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Chiquita Brooks-LaSure
Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
P.O. Box 8013
Baltimore, MD 21244–1850

Re: CMS-9906-P - 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 Brooks-LaSure:

The American Kidney Fund appreciates the opportunity to provide comments on the Centers for Medicare and Medicaid Services' (CMS) proposed rule referenced above.

The American Kidney Fund (AKF) fights kidney disease on all fronts as the nation's leading kidney nonprofit. AKF works on behalf of the 37 million Americans living with kidney disease, and the millions more at risk, with an unmatched scope of programs that support people wherever they are in their fight against kidney disease—from prevention through transplant. Through programs of prevention, early detection, financial support, disease management, clinical research, innovation and advocacy, no kidney organization impacts more lives than AKF. AKF is one of the nation's top-rated nonprofits, investing 97 cents of every donated dollar in programs, and holds the highest 4-Star rating from Charity Navigator and the Platinum Seal of Transparency from GuideStar.

AKF appreciates that CMS is proposing several changes in this rule that would improve the health insurance markets, ensure all Americans have access to affordable and comprehensive health coverage, and make a concerted effort to improve health equity and address health disparities. Our comments on specific CMS proposals are below.

Navigator Program Standards

AKF supports CMS' proposals to reinstitute requirements for navigators in federally-facilitated exchanges (FFE) to provide certain information and assistance to consumers, including understanding the process of filing exchange eligibility appeals and understanding basic concepts and rights related to health coverage and how to use it.

We agree with CMS that requiring navigators to help consumers understand basic concepts and rights related to health coverage is an important step to address disparities in health literacy among vulnerable and underserved populations. There have been longstanding disparities in health coverage among communities of color, with nonelderly Black, Hispanic, American Indian/Alaska Native, and Native Hawaiian/Other Pacific Islander people more likely to be uninsured than their White counterparts.¹ Given that consumers in these demographic groups are therefore likely to have less experience navigating the intricacies of health insurance, providing them with information from trusted navigators on basic health coverage concepts is vitally important. By helping consumers, particularly from underserved and vulnerable populations, better understand key concepts such as deductibles, copays and coinsurance, provider networks, and access to primary care and preventive services, they will be better equipped to use their coverage throughout their plan year.

Exchange Direct Enrollment Option

AKF fully supports CMS' proposal to remove and repeal the Exchange Direct Enrollment option (Exchange DE option) that was codified in part 1 of the 2022 Payment Notice final rule. As we noted in our December 2020 comment letter on the rule that proposed the Exchange DE option, we believe that allowing states to transition to the Exchange DE option would likely lead to lower enrollment in comprehensive coverage due to brokers' reluctance to refer people to plans that do not pay commissions or to Medicaid, increased pressure for consumers to enroll in short-term limited duration insurance (STLDI) and other sub-par plans, and consumer confusion during the transition. This would be particularly harmful to consumers with chronic conditions such as chronic kidney disease (CKD), who rely on more comprehensive coverage to manage their health needs and many of whom are from underserved and vulnerable populations. We appreciate CMS' proposal to repeal this harmful exchange option that would be available to states.

Open Enrollment Period Extension

AKF supports CMS' proposal to change the open enrollment period for the 2022 coverage year and beyond so that it begins on November 1 and runs through January 15 of the applicable benefit year. Extending the open enrollment period will give consumers more time to consider the various factors that go into picking the best coverage that meets their financial and health care needs, which is particularly important for people with serious chronic conditions such as CKD

¹ <https://www.kff.org/racial-equity-and-health-policy/issue-brief/health-coverage-by-race-and-ethnicity/>

and who may have other comorbidities. Also, an extended open enrollment period will be helpful to consumers in underserved communities, who may face barriers related to language, access to technology, or being able to take time off from work, and who would benefit from having more time to seek in-person or by-phone assistance to enroll in coverage.

Monthly Special Enrollment for APTC-Eligible Qualified Individuals with Household Income No Greater than 150 Percent of the Federal Poverty Level

To make affordable coverage available to more consumers, CMS proposes to codify a monthly special enrollment period (SEP) for qualified individuals or enrollees, or the dependents of a qualified individual or enrollee, who are eligible for advance premium tax credit (APTC), and whose household income is expected to be no greater than 150% of the federal poverty level (FPL). AKF supports this proposal, as it would provide additional opportunity for lower income individuals and dependents who are already eligible to enroll in subsidized exchange coverage to do so. Having health coverage and access to primary and preventive care are important elements to preventing chronic kidney disease, and we support CMS efforts to encourage eligible consumers to enroll in a \$0 or low-cost premium silver level plan with cost-sharing reductions, instead of remaining uninsured.

The monthly SEP proposal is also a policy tool that could help improve health equity among the estimated 1.3 million uninsured people who have incomes below 150% FPL and qualify for a \$0 premium silver benchmark plan. A recent analysis showed that of those 1.3 million people, 41% are Hispanic, 65% have a high school education or less, 16% live in rural areas (compared to 13% of the nonelderly U.S. population), and 46% speak a language other than English at home.² The proposed monthly SEP could be a useful step in helping address health disparities in traditionally underserved populations. The analysis also shows that about half of the uninsured people with incomes below 150% FPL are young adults (age 19-34), which could help contribute to a balanced risk pool.

User Fee Rates for the 2022 Benefit Year

AKF supports CMS' proposed Qualified Health Plan (QHP) issuer user fee rates for the 2022 plan year of 2.75% of total monthly premiums for the FFEs and 2.25% for state-based exchanges on the federal platform (SBE-FP). This would be an increase from the 2.25% and 1.75% user fee rates, respectively, for the FFEs and SBE-FEs published in part 1 of the 2022 Payment Notice final rule in January 2021. We agree with CMS that this proposed increase in the user fee is needed to sustain essential exchange-related activities, such as consumer information and outreach programs.

² <https://www.kff.org/private-insurance/issue-brief/a-closer-look-at-the-uninsured-marketplace-eligible-population-following-the-american-rescue-plan-act/>

Provisions of the Proposed Rule for Section 1332 Waivers

AKF fully supports CMS' proposal to rescind the interpretations of the statutory guardrails for section 1332 of the Affordable Care Act (ACA) announced in the 2018 guidance and codified in part 1 of the 2022 Payment Notice final rule. As we noted in our comment letter on the proposed codification of the 2018 guidance, we expressed significant concerns that the 2018 guidance would have an adverse impact on the stability of ACA exchanges, comprehensiveness and affordability of coverage, pre-existing condition protections, and the protection of vulnerable populations in states that pursue and receive approval for a 1332 waiver under the guidance. Therefore, we are pleased to see and fully support CMS' proposal to remove these interpretations of section 1332 guardrails set forth in the 2018 guidance and instead interpret the statutory guardrails in a manner that is similar to the 2015 guidance, and that aligns with congressional intent and the plain reading of the statute.

AKF would also like to express our support for CMS' proposal to consider, when assessing whether a section 1332 waiver proposal meets the comprehensiveness, affordability, and coverage guardrails, the effect the waiver proposal would have across different groups of state residents. As noted in the proposed rule, CMS would in particular consider "effects on vulnerable or underserved residents, including low-income individuals, older adults, those with serious health issues or who have a greater risk of developing serious health issues, and people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality." We appreciate CMS' commitment to ensuring that section 1332 waivers do not perpetuate health inequities and CMS' encouragement for states to develop waiver proposals that address barriers to health coverage for underserved groups.

Thank you for the opportunity to provide comments on this proposed rule.

Sincerely,



LaVarne A. Burton
President and CEO