AMA AMERICAN MEDICAL ASSOCIATION

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The Honorable Chiquita Brooks-LaSure
Administrator
Centers for Medicare & Medicaid Services
Hubert H. Humphrey Building, Room 445–G
200 Independence Avenue, SW
Washington, DC 20201

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

Dear Administrator Chiquita Brooks-LaSure:

On behalf of the physician and medical student members of the American Medical Association (AMA), I appreciate the opportunity to provide comments to the Centers for Medicare & Medicaid Services (CMS) in response to the Notice of Proposed Rulemaking (proposed rule or NPRM) on "Updating Payment Parameters, Section 1332 Waiver Implementing Regulations, and Improving Health Insurance Markets for 2022 and Beyond." The proposed rule would, among other provisions, lengthen the annual open enrollment period (OEP), create a new special enrollment period opportunity for certain low-income consumers, expand duties performed by Navigators, and minimize confusion and burden for consumers. The AMA commends the Administration for their commitment to extending health insurance coverage to more Americans and making it easier and more affordable to get covered. Our comments below highlight in particular a few specific provisions; we support this proposed rule and urge CMS to finalize it without delay.

<u>Open Enrollment Period</u>

The proposed rule would establish an annual OEP of 75 days—from November 1 to January 15—beginning with the 2022 plan year. This would apply for all exchanges, including state-based exchanges, although most of the latter already had allowed enrollment through January. The AMA had opposed the shortening of the OEP to 45 days under the previous Administration and supports this proposed change. The current 45-day OEP does not provide enough time for all potential consumers to fully assess their plan options and choose the best plan for themselves and their families, as well as understand their premium and cost-sharing liabilities. Moreover, consumers in underserved communities that may need more assistance or time to enroll (such as those with limited English proficiency) would also benefit from an extended enrollment period.

<u>New Low-Income SEP</u>

CMS proposes a new monthly SEP for individuals and dependents who are eligible for advance premium tax credits and whose household income is under 150 percent of the federal poverty level (FPL). CMS notes that this would help provide the population of uninsured people who are not enrolled but who already qualify for a free platinum-equivalent plan, many of whom are younger people. The AMA agrees that the population with incomes under 150 percent FPL, eligible for zero-premium marketplace coverage under the American Rescue Plan, require innovative policy interventions to ensure they get covered. However, the AMA suggests that CMS explore opportunities to auto-enroll this population in marketplace coverage at no cost to them, with an opportunity to opt out. The targeted use of auto-enrollment for the population eligible for zero-premium marketplace coverage has the potential to achieve significant coverage gains. In addition, for those who lose their employer-sponsored health insurance coverage resulting from the COVID-19 pandemic, state unemployment insurance systems could be leveraged to facilitate enrollment in no- or low-cost health insurance for which the newly unemployed are eligible.

State Exchange Direct Enrollment Option

The AMA strongly supports the proposal to repeal the Exchange Direct Enrollment (Exchange DE) option that was finalized by the previous Administration in January. Under this option, states were allowed to move away from a single, centralized exchange (i.e., Healthcare.gov) to an Exchange DE option, a decentralized system where states could let people enroll in exchange plans using private sector entities (i.e., insurers, web-brokers, and agents and brokers) beginning in 2023. We had opposed this approach over concerns that it could result in confusion and disruption. The Affordable Care Act (ACA) established the exchanges to serve as consumer-facing, one-stop marketplaces where individuals could compare qualified health plans (QHPs) based on price and quality, choose the plan best suited to their needs, and learn about eligibility for and apply for financial assistance. Consumers can submit a single application at the exchange website to connect with the type of health coverage for which they are eligible, whether Medicaid, the Children's Health Insurance Program (CHIP), or a private plan. The majority of states rely on the federal insurance exchange, plus a few others that run their own state marketplaces under the law but depend on the federal online sign-up system.

The DE option raised several concerns primarily because DE entities do not have all the benefits and protections that the ACA marketplaces provide. For example, many DE entities offer plans that do not comply with ACA standards, such as short-term limited duration insurance, and they may benefit financially if they enroll more people in them. One study found that some DE sites use screening tools to shift consumers away from marketplace options. Since web-brokers can recommend specific products to clients, they can steer consumers away from more comprehensive plans. We were particularly concerned that individuals who are eligible for Medicaid or CHIP may face additional barriers to enrolling when they rely on a DE website. In addition, continuing on the path of privatizing the exchange with which millions of consumers are familiar and through which most consumers enroll could make it harder for people to find high-quality, ACA-compliant insurance with full benefits and could reduce overall enrollment. The AMA urges CMS to adopt this proposal.

Changes to Section 1332

The AMA strongly supports the proposal to rescind the 2018 guidance on Section 1332 waivers, eliminate any references to or incorporation of the 2018 guidance, and replace the previous Administration's interpretations with an approach that generally tracks the 2015 guidance on the waivers. We had strongly opposed the 2018 guidance and its incorporation into federal regulations out of concern that the agencies' reinterpretation of the guardrails would make it easier for states to sidestep important ACA coverage requirements; undercut crucial state and federal patient protections, especially for individuals with pre-existing conditions; result in substandard, inadequate health insurance coverage; and disrupt and destabilize the individual health insurance markets. Most significantly, under the CMS guidance, states could use federal funds to subsidize non-ACA compliant plans, including short-term limited duration insurance, which has skimpy benefits and fewer protections for individuals with pre-existing conditions. We believe that these changes are contrary to both the statutory text and congressional intent and are very pleased that CMS proposes to reverse these ill-considered changes.

Mental Health Parity and Addiction Equity Act

The AMA supports the technical change in the proposed rule that would confirm that insurers must comply with the Mental Health Parity and Addiction Equity Act (MHPAEA) when satisfying the requirement to cover mental health and substance use disorder services (including behavioral health treatment services) as an essential health benefit. This is especially important given the changes adopted in the December 2020 Consolidated Appropriations Act regarding non-quantitative limits. The AMA strongly supports efforts to strengthen enforcement of the MHPAEA. State departments of insurance regularly find that health insurance companies violate the MHPAEA and resist efforts to ensure that patients with mental illness or a substance use disorder receive benefits in parity with medical and surgical benefits. At a time when the nation's drug overdose epidemic is claiming more lives than ever, and those with mental illness struggle to get care, it is essential that health insurers face real consequences for their actions.

Thank you for considering the AMA's comments. If you have any questions, please feel free to contact Margaret Garikes, Vice President, Federal Affairs, at margaret.garikes@ama-assn.org or (202) 789-7409.

Sincerely,

James L. Madara, MD