



February 12, 2019

Seema Verma  
Administrator  
Centers for Medicare and Medicaid Services  
Department of Health and Human Services  
Attention: CMS-9926-P  
P.O. Box 8016  
Baltimore, MD 21244-8016

RE: Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2020; CMS-9926-P

Dear Administrator Verma,

The American College of Physicians (ACP) appreciates the opportunity to comment on the Notice of Benefit and Payment Parameters for 2020. ACP is the largest medical specialty organization and the second-largest physician group in the United States. ACP members include 154,000 internal medicine physicians (internists), related subspecialists, and medical students. Internal medicine physicians are specialists who apply scientific knowledge and clinical expertise to the diagnosis, treatment, and compassionate care of adults across the spectrum from health to complex illness.

#### General comments

ACP is concerned about preliminary evidence that the uninsured rate has reached its highest level since 2014. According to a January 2019 Gallup survey, nearly 14% of adults did not have health insurance in the fourth quarter of 2018, (1). Early reports indicate that plan year 2019 enrollment in the federally-facilitated marketplace declined slightly. We believe it is incumbent on CMS to take action to reverse this decline by stabilizing the health insurance marketplaces; providing dedicated funding for outreach, marketing, and education during open enrollment periods; and blocking the sale of extended short-term, limited duration, and association health plans that are not required to abide by the law's regulations.

#### Guaranteed renewability, prescription drug formularies (146.106)

Starting in plan year 2020 and beyond, CMS proposes to allow individual, small group, and large group market issuers to change their prescription drug formulary mid-year when a generic equivalent of a

prescription drug becomes available so the generic be added to the formulary. The issuer would be permitted to remove the equivalent brand name drug from the formulary or move the brand name drug to a different cost-sharing tier.

ACP generally supports expediting approval and encouraging use of generic drugs, and the agency's proposal could steer enrollees to lower cost drug options. However, inclusion of a generic equivalent of a brand-name drug on a formulary should be based upon the drug's effectiveness, safety, and ease of administration rather than solely based on cost. If maintenance changes are made, issuers must be required to give prompt prior notification of no fewer than 90 days before the change to patients and physicians.

We recommend that issuers making mid-year formulary changes only be permitted to move the brand-name drug to a different cost-sharing tier for the remainder of the plan year. Issuers should not be allowed to remove a safe brand name drug from the formulary until the time of plan renewal. Discriminatory drug tiering or benefit design, such as when a generic or brand-name drug is moved to a tier with high cost-sharing to dissuade enrollment, should be prohibited. Additionally, we ask the agency to consider directing issuers to provide a transitional fill to patients when a change to brand-name drug coverage is made. This would ensure that the patient can access clinically necessary medication during a course of treatment and lessen the need to pursue an exception.

#### Navigator Program Standards (155.210)

ACP supports the mission of the navigator program to provide objective information about health insurance, perform enrollment assistance, and conduct outreach activities, among other duties. People who receive assistance from Navigators and other assisters are more likely to enroll in coverage than those who do not receive assistance (2). Navigators also educate enrollees on how to use insurance. We are concerned about the proposal to remove the requirement that Navigators operating in federally-facilitated exchanges/marketplaces provide post-enrollment duties, including providing information on the appeals process and improving health insurance literacy. Health insurance has become more complicated and health insurance literacy is relatively low among the uninsured (3). People with high health insurance literacy have a higher probability of being insured than those with low health insurance literacy (4). We believe Navigators should continue to provide post-enrollment assistance. We also urge the agency to provide sufficient financial support for the Navigator program to ensure the full range of services can be provided to the public.

#### Ability of States to Permit Agents and Brokers to Assist Qualified Individuals, Qualified Employers, or Qualified Employees Enrolling in QHPs (155.220)

The proposal to expand Direct Enrollment may provide consumers with additional avenues to shopping for and enrolling in qualified health plans (QHP). We agree with the proposal to prohibit web-broker websites from displaying recommendations on QHPs based on compensation the broker or agent receives from QHP insurers; however we are concerned that it would not prohibit web-brokers from "otherwise implicitly making recommendations based on how they display QHPs," such as by how lists

of available plans are presented to shoppers. The agency should strongly enforce efforts to ensure the consumer experience is not affected by web broker compensation.

Additionally, we are concerned about recent reports that indicate some insurance brokers may be steering consumers to short-term, limited duration plans because they provide lavish compensation packages (5). We oppose the proliferation of these plans because they do not meet the ACA's insurance regulations, may expose enrollees to higher-than-expected health care costs, and lead to premium spikes in the ACA-compliant marketplace. Consumers should be matched with the plan that best suits their needs and Direct Enrollment should not be used as a means to direct QHP shoppers to plans that do not comply with ACA insurance regulations.

Similarly, at 156.280 the agency proposes to require plans that offer non-Hyde abortion benefits to offer at least one "mirror QHP" that provides identical coverage but excludes non-Hyde abortion services, if permitted under state law. ACP is concerned that this proposal may cause issuers to drop coverage of women's health services due to the associated administrative complexity. We recommend that if this proposal is finalized, steps be taken to ensure plan information is presented in an objective, clear manner and shoppers are able to easily differentiate between the QHP that covers non-Hyde abortion services and its mirror QHP counterpart. Doing so will enable shoppers to make an informed decision based on their insurance needs.

#### Special Enrollment Periods (155.420)

The proposal would provide a special enrollment period to individuals who become eligible for advance premium tax credit due to a decrease in household income. We support this provision to allow off-exchange plan enrollees to transition to a subsidized QHP and help ensure continuous coverage.

#### Silver Loading

ACP strongly supports efforts to make ACA-compliant QHPs more affordable. For example, we support lifting the eligibility cap on APTCs so that certain people with incomes over 400% of the federal poverty level can purchase subsidized insurance. Silver loading has been devised by insurers and state insurance regulators as a way to address high premiums and stabilize the marketplace. Evidence shows that silver loading was key to stabilizing the marketplace in the volatile 2018 plan year, when many insurers increased premiums to correct for inaccurate pricing (6). As a result of this strategy, many people had the opportunity to enroll in zero-premium Bronze plans and Gold-tier plans that were cheaper than less-generous Silver-tier offerings. Silver loading has proven to be highly popular among issuers (7) and has been adopted by more states in the 2019 plan year. ACP recommends that silver loading remain an option to improve affordability and attract issuers and enrollees to the market.

#### Prohibition on Discrimination (156.125)

We appreciate the discussion on the need for and efficacy of medication-assisted treatment. However, ACP strongly believes that health insurers should be *required* to cover all four medication-assisted

treatment drugs—buprenorphine, naltrexone, buprenorphine/naloxone, and methadone—for opioid use disorder (8). Further, insurers should remove onerous limits on medications for overdose prevention and medication-assisted treatment, including burdensome prior authorization rules or lifetime limits on buprenorphine that prevent medically necessary care.

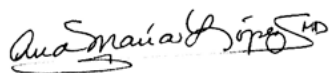
#### Premium Adjustment Percentage (156.130)

We are concerned the agency proposes to change the Premium Adjustment Percentage in a way that raises the maximum annual limitation on cost sharing by 3.8% above 2019 levels (e.g., from \$7,900 to \$8,200 for self-only coverage). The proposal would also make changes to the mechanism that would result in lower federal premium tax credit expenditures and less generous premium tax credits.

The uninsured cite affordability as the primary reason for not getting coverage (9). We are very concerned that the changes to the Premium Adjustment Percentage would cause the uninsured rate (and uncompensated care costs) to rise. The agency's impact analysis estimates exchange-based insurance enrollment would drop by 100,000 each year from 2020 to 2023 if the proposed change is adopted. We urge the agency not adopt these proposed changes.

Thank you for considering our comments. Please contact Ryan Crowley, Senior Associate for Health Policy, at [rcrowley@acponline.org](mailto:rcrowley@acponline.org) if you have questions.

Sincerely,



Ana María López, MD, MPH, MACP  
President  
American College of Physicians

---

<sup>1</sup> Witters D. U.S. Uninsured Rate Rises to Four-Year High. Gallup. January 23, 2019.

[https://news.gallup.com/poll/246134/uninsured-rate-rises-four-year-high.aspx?utm\\_source=alert&utm\\_medium=email&utm\\_content=morelink&utm\\_campaign=syndication](https://news.gallup.com/poll/246134/uninsured-rate-rises-four-year-high.aspx?utm_source=alert&utm_medium=email&utm_content=morelink&utm_campaign=syndication)

<sup>2</sup> Sommers BD, Maylone B, Nguyen KH, Blendon RJ, Epstein AM. The Impact of State Policies on ACA Applications And Enrollment Among Low-Income Adults in Arkansas, Kentucky, And Texas. *Health Aff.* 2015;34(6):

<https://doi.org/10.1377/hlthaff.2015.0215>

<sup>3</sup> Norton M, Hamel L, Brodie M. Assessing Americans' Familiarity With Health Insurance Terms and Concepts. Kaiser Family Foundation. November 11, 2014. Accessed at <https://www.kff.org/health-reform/poll-finding/assessing-americans-familiarity-with-health-insurance-terms-and-concepts/>

<sup>4</sup> Hoerl M, Wuppermann A, Barcellos SH, Bauhoff S, Winter JK, Carman KG. Knowledge as a predictor of insurance coverage under the Affordable Care Act. *Med Care.* 2017;55(4):428-435. Accessed at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5352474/>

<sup>5</sup> Appleby J. Short-Term Health Plans Hold Savings For Consumers, Profits For Brokers And Insurers. Kaiser Health News. December 21, 2018. Accessed at <https://khn.org/news/short-term-health-plans-profitable-for-brokers-and-insurers/>

---

<sup>6</sup> Burton RA, Peters RA, Wengle E, Elmendorf C, Aarons J. What Explains 2018's Marketplace Enrollment Rates? Urban Institute. June 2018. Accessed at [https://www.urban.org/sites/default/files/publication/98650/marketplace2018\\_2001877.pdf](https://www.urban.org/sites/default/files/publication/98650/marketplace2018_2001877.pdf)

<sup>7</sup> Hall M. Stabilizing and strengthening the individual health insurance market: A view from ten states. Brookings Institute. July 2018. Accessed at <https://www.brookings.edu/wp-content/uploads/2018/07/Stabilizing-and-Strengthening-the-Individual-Health-Insurance-Market2.pdf>

<sup>8</sup> Crowley R, Kirschner N, Dunn AS, Bornstein SS. Health and Public Policy to Facilitate Effective Prevention and Treatment of Substance Use Disorders Involving Illicit and Prescription Drugs: An American College of Physicians Position Paper. *Ann Intern Med.* 2017;166(10):733-736. Accessed at <https://annals.org/aim/fullarticle/2613555/health-public-policy-facilitate-effective-prevention-treatment-substance-use-disorders?searchresult=1>

<sup>9</sup> Kirzinger A, Hamel L, Munana C, Brodie M. Kaiser Health Tracking Poll – March 2018: Non-Group Enrollees. April 3, 2018. Accessed at <https://www.kff.org/health-reform/poll-finding/kaiser-health-tracking-poll-march-2018-non-group-enrollees/>