



Charles N. Kahn III  
President and CEO

July 27, 2021

The Honorable Chiquita Brooks-LaSure  
Administrator  
Centers for Medicare & Medicaid Services  
Department of Health and Human Services  
Attention: CMS-9906-P  
Hubert H. Humphrey Building  
200 Independence Avenue, SW  
Washington, DC 20201

**Re: 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; 86 Fed. Reg. 35,156 (July 1, 2021); CMS-9906-P**

Dear Administrator Brooks-LaSure:

The Federation of American Hospitals (FAH) is the national representative for over 1,000 leading tax-paying hospitals and health systems throughout the United States. FAH members provide patients and communities with access to high-quality, affordable care in both urban and rural areas across 46 states, plus Washington, D.C and Puerto Rico. Our members include teaching and non-teaching, acute, inpatient rehabilitation, behavioral health, and long-term care hospitals and provide a wide range of inpatient, ambulatory, post-acute, emergency, children's, and cancer services. These tax-paying hospitals account for nearly 20% of U.S. hospitals and serve their communities proudly while providing high-quality health care to their patients.

We appreciate the opportunity to submit comment to the Centers for Medicare & Medicaid Services (CMS) regarding its proposed rule, *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) published in the Federal Register (86 Fed. Reg. 35,156) on July 1, 2021.

The *Patient Protection and Affordable Care Act's* (ACA) coverage expansion has meant millions more Americans can receive needed health care services. The ability to shop for and purchase coverage through American Health Benefit Exchanges (Exchanges) has been an important success for America's previously uninsured even before the COVID-19 pandemic, but over the course of the pandemic, the affordable coverage opportunities created by the ACA supported access to critical health care services when individuals lost access to employer-sponsored health care coverage.

The FAH applauds the Administration for taking steps to strengthen the Exchanges and further the aims of the ACA while pursuing the dual directives of Executive Order (EO) 13986, which directs the federal government to “pursue a comprehensive approach to advancing equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality,” and EO 14009, which proclaims the Administration's policy to “protect and strengthen Medicaid and the ACA and to make high-quality healthcare accessible and affordable for every American.” The COVID-19 pandemic has laid bare inequities in our health care system and underscored how critical it is for all Americans to have access to coverage and care. With that in mind, the FAH strongly supports the Administration's commitment in adopting a wide range of policies to address health inequities, including those proposals set forth here that target barriers to coverage.

### **Navigator Program Standards (III.B.2)**

The FAH appreciates CMS' acknowledgment that “social determinants of health can also create significant disparities in whether and how an individual is able to afford and access health coverage and health care services,” and agrees that Navigators are “uniquely positioned” to address these disparities by virtue of their standing in the community and their ability to build strong relationships. 86 Fed. Reg. 35156, 35165. We share CMS' vision of a robust Navigator program that provides a broad range of support services to assist individuals enrolling in and using their coverage to access care. The FAH was also pleased to learn of the recent announcement of additional funding for Navigator grants and appreciates CMS' larger efforts to promote access to affordable health care coverage through the Navigator program and otherwise.

In particular, the FAH supports the proposed expansion of required Navigator duties, which would help to ensure that Navigators provide individuals in need of assistance with the information and guidance necessary for them to enroll in a qualified health plan (QHP) and then use their coverage to access care. When Navigators do not provide the core set of services identified in proposed 45 C.F.R. §155.210(e)(9), enrollees may become frustrated and fail to complete the enrollment process or forego needed health care services. In light of recent additional funding for Navigator activities, we think it is appropriate to expect Navigators to fulfill *all* the duties set forth in proposed 45 C.F.R. §155.210(e)(9), from helping individuals understand the process of filing eligibility appeals, to helping individuals understand basic concepts and rights related to health coverage. Finally, we also agree that it is appropriate to require that Navigators, but not certified application counselors (CACs), to take on these expanded duties, in light of CACs' narrower role and the absence of funding for CAC activities. CACs play a vital role in promoting access to coverage in their communities, and while many may undertake post-enrollment activities, the FAH is concerned that the expansion of CACs'

regulatory duties would unfairly burden CACs and may decrease access to enrollment assistance if CACs cease operations.

### **Repeal of the Direct Enrollment Option (III.B.3)**

The FAH supports repeal of the Exchange Direct Enrollment option and removal of Section 155.221(j). The FAH has previously commented that the Exchange Direct Enrollment option presented a fractured pathway to coverage for consumers as opposed to the one-stop shopping experience offered through state and federal exchanges today. We agree that available resources could be better allocated for implementation of policies that facilitate enrollment in plans and coverage best suited for enrollees.

### **Extension of the Annual Open Enrollment Period (III.B.4)**

The FAH supports the extension of the Annual Open Enrollment Period to January 15<sup>th</sup>. The longer open enrollment period allows consumers to fully evaluate their options for coverage and consider updates in their plan costs. While CMS invites comment on alternatives to extending the enrollment period to January 15<sup>th</sup>, these alternatives provide less flexibility to consumers and more restrictive alternatives for consumers to evaluate their coverage options. In previous comments, the FAH has supported auto-reenrollment as a consumer friendly tool that provides continuity of care and coverage. The FAH would encourage CMS to further study consumer satisfaction with auto-reenrollment before proposing changes which would make re-enrollment more cumbersome for consumers.

### **Monthly Special Enrollment Period for APTC-Eligible Individuals (III.B.5)**

The FAH supports the proposal to codify a monthly special enrollment period for those individuals that are eligible for advance payments of the premium tax credit (APTC) and that expect their household income to be no more than 150% of the federal poverty level (FPL). We agree that reducing barriers to enrollment is critical to expanding coverage among this population, and that even with extensive outreach efforts coinciding with annual enrollment periods, “additional enrollment opportunities for low-income consumers are appropriate and in the best interest of low-income consumers.” 86 Fed. Reg. at 35,169. If finalized, this policy would address social disparities in health, appropriately furthering the coverage aims of the ACA.

We appreciate CMS’ observation that individuals may lose Medicaid eligibility at times when they are most in need of health coverage – such as after the termination of pregnancy-related Medicaid coverage following the birth of a child – and support the common-sense idea of providing low-income individuals with a simple, convenient special enrollment period on a monthly basis. The proposed policy does not, of course, address the unaffordability of coverage for many individuals in states that failed to expand their Medicaid programs pursuant to the ACA, but it is a pragmatic approach for maximizing enrollment opportunities for a vulnerable and often underserved population.

**Network Adequacy Standards**

The FAH encourages CMS to develop as soon as possible a more complete and detailed network adequacy review process through rulemaking and to provide guidance while new rules are being developed. The FAH encourages development of network adequacy standards that not only measure the number of providers and geographic coverage, but also evaluate the barriers that issuers or plan designs create that limit access to certain network providers or their services. Network referral requirements, tiered benefit designs, and authorization requirements often limit beneficiary access to subsets of providers or services within a plan’s given service area, and may mask the true extent of beneficiary access to Essential Health Benefits in a given plan. The FAH looks forward to providing comments on meaningful measures for network adequacy that consider actual, not theoretical, access to network providers and the Essential Health Benefits they provide.

**Section 1332 Waivers (IV)**

The FAH applauds the Administration’s decision to reverse the 2018 guidance on Section 1332 waivers. We share the concern expressed by commenters that the 2018 guidance might permit waivers that “result in fewer residents in those states enrolling in comprehensive and affordable coverage,” 86 Fed. Reg. at 35,180, and we reiterate our statement in our December 21, 2018 letter that the 2018 guidance is “not consistent with either the spirit or the meaning of the law” because it encourages enrollment in plans that do not cover a minimum set of essential benefits. The FAH believes that the Proposed Rule’s modifications to the waiver requirements will best serve the Administration’s goal of ensuring adequate, affordable coverage for all Americans.

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Thank you for the opportunity to comment on the proposed rule. If you have any questions, please contact me or a member of my staff at 202-624-1534.

Sincerely,

