

# CANCER LEADERSHIP COUNCIL

A PATIENT-CENTERED FORUM OF NATIONAL ADVOCACY ORGANIZATIONS  
ADDRESSING PUBLIC POLICY ISSUES IN CANCER

March 7, 2017

The Honorable Tom Price  
Secretary  
Department of Health and Human Services  
Room 445-G  
Hubert H. Humphrey Building  
200 Independence Avenue, SW  
Washington, D.C. 20201

Re: Attention: CMS-9929-P, Patient Protection and Affordable Care Act; Market Stabilization

Dear Secretary Price:

The undersigned organizations representing cancer patients, physicians and other cancer care professionals, and researchers appreciate the opportunity to comment on the proposed rule on Affordable Care Act market stabilization. We are concerned that the proposed rule, aimed at stabilizing the individual and small markets, could in fact have destabilizing effects and could make it more difficult for people with cancer to purchase insurance coverage that is adequate and affordable.

## ***Guaranteed availability of coverage (§147.104)***

The proposed rule would permit issuers to collect past due premium payments before agreeing to enroll consumers in the same plan or a different product from the same issuer. The Centers for Medicare & Medicaid Services (CMS), in proposing this change, suggests that this new policy might discourage “gaming” of the system. The agency references studies that show that some individuals who fail to pay premiums in a plan year enroll in the same plan in the following plan year, without payment of the past due premiums. The suggestion is that consumers choose to pay premiums and retain coverage only in the months that they need health care services and that those consumers stop payment of premiums and forgo coverage in later months of the year.

We do not have data that would identify whether cancer survivors are among those who fail to pay premiums, only to enroll in the same plan or a plan from the same issuer in the following year. However, we do have information about the financial burden that cancer survivors shoulder, when premium payments are combined with substantial cost-sharing for care. We suggest that, to the extent that cancer survivors might be among those who fail to pay premiums during a plan year, it is likely the result of the financial struggle they may face in paying for their cancer care.<sup>1</sup> Many of our organizations have routine and consistent contacts with cancer patients regarding their purchase and utilization of insurance plans. We do not observe these patients seeking to “game” the system in the manner suggested in the proposed rule.

The proposal to permit issuers to collect past due premiums before enrolling a consumer in the same or another plan may have its intended effects of protecting against adverse selection for some issuers. This proposed provision may also pose a serious burden to consumers – perhaps including cancer survivors – who struggle to make it through year after year of significant cancer care costs. If this provision of the proposal is finalized, we urge that consumers be permitted to take advantage of premium assistance programs to make past due premium payments.

#### ***Initial and annual open enrollment periods (§155.410)***

The agency proposes to reduce the open enrollment period for the 2018 plan year to a six-week period beginning on November 1, 2017, and ending on December 15, 2017. Those consumers who choose plans during the open enrollment period will have a plan effective date of January 1, 2018. CMS says that the shorter enrollment period “may have a positive impact on the risk pool because it will reduce opportunities for adverse selection by those who learn they will need services in late December or January.”

The rationale for shortening the enrollment period appears to be at odds with past experience in the exchanges, when younger enrollees tended to enroll at the end of the enrollment period. As a result, we are not persuaded that shortening the enrollment period will result in a younger and healthier pool of enrollees, thereby contributing to market stabilization. We believe the impact of a shorter enrollment period could be a less healthy pool.

In addition, the exchanges may face a challenge in implementing a shorter enrollment period in 2017 for the 2018 plan year with such short notice about the proposed revision. If the agency moves forward with an abbreviated enrollment period, it must do so only if

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<sup>1</sup> Didem SMB, Farr SL, and Fang Z. National estimates of out-of-pocket health care expenditure burdens among nonelderly adults with cancer: 2001 to 2008. *J Clin Oncol* 29. 2001. Medical costs and productivity losses of cancer survivors – United States, 2008-2011. *Morbidity and Mortality Weekly Report*, June 13, 2014. Ramsey SD, Bansal A, Fedorenko CF, et al. Financial insolvency as a risk factor for early mortality among patients with cancer, *J Clin Oncol*. 2016.

it also provides additional assistance to consumers for enrollment during the shortened enrollment period. We are aware of successful navigation initiatives that have contributed to robust enrollment in certain geographic areas, and we urge that such initiatives be replicated and appropriately supported.

### ***Special enrollment periods (§155.420)***

In response to the concerns of issuers about the potential abuses of special enrollment periods, the agency had planned to pilot a program for the evaluation of verification of documentation for special enrollment. The agency proposed a pilot program so that it could evaluate the impact of verification of documentation and the possibility that verification might discourage younger and healthier individuals from enrolling during special enrollment periods.

In the proposed rule, the agency proposes to abandon its test of verification of documentation for special enrollment and instead to move forward with a plan to verify documentation for all seeking special enrollment. We recommend that the agency proceed with its test of verification, as previously proposed, and abandon the plan for verification of all special enrollment documentation.

Cancer survivors may need to take advantage of special enrollment periods for important life changes, including job change, marriage, or the birth of a child. Cancer survivors might be assumed to be “incentivized” to pursue special enrollment and therefore would not be discouraged by verification processes. However, there is some experience from organizations serving cancer survivors that young adult survivors of childhood cancer are sometimes discouraged from plan enrollment by the enrollment process.<sup>2</sup> We are concerned that these individuals might be adversely affected by verification during special enrollment periods.

Questions about the effects of verification of documentation might be answered during a test of verification. We urge the agency to proceed with its pilot program. In the context of this test, we recommend that the agency investigate ways in which navigators might assist consumers with special enrollment, including documentation requirements.

### ***Levels of coverage (actuarial value) (§156.140)***

The agency has responded to the demands from plan issuers for more flexibility in plan design from year to year by proposing modifications to the de minimis changes to the actuarial value of plans. Issuers will be permitted a de minimis variation of -4/+2

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<sup>2</sup> A survey of childhood cancer survivors identified a lack of familiarity with the Affordable Care Act and recommended education and assistance to encourage insurance enrollment. Park ER, Kirchhoff AC, Perez, et al. Childhood cancer survivor study participants’ perceptions and understanding of the Affordable Care Act. J Clin Oncol. 2015.

percentage points for all metal level plans except for bronze plans, for which de minimis variation of -4/+5 would be permitted.

We are concerned about the impact of actuarial value changes on consumers. Among the possible effects will be the offer of insurance products that have a lower premium but higher cost-sharing as well as the reduction of advanced premium tax credits, which are based on a calculation that reflects actuarial value.<sup>3</sup> Permitting issuers flexibility related to actuarial value may have the unfortunate effect of reducing access to adequate health insurance coverage for consumers. Cancer survivors who are shouldering significant costs of cancer care may be especially hard hit by this proposal.

We would also note that this proposal may adversely affect the pool of enrollees. If younger and healthier consumers do not find adequate and affordable plan options, they may decline to enroll.

### *Network adequacy (§156.230)*

The agency proposes for plan year 2018 to rely on state reviews of network adequacy, provided the state has a sufficient network adequacy review process. In the alternative, the agency would rely on an issuer's accreditation from an accrediting agency that is recognized by the Department of Health and Human Services. Finally, unaccredited issuers would be required to submit an access plan as part of the qualified health plan process. (The agency does not anticipate unaccredited issuers in 2018, making it unlikely that any issuers will be required to issue an access plan.)

We consider the proposal for review of network adequacy for plan year 2018 to be a step backward in terms of promoting network adequacy and protecting the access of cancer patients to adequate networks. During the ongoing implementation of the Affordable Care Act, we have consistently urged that the federal government set fundamental standards for network adequacy. At the same time, we have generally acknowledged that the National Association of Insurance Commissioners Health Benefit Plan Network Access and Adequacy Model Act may serve as a reasonable standard for state regulation of network adequacy. However, the protections of the NAIC Model Act will only be realized if the states enact laws and implement regulations consistent with the act. That process in the states is moving slowly, which means that consumers in only a few states enjoy NAIC Model Act protections.

In light of the inadequate state protections related to network adequacy, we do not consider this the appropriate time to move toward such deference to state review of

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<sup>3</sup> The Center on Budget and Policy Priorities concluded, "... the proposed rule would result in reduced premium tax credit amounts because it would lower the standards for "silver" plan coverage... By allowing less generous silver plans, the rule would reduce the value of premium tax credits for many of the more than 9 million consumers who receive them – an effect the rule itself acknowledges." Aron-Dine A and Park E. Trump Administration's New Health Rule Would Reduce Tax Credits, Raise Costs, for Millions of Moderate-Income Families, Center on Budget and Policy Priorities, February 15, 2017.

network adequacy. We encourage that minimal federal standards for network adequacy be retained and that issuers be required to meet those standards.

We recommend that standards for network adequacy be at least as rigorous as current ACA standards. We have previously noted that time and distance standards for network adequacy, while generally important for consumers, are not adequate for cancer patients who require access to multidisciplinary specialty care that may in fact be available only at great distance and significant travel time from home. For cancer survivors, network adequacy standards must include exceptions processes and appeal standards that will permit cancer patients to seek and receive prompt decisions regarding access to care outside a plan network.

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We appreciate the opportunity to comment on the proposed rule on market stabilization. We understand the need to move with all due speed on matters related to the stabilization of the insurance markets. However, because of the importance of the proposed rule and its potential impact on consumers, we think that a longer comment period should have been provided.

Sincerely,

Cancer Leadership Council

American Society for Radiation Oncology  
CancerCare  
Cancer Support Community  
The Children's Cause for Cancer Advocacy  
Fight Colorectal Cancer  
International Myeloma Foundation  
**LIVESTRONG** Foundation  
Lymphoma Research Foundation  
National Coalition for Cancer Survivorship  
Ovarian Cancer Research Fund Alliance  
Pancreatic Cancer Action Network  
Prevent Cancer Foundation  
Susan G. Komen