

July 13, 2021

Chiquita Brooks-LaSure
Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
P.O. Box 8016
Baltimore, MD, 21244-8016

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:

On behalf of our 40,000 members, the American College of Emergency Physicians (ACEP) appreciates the opportunity to comment on a proposed rule that updates payment parameters for Exchanges and repeals certain provisions related to the Affordable Care Act (ACA) Section 1332 waivers. Our comments are limited to those proposals that affect emergency physicians and the patients we serve.

Lengthening the Open Enrollment Period

The Centers for Medicare & Medicaid Services (CMS) is proposing to lengthen the annual open enrollment period for coverage through all Exchanges to November 1 through January 15, as compared to the current annual open enrollment period of November 1 through December 15. ACEP supports this proposal and any other policy that would expand our patients' access to affordable health care coverage.

Repealing the Exchange Direct Enrollment Option

ACEP supports CMS' proposal to eliminate the Exchange Direct Enrollment Option. Under this option, which was finalized by the previous administration, certain states that operate Exchanges could have chosen to rely on private sector entities that establish their own independent websites rather than using a centralized, government-run website. When this policy was first proposed, ACEP expressed significant concerns with it and requested that it not be finalized.¹ We believed that this option would increase the risk that consumers mistakenly purchase less comprehensive and potentially more expensive health care coverage from non-sanctioned private websites. Doing so could put these consumers' health in jeopardy while putting them in financial peril at the same time. Therefore, we again are strongly in support of eliminating this option and continuing to require states to use a centralized, government-run website to operate their Exchanges.

WASHINGTON, DC OFFICE

901 New York Ave, NW
Suite 515E
Washington DC 20001-4432

202-728-0610
800-320-0610
www.acep.org

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¹ ACEP's previous comments on the Exchange Direct Enrollment Option can be found at: <https://www.acep.org/globalassets/new-pdfs/advocacy/acep-response-to-2022-notice-of-benefit-and-payment-parameters.pdf>.

Network Adequacy

A recent court case repealed a CMS rule that had eliminated federal government's reviews of the network adequacy of qualified health plans (QHPs) offered through the federally-facilitated Exchange in certain circumstances by incorporating the results of the states' reviews. While CMS is going to address this issue further in future rulemaking, the agency requests comments and input regarding how the federal government should approach network adequacy reviews. ACEP has long advocated for CMS to enforce strong network adequacy standards. We are generally wary of any potential changes to network adequacy requirements that could impact patients' access to care, and therefore, we believe that the federal government must closely review the network adequacy of QHPs and watch out for any modifications these plans choose to make that could make it more challenging for patients to receive care. Further, we believe that it is essential for all beneficiaries enrolled in QHPs to know from the plan in advance of an emergency (NOT during or after an emergency has occurred) if the physician treating them is in-network. The very nature of emergency conditions and emergency department (ED) care, more than any other type of specialty care, precludes the opportunity for patients to preferentially go to facilities with in-network emergency physicians.

Repealing Section 1332 Waivers and Guidance

CMS is proposing to repeal ACA section 1332 guidance that was released in 2018 and codified earlier this year. ACEP strongly supports this proposal, as we repeatedly expressed concerns about the impact the "State Relief and Empowerment Waivers" finalized by the last Administration would have on patient care.² We strongly believed that the waivers would create more instability in the market since they could lead to the proliferation of Association Health Plans and short-term, limited-duration plans. Expanding the availability of these plans would lead to an exodus of healthy people from the healthcare marketplace, thereby distorting the market's risk pool. Such a shock to the market could cause plans in the market to increase premiums, provide less generous benefit packages, or leave the market altogether. Furthermore, both Association Health Plans and short-term, limited-duration plans are not required to cover all ten essential health benefits (EHBs). We believe that it is critically important for all insurance plans to cover all ten EHBs. Without such guaranteed coverage, consumers can be left with a narrow set of benefits that do not ensure access to the items and services they need to manage their health conditions. Consumers who purchase less comprehensive health plans may wind up deferring more routine care or visiting a primary care physician or specialist for more minor conditions or symptoms. Such deferral or delay will often result in their condition or symptoms becoming exacerbated and eventually, result in a trip to the ED. At this point, due to the progression of their condition, their care in the ED will be much costlier and more complex than if they had earlier access to more routine care in a physician's office.

ACEP is also pleased that CMS is revising its official interpretation of the ACA section 1332 "guardrails" to again make them more in line with the actual language in the statute. Under these guardrails, section 1332 waiver applications will only be approved if they: 1) Provide coverage that it is at least as comprehensive as coverage offered through the ACA Exchanges established by title I of the ACA; (2) Provide coverage and cost-sharing protections against excessive out-of-pocket spending that are at least as affordable for the state's residents as would be provided under Title I of the ACA; (3) Provide coverage to at least a comparable number of the state's residents as would be provided under Title I of the ACA; and (4) Not increase the federal deficit. In this proposed rule, CMS is requiring that, in order to meet the guardrails, health care coverage under a section 1332 waiver must be protected to be as affordable and comprehensive overall for state residents as coverage absent the waiver. CMS is also proposing that the number of people projected to have coverage under the waiver could not be less than the number with coverage absent the waiver. **ACEP strongly supports these proposals.**

² ACEP's most extensive comments on the State Relief and Empowerment Waivers can be found at: <https://www.acep.org/globalassets/new-pdfs/advocacy/acep-response-to-section-1332-waiver-request-for-information.pdf>.

We appreciate the opportunity to share our comments. If you have any questions, please contact Jeffrey Davis, ACEP's Director of Regulatory Affairs at jdavis@acep.org.

Sincerely,

A handwritten signature in black ink that reads "Mark Rosenberg". The signature is written in a cursive style with a large, prominent "M" and "R".

Mark S. Rosenberg, DO, MBA, FACEP

ACEP President