December 29, 2020

Seema Verma
Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-9914-P
P.O. Box 8016
Baltimore, MD  21244-8016

RE: “Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2022 and Pharmacy Benefit Manager Standards; Updates to State Innovation Waiver (Section 1332 Waiver) Implementing Regulations,” Proposed Rule

Dear Administrator Verma,

As organizations that share a strong commitment to the health of our nation’s children, we appreciate the opportunity to provide comments in response to the proposed 2022 Notice of Benefit and Payment Parameters (Notice). Our organizations believe that all coverage for children must ensure access to timely, affordable, high-quality and age-appropriate health care (including dental, vision and hearing services) that meets their unique developmental needs and enables them to meet their full potential as adults. It must also promote the health of women before, during and between pregnancies. Access to health care for children and their families is vital to long-term health, well-being and productivity.

We respectfully submit the following comments on provisions in the Notice that we believe could impede seamless access to appropriate coverage and care for children, particularly those with serious, chronic or complex conditions, and pregnant women. We hope that we can work with you to find better approaches to ensure that all children, pregnant women and families can identify and enroll in age-appropriate coverage that meets their unique health care needs. Our comments highlight:

- Our serious concern that allowing all states to move to Direct Enrollment Exchanges and use private web brokers, agents and insurers to enroll people in individual insurance plans will result in loss of coverage or the steering of families to inadequate coverage.
- Our continued belief that the flexibilities afforded to states and insurers related to the essential health benefit (EHB) benchmark selections could leave children without the age-appropriate benefits they need and their families with higher out-of-pocket costs.
- Our opposition to the proposed codification of the changes to the Section 1332 waiver statutory guardrails that were implemented in 2018, which could expose children, pregnant women and families to higher costs and less access to critically needed services.

Our detailed comments are below.

New “Direct Enrollment” Exchanges
We strongly recommend that the provisions in the Notice that allow states to establish Direct Enrollment (DE) Exchanges, in place of the current “one-stop shop” Exchanges, be withdrawn. Under this proposal, families in states that choose to move to DE would no longer have a source for comprehensive information about Affordable Care Act (ACA)-compliant private coverage options, Medicaid and the Children’s Health
Insurance Program (CHIP), or access to financial assistance. Instead, they would have to rely on information created and provided by private insurance companies and brokers to compare plans, apply for financial assistance and enroll in coverage.

We are particularly concerned that a potentially inadequate and misleading display of coverage options on the DE Exchange websites could lead to an increase in the number of children and families who fall through the cracks and do not have the coverage they need. It is critical that consumers, especially families with children, have the tools they need to find and use affordable coverage. Many families with children will be navigating multiple sources of coverage and will need cohesive, tailored consumer assistance to ensure that they have access to appropriate and affordable coverage. However, the DE Exchanges would be allowed to display plans that are not compliant with the ACA, choose which ACA-compliant plans to display and determine how to display this information on their websites. In addition, they would not be required to provide full information about the ACA non-compliant plans, such as their Summaries of Benefits and Coverage, premium costs, provider directories, quality ratings or shop and compare options. As a result, families could be diverted into private plans that may not suit their financial or health needs, such as short-term limited duration insurance plans (STLDIs), which do not offer a full package of EHBs, guarantee protections for individuals with preexisting conditions or limit out-of-pocket costs, and are not eligible for premium tax credits.

Furthermore, the brokers and private insurers working through these websites would not be required to direct eligible children, pregnant women and families to Medicaid or CHIP. For children, the potential impediments to Medicaid enrollment are especially troubling. Medicaid provides a comprehensive set of services that are vital to children’s development and well-being, ranging from preventive services (including vision, dental and hearing) to medically necessary acute and specialty care, behavioral health services and key therapies. These services are especially important for children with special health care needs or serious, chronic or complex medical conditions. Eligible children who are not enrolled in Medicaid as a result of inadequate information from the DE Exchange are more likely to experience poorer health outcomes at a greater cost to their families, the health care system and society.

Rather than moving to a system that is likely to result in coverage gaps and inadequate coverage, we encourage you to identify ways to further improve information about all coverage options for children, pregnant women and their families. We respectively request that you withdraw this proposal.

**Essential Health Benefits**

We continue to be very concerned about changes to the EHB benchmark selection process, which were adopted in the final 2019 Notice. As we have articulated in prior comment letters\(^1\), the flexibilities afforded to states and insurers related to benchmark selection could leave children, especially those with serious, chronic or complex conditions, worse off and their families with higher out-of-pocket costs than under the former selection process. Without stronger parameters for states that design their own EHB package from scratch or choose all or parts of a benchmark from another state, it is very possible that a state could limit or drop certain key benefits for children in the interest of lowering premiums.

It is critical that essential pediatric benefits include all age-appropriate preventive, diagnostic and treatment services that are medically necessary for children, including those who have a chronic condition, functional impairment, or significant or multiple health risks. Those services must be specifically suited to children’s

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\(^1\) See [Nov. 27, 2017 letter re: CMS-9930-P](https://example.com) and [Feb. 19, 2019 letter re: CMS-926-P](https://example.com).
unique and continuous development and growth needs and must include therapies and devices that are now included in the habilitative services category of the EHBs. We believe that the new benchmark development process could limit access to these vitally important services for children and expose families to financial hardship. We respectfully urge you to discontinue this policy and restore the prior EHB benchmark selection process.

**State Innovation Waivers**

We are opposed to the proposed Notice’s intent to codify the 2018 re-interpretation of the ACA’s statutory guardrails for Section 1332 state innovation waivers. As we noted in our comments to CMS in response to the release of the revised guardrails\(^2\), we believe they are inconsistent with the statutory requirements of Section 1332 and could have far-reaching negative effects on children, pregnant women and families.

Combined with the administration’s expansion of the availability of STLDI plans and Association Health Plans, the guidance has allowed a proliferation of ACA non-compliant plans that expose children, pregnant women and families to higher costs; less access to critically needed services; medical underwriting; annual and/or service-specific limits; coverage denials; and limited access to appropriate maternal and child health providers. We have already seen, through the approval of Georgia’s waiver request to establish a DE Exchange, that the revised guardrails open the door to states’ adoption of policies that could lead to inadequate coverage and problematic impediments to Medicaid coverage for needy and eligible children. These state approaches conflict with the intent of Section 1332.

We strongly believe that it is imperative that the affordability and coverage protections envisioned by Congress when it enacted Section 1332 are implemented in ways consistent with statutory requirements. We urge you to withdraw this proposal and, instead, advance appropriate delivery system reforms and health care quality improvement initiatives that will reduce consumer costs and improve care for children, pregnant women and their families.

In conclusion, the undersigned organizations appreciate this opportunity to share our views regarding the proposed 2022 Notice and urge you to withdraw these proposals, which could fragment the current system rather than strengthen it. We look forward to working with you on mechanisms to ensure that the unique health care coverage and access needs of pregnant women, children and families are met in the individual and large group markets and that all Medicaid and CHIP-eligible children are enrolled. If we may provide further information or otherwise be of assistance, please contact Jan Kaplan at the Children’s Hospital Association, at 202-753-5384 or jan.kaplan@childrenshospitals.org.

Sincerely,

American Academy of Pediatrics  
Children’s Defense Fund  
Children’s Hospital Association  
Family Voices  
First Focus on Children  
National Association of Pediatric Nurse Practitioners

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