the potential to boost enrollment. We recommend that outreach and engagement efforts proceed and that a special enrollment period be utilized.

Network Adequacy

We are heartened that HHS will reevaluate network adequacy standards for plans offered through the Federally Facilitated Marketplace (FFM). Marketplace plans are required to maintain an adequate network of providers and up-to-date online provider directories. Defining the standards for network adequacy and sufficient provider directories may help ensure that FFM plans are adequate for cancer patients and that cancer patients can make choices about the plans most suited to their health care needs.

Cancer patients typically require multidisciplinary care including surgery, drug therapy, and radiation therapy, plus supportive care for the management of the side effects of cancer and cancer treatment. Treatment needs may change over the continuum of a cancer patient's care, and patients may need access to different providers over the course of their disease and treatment. Cancer is of course not a single disease but many diseases, and patients may require care from cancer care professionals with expertise in rare cancers. We urge that the complexity of cancer care and the need for a wide range of cancer care professionals be considered in the review of network adequacy standards.

The COVID pandemic has brought to our attention the health care disparities that existed before the pandemic, and these disparities have been exacerbated by the pandemic. In the review of network adequacy standards, we urge that underserved populations be carefully considered. Networks should be evaluated for having appropriate language services to ensure that those with limited English proficiency can obtain care in their preferred language. Networks should be evaluated for accessibility, including physical and language accessibility. Networks must be adequate to meet the needs of a diverse enrollee population, including people of color, immigrants, people with disabilities, and LGBTQ individuals. Provider directories must also be

² Kaiser Family Foundation, A Closer Look at the Uninsured Marketplace Eligible Population Following the American Rescue Plan Act, May 27, 2021. Accessed on July 24, 2021, at <https://www.kff.org/private-insurance/issue-brief/a-closer-look-at-the-uninsured-marketplace-eligible-population-following-the-american-rescue-plan-act/>. Department of Health and Human Services, Assistant Secretary for Planning and Evaluation, Access to Marketplace Plans with Low Premiums on the Federal Platform, April 1, 2021. Accessed on July 24, 2021, at <https://aspe.hhs.gov/reports/access-marketplace-plans-low-premiums-current-enrollees-american-rescue-plan>.

available in languages in addition to English to assure that consumers can assess the adequacy of plans and their networks.

We appreciate the opportunity to comment on this proposed rule. The proposed rule advances policies that will improve access to affordable coverage that is adequate, and for that reason the proposal is responsive to the needs of cancer patients.

Sincerely,

Cancer Leadership Council

Association of Oncology Social Work
Cancer Support Community
Children's Cancer Cause
LUNgevity Foundation
Lymphoma Research Foundation
National Coalition for Cancer Survivorship
Prevent Cancer Foundation
Susan G. Komen