



July 28, 2021

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

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

The Honorable Chiquita Brooks-LaSure
Administrator
Centers for Medicare & Medicaid Services
U.S. 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 (CMS-9906-P)

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

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

The Cystic Fibrosis Foundation is a national organization dedicated to curing cystic fibrosis (CF). We invest in research and development of new CF therapies, advocate for access to care for people with CF, and fund and accredit a network of specialized CF care centers.

Cystic fibrosis is a life-threatening genetic disease that affects more than 30,000 children and adults in the United States. Through careful, aggressive, and continuously improving disease management, the average life expectancy for people with cystic fibrosis has risen steadily over the last few decades. In addition to advances in care, recently approved genetically-targeted drugs that address the underlying cause of CF are available for patients with specific genetic profiles and have contributed to the increases in life expectancy. This milestone reflects over 50 years of hard work to improve CF treatments, develop evidence-based standards of care, and encourage adherence to a lifetime of chronic care. This system of care and the improvements in length and quality of life for those with CF can only be realized if patients have access to adequate and affordable insurance.

CYSTIC FIBROSIS FOUNDATION
NATIONAL OFFICE

4550 MONTGOMERY AVE.
SUITE 1100N
BETHESDA, MD 20814

TEL: 800.FIGHT.CF
FAX: 301.951.6378

WEB: WWW.CFF.ORG

The CF Foundation appreciates the opportunity to comment on the Updating Payment Parameters, Section 1332 Waiver Implementation, and Improving Health Insurance Markets for 2022 and Beyond Proposed Rule, issued by the Departments of Health and Human Services (“HHS”) and of the Treasury (collectively, the “Departments”).

Exchange Direct Enrollment Option

In our comments to the proposed Notice of Benefit and Payment Parameters (NBPP) for 2022, we expressed our concerns, and urged HHS) not to finalize policy in which states had the option to transition away from a single, centralized exchange (such as a state-based platform or HealthCare.gov) to a private sector model that would rely on insurers, web-brokers, and agents and brokers. The potential privatization of exchanges is the culmination of a series of past efforts to incorporate insurers and web-brokers in the enrollment process. A model that relies on insurers and web-brokers will result in two serious risks to consumers: they may purchase non-qualified health plans that do not cover their pre-existing conditions and they may not receive reliable information about their Medicaid and advance premium tax credit (APTC) eligibility. In short, consumers may be at risk of making uninformed choices without full information about their coverage options and that do not reflect their eligibility for premium assistance or Medicaid benefits. In a covert testing initiative to assess whether consumers were provided misleading information about non-Affordable Care Act-compliant plans, the Government Accountability Office found a troubling pattern of misleading sales tactics by private sector insurance sales representatives.¹

The CF Foundation does not support a movement toward privatization of exchange functions, absent strong assurances from states about consumer protections in their privately administered exchanges. For these reasons, we strongly support the Departments’ proposal to repeal the Exchange Direct Enrollment Option.

Section 1332 Guidance

Section 1332 of the ACA outlines four guardrails that any waiver application must meet for approval: coverage must be as affordable as it would be without the waiver; coverage must be as comprehensive as it would be without the waiver; a comparable number of people must be covered under the waiver as would be without it; and the waiver must not add to the federal deficit. In 2018, the Departments issued guidance that relaxed and broadened the guardrails, considering the number of people who have *access* to affordable comprehensive coverage, rather than the number who *enroll* in this coverage. This misinterpretation of the guardrails allows states to pursue policies that steer potential enrollees into substandard coverage, such as short-term, limited-duration plans or association health plans, which do not necessarily cover CF care.

In the NBPP for 2022, HHS codified this guidance, weakening consumer protection in the marketplace and potentially driving people to coverage that is less comprehensive or less affordable. CFF opposed the 2018 guidance when it was released, and we asked HHS to rescind this proposal. For these reasons, we support the Departments’ decision to rescind the guardrail interpretations from the 2018 guidance and codified by the NBPP for 2022. We strongly support the Departments’ recommitment to ensuring the 1332 waivers reflect congressional intent behind the program and protect vulnerable populations like people with CF.

Insurer User Fees for Federally Facilitated Exchanges

The CF Foundation opposed the proposal in the NBPP for 2022 that reduced the user fee for insurers on the federally facilitated exchanges from 3 percent to 2.25 percent. This was the second cut in recent years, totaling a 1.5 percent reduction. HHS claimed these user fee cuts will lead to premium reductions for consumers, we are concerned about additional implications. We support HHS reevaluating and increasing the user fee percentage in this proposed rule, demonstrating the Department's recommitment and reinvestment in improving and updating Healthcare.gov, marketing and advertising for the ACA, and expanding Navigator programs. These activities are essential to ensuring a robust, high functioning marketplace for consumers and therefore, we ask CMS to rescind this user fee reduction.

Extended Open Enrollment Period

At this time, the annual open enrollment period for individual market coverage is 45 days, giving consumers a limited time to “shop” and enroll in a plan that best suits their needs. The CF Foundation supports the proposed rule extending the open enrollment period up to 75 days. This will provide consumers with a better chance to learn about their options and connect with a Navigator or other assister when selecting a plan. Furthermore, we support HHS' proposal to apply this open enrollment period extension to all marketplaces. However, we ask the Department to clarify that such an extension would constitute a minimum standard and would not displace decisions by state-based marketplaces (SMBs) to offer more generous enrolment periods. SMBs should retain the flexibility to establish longer enrollment opportunities than the federal default if they determine that doing so is in the best interest of their constituents.

Monthly Special Enrollment Period for APTC-Eligible Qualified Individuals with a Household Income Less Than 150 Percent of the Federal Poverty Level

The CF Foundation strongly supports the proposal to establish a special enrollment period (SEP) for qualified individuals at low incomes who are eligible for advance payments of the premium tax credit (APTC). As the Departments note in the proposals, this SEP may help to bring in many of the estimated 1.3 million uninsured people² who already qualify for a free platinum-equivalent plan but are not enrolled in coverage. Evidence demonstrates many uninsured individuals have not enrolled in marketplace coverage because they are unaware of their options and/or believe they cannot afford to buy a plan.

This policy could also help advance the Departments' health equity initiative as a relatively large share of uninsured people eligible for significant assistance to buy Marketplace coverage are Hispanic, and non-native English speakers.³ Another study found that nearly 66% of Black nonelderly uninsured adults and 69% of Hispanic nonelderly uninsured adults can access a zero-premium plan.⁴ Furthermore, as we see the unwinding of the public health emergency (PHE), this new SEP opportunity will likely be important to reduce coverage gaps for people who lose eligibility for Medicaid, a population that has been particularly hit hard by the economic fallout of the pandemic.

We recognize that because of the ARP, low-income individuals have significantly greater access to \$0 or very low premium marketplace plans, and this significantly increases the potential effectiveness of the proposed SEP. We encourage congressional action to make the ARP's affordability improvements permanent and believe a permanent SEP for qualified individuals with low incomes would serve as a strong complementary policy.

Network Adequacy

The CF Foundation is excited HHS intends to reexamine federal network adequacy standards for plans offered through the Federally Facilitated Marketplace (FFM) as it is acritical to restore and strengthen protections for consumers. Federal law requires that marketplace health plans maintain an adequate network of providers, and to maintain and up-to-date online provider directories. These protections are designed to ensure that marketplace enrollees have timely, meaningful access to the care and services they need, as well as accurate information sufficient to enable them to understand plans' networks and identify the plans and providers most likely to meet their needs.

For individuals with complex, chronic conditions like CF, which require a provider care team of specialists, it is vital to ensure that plans' provider networks are of sufficient size and composition, and that provider directories are accurate, informative, and clear. This is particularly important for patients from underserved communities, who have experienced discrimination in health care settings and systematically worse health outcomes. As HHS revisits network parameters for qualified health plans (QHPs), we suggest networks should be evaluated on their ability to provide culturally- and linguistically-competent care as well as care accessible to people with disabilities. This means, among other things, a rigorous assessment of whether a network includes sufficient providers and/or provides sufficient access to appropriate language services to ensure limited English proficiency individuals can obtain timely care in their preferred language, as well as assessment of physical, language, and other accessibility. Further, networks must ensure access to culturally appropriate care reflecting the diversity of enrollees' backgrounds and attuned to traditionally underserved communities, including people of color, immigrants, people with disabilities, and LGBTQ individuals. To enable consumers to identify the plans and providers likely to meet their needs, all health plans must be required to indicate in their provider directories the languages of other than English spoken by any provider and/or their staff.

The CF Foundation appreciates the opportunity to provide comment on the Updating Payment Parameters, Section 1332 Waiver Implementing Regulations, and Improving Health Insurance Markets for 2022 and Beyond Proposed Rule. We look forward to working with the Departments on these critical issues to ensure access and affordability for people with CF.

Sincerely,



Mary B. Dwight
Chief Policy & Advocacy Officer
Senior Vice President, Policy & Advocacy
Cystic Fibrosis Foundation

¹ Government Accountability Office to Senators Robert Casey, Jr. and Debbie Stabenow, Private Health Coverage: Results of Covert Testing for Selected Offerings, August 24, 2020. Accessed on December 13, 2020, at <https://www.gao.gov/assets/710/708967.pdf>.

² Kaiser Family Foundation, How the American Rescue Plan Act Affects Subsidies for Marketplace Shoppers and People Who Are Uninsured, March 25, 2021. Accessed on July 21, 2021, at <https://www.kff.org/health-reform/issue-brief/how-the-american-rescue-plan-act-affects-subsidies-for-marketplace-shoppers-and-people-who-are-uninsured/>

³ Kaiser Family Foundation, A Closer Look at the Uninsured Marketplace Eligible Population Following the American Rescue Plan Act, May 27, 2021. Accessed on July 21, 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/>

⁴ 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 21, 2021, at <https://aspe.hhs.gov/sites/default/files/private/pdf/265321/ASPE%2520ACA%2520Low%2520Premium%2520Plans%2520Issue%2520Brief%2520II.pdf>