American Hospital Association™
Advancing Health in America

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December 21, 2018

Seema Verma
Administrator
Centers for Medicare & Medicaid Services
Hubert H. Humphrey Building
200 Independence Avenue, S.W., Room 445-G
Washington, DC 20201

RE: State Relief and Empowerment Waivers (CMS-9936-NC)

Dear Ms. Verma:

On behalf of the American Hospital Association's (AHA) nearly 5,000 member hospitals, health systems and other health care organizations, our clinical partners – including more than 270,000 affiliated physicians, 2 million nurses and other caregivers – and the 43,000 health care leaders who belong to our professional membership groups, thank you for the opportunity to comment on the guidance modifying the regulations governing waivers under Section 1332 of the Affordable Care Act. We support the Departments of Treasury and Health and Human Services' (collectively, the departments) efforts to streamline the application process and allow states more flexibility to design coverage programs that work for their unique populations. However, we are concerned that these new guidelines and waiver concepts could result in the loss of certain consumer protections, particularly related to the comprehensiveness of coverage, destabilize the individual health insurance markets and adversely affect vulnerable populations.

The AHA is committed to state flexibility and the expansion of affordable, high-quality health coverage and looks forward to working with the departments on these shared goals. We support solutions that lower the cost of coverage and provide greater choice among plans, but not at the expense of comprehensiveness of coverage or the stability of the individual health insurance market. Inadequate coverage puts patients at substantial health and financial risk; while instability of the marketplace could reduce access to coverage and care.

Given these concerns, the AHA recommends that the departments update the revised guidance to ensure that any 1332 waiver proposal does not depreciate the quality or affordability of coverage.

Our detailed comments follow.

Expansion of Short-term, Limited-duration Health Plans. As noted in the updated guidance and expanded on in more detail in the Adjusted Plan Options waiver concept, by loosening the comprehensiveness, affordability, and comparability guardrails, states seeking Section 1332 waivers could encourage the expansion of health plans that do not meet all of the consumer protections established in federal law, including short-term, limited-duration health plans. As detailed in previous comments shared with the agency, these insurance products could harm consumers by providing inadequate access to care, including by excluding coverage for pre-existing conditions, and subjecting patients to much greater out-of-pocket spending when illness or injury occurs. In addition, because these plans are not required to offer coverage to all consumers, they can limit enrollment to healthier individuals, concentrating the less healthy individuals in the fully compliant individual market, thus raising premiums and threatening access to affordable, comprehensive coverage for those who rely on comprehensive coverage. **We urge the departments to revise the 1332 waiver guidance to disallow the use of federal funds on these inadequate insurance products.**

Aggregate vs. Sub-population Effects. The departments propose to modify the coverage guardrail to measure the aggregate effect of the waiver on coverage, rather than the effect on specific sub-populations, particularly those most vulnerable. **We disagree with this approach and urge the departments to reinstate the previous guardrail in the final rule.** Older individuals and those with pre-existing conditions are often most in need of health care services, and yet they also are the populations most likely to be left out of coverage options that do not need to comply with comprehensive consumer protections.

Consumer-driven Health Care. One of the new waiver principles adopted by the departments is the promotion of "consumer-driven health care." We understand the departments define "consumer-driven health care" as plans that use higher cost sharing to influence patients' decisions about whether and where to access care. **We urge CMS to remove this principle.**

Recent studies and years of anecdotal evidence from AHA members show that such plans can have significant negative consequences on patients' access to care and have steep, unexpected financial implications. Most health care services are complex and not "shoppable," but even in instances where services are relatively interchangeable (e.g., an MRI) and a patient has the tools available, consumer-driven plans have not led to significant shopping by patients.[1] In addition, these plans, which often come in the form of high-deductible health plans (HDHPs), sometimes create financial barriers that prevent patients from accessing care, such as forgoing preventive screenings[2] or not

[1] Chernew, M., Cooper, Z., Larsen-Hallock, E., and Scott Morton, F. "Are Health Care Services Shoppable? Evidence from the Consumption of Lower-Limb MRI Scans." NBER Working Paper No. 24869. July 2018.
[2] Mazurenko, O., Buntin, M., and Menachemi, N. "High-Deductible Health Plans and Prevention." Annual Review of Public Health. November 2018.

following their care plan. When patients in HDHPs do seek care, they often cannot meet their cost-sharing obligations and, in that instance, HDHPs may increase the financial stress of patients while simply shifting costs back to providers by forcing them to absorb the loss through bad debt. This financial strain is bad for patients and bad for communities: with fewer resources, providers are challenged to maintain access to a comprehensive scope of services.

Streamlining the Application Process. We support the departments' intent to streamline the waiver approval process in order to make it easier for states to apply for 1332 waivers and facilitate more rapid implementation of state-level models. We are particularly pleased that the departments are not compromising stakeholder engagement opportunities. We also support the development of waiver concepts and, specifically, the waiver concept related to risk stabilization strategies. However, we are concerned that several of the other waiver concepts could exasperate some of the challenges detailed above, including by increasing enrollment in inadequate coverage and weakening the individual health insurance market.

CONCLUSION

Hospitals and health systems are committed to state flexibility and support the departments' efforts to streamline the 1332 waiver process. However, the proposed changes to the guardrails and several of the waiver concepts go too far in allowing states to take actions that could result in weakened consumer protections and the destabilization of the individual health insurance market. We urge the departments to revise the updated guidance to ensure that patients are protected from inadequate or unaffordable coverage.

Thank you for the opportunity to comment. Please contact me if you have questions, or feel free to have a member of your team contact Ariel Levin, senior associate director of policy, at 202-626-2335 or alevin@aha.org.

Sincerely,

/s/

Thomas P. Nickels
Executive Vice President
Government Relations and Public Policy