AMERICAN ACADEMY OF FAMILY PHYSICIANS

November 12, 2024

The Honorable Chiquita Brooks-LaSure
Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
PO Box 8016
Baltimore, MD 21244

Re: Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2026; and Basic Health Program [Docket No. CMS–9888–P]

Dear Administrator Brooks-LaSure:

On behalf of the American Academy of Family Physicians (AAFP), representing more than 130,000 family physicians and medical students across the country, I write to offer our response to the Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2026; and Basic Health Program proposed rule, published in the October 10, 2024, *Federal Register*.

The AAFP has long supported affordable, comprehensive coverage. Family physicians see firsthand how lack of comprehensive coverage and high out-of-pocket costs adversely impact patients and can cause patients to delay necessary care out of fear of being unable to afford it. **To further bolster coverage, the AAFP recommends CMS:**

- **Finalize as proposed the policy allowing the agency to target the lead agent and any other involved agents or brokers in compliance reviews and take enforcement actions.**
- **Finalize as proposed the policy allowing issuers to use fixed-dollar premium payment thresholds and total premium thresholds.**
- **Consider establishing a triggering event related to pregnancy in future rulemaking.**

Engaging in Compliance Reviews and Taking Enforcement Actions Against Lead Agents for Insurance Agencies

CMS intends to leverage its authority to conduct compliance reviews and take enforcement actions against lead agents, similar to its current practices with agents and brokers. This includes the ability to periodically monitor and audit these individuals. When misconduct or noncompliance is identified at the agency level, compliance reviews or enforcement actions will target the lead agent and any other involved agents or brokers, as lead agents are the individuals responsible for directing and/or overseeing their employees' and contractors' behavior and activity. CMS plans to examine agency-wide resources, such as company practices and training materials, to identify any indications of agency endorsement of noncompliant behavior.

The AAFP supports this policy and encourages the agency to continue to strive to better protect enrollees from agents and brokers who are not compliant with regulations designed to protect them. Coverage decisions should always be made solely based on what is best for the enrollee, but commissions made by agents and brokers create a potential conflict of interest. Whenever an individual or entity is financially incentivized to influence an enrollee's coverage decision, the AAFP believes that the utmost care should be taken to enforce regulations on misconduct.

Establishment of Optional Fixed- Dollar Premium Payment Threshold and Total Premium Threshold (§155.400(g)) (59)

CMS proposes to codify a provision related to the premium payment threshold policies that would allow additional issuer flexibility to decide when amounts collected from an enrollee would be considered to satisfy their obligation to pay the enrollee-responsible portion of the premium for certain purposes. Currently, issuers are permitted to adopt a percentage-based premium payment threshold which allows issuers to effectuate coverage when enrollees make premium payments above that threshold, but beneath the full premium amount owed. Enrollees paying enough to meet the threshold would not be placed in a grace period and would not be at risk of having their coverage terminated. Because this policy currently requires issuers to use a percent-based threshold, and CMS has historically recommended a 95% threshold, enrollees with low premiums may only owe small dollar amounts on their premium but not meet the threshold. Under this new policy, issuers can adopt a $5 threshold policy, under which they could provide additional flexibility to enrollees who fail to pay the full amount of their portion of premium owed.

CMS is also considering whether to further amend §155.400(g) to also permit issuers to set a reasonable threshold that is a percentage of the policy's total premium and not just the enrollee's portion of premium, thus allowing APTC paid on the consumer's behalf to count toward the threshold. whether a fixed-dollar threshold, as proposed, or a percentage threshold based on gross premium, would better meet our goal of providing flexibility to issuers to allow enrollees to avoid triggering a grace period or termination of enrollment through the Exchange for owing small amounts of premium. Finally, CMS proposes limiting issuers to utilize one premium payment threshold, such that a fixed-dollar threshold cannot be adopted and utilized in tandem with a percentage-based policy, either net or gross.

The AAFP strongly believes that all individuals should have affordable access to comprehensive health care coverage. Accordingly, AAFP supports affording maximum flexibility to issuers in relation to premium amounts owed that may be waived or disregarded when making determinations as to whether or not a beneficiary may maintain coverage. We appreciate that the agency is seeking to remedy situations wherein policies were terminated for non-payment of amounts between $0.01 and $5.00.

While the policy contained in this years' rule increases issuers' ability to avoid placing a beneficiary in a grace period, we wish to call the agency's attention to the requirement in §156.270(d) that issuers who place an enrollee in a grace period notify providers of the possibility for denied claims when an enrollee is in the second and third months of the grace period. We have heard anecdotally that issuers are failing to provide notice to providers when beneficiaries are in a grace period. In addition, issuers are not terminating coverage until many months after the grace period has ended. This means providers are not aware of the enrollee's potential loss of coverage nor their potential liability for claims. Issuers are recouping amounts paid long after the date of service to the complete surprise of providers. We ask the agency consider strengthening provider protections in this regulation, including potentially limiting issuers' ability to recoup claims paid, especially in cases where notice of grace periods was never given.

Establishment of a Triggering Event Related to Pregnancy

CMS has the authority to establish special enrollment periods and has done so by codifying triggering events, which make individuals eligible to enroll in or change from one QHP to another outside of open enrollment. 45 CFR 155.420(d). While a triggering event currently exists for individuals who gain a dependent, including through birth, there is no triggering event in regulation that would allow a

qualified individual to enroll in coverage due to pregnancy. 45 CFR 155.420(d)(2)(i). While some states have created a triggering event related to pregnancy, to date, the agency has not acted on a federal level.

This stands in contrast to federal policy which establishes maternity and newborn care as one of the ten essential health benefits. 42 U.S.C. 18022. It also represents an opportunity for the agency to make a meaningful impact on what it has described itself as the maternity care crisis.[1] The United States possesses the highest infant and maternal mortality rates compared with any other high-income country, even though it spends the most on health care.[2] Tragically, more than 80% of pregnancy-related deaths were preventable[3] and women receiving no prenatal care are three to four times more likely to have a pregnancy-related death than women who receive prenatal care.

The CDC notes that more than one-half of mothers who gave birth in 2021 (51.7%) were covered by private insurance as the source of payment for the delivery, while 41.0% used Medicaid, 3.4% used other types of coverage, and 3.9% as self-pay.[4] Given the direct impact that health coverage during pregnancy has on maternal mortality, we urge the agency to consider creating a new triggering event related to pregnancy. This will allow pregnant people to immediately gain access to life-saving care necessary to ensure the health of both parents and children.

We appreciate that the agency did not propose to establish pregnancy as a triggering event in the proposed rule and is therefore unable to enact a new regulation without going through the proper notice and comment procedure. However, we encourage the agency to revisit this issue in its rulemaking for benefit year 2027.

Thank you for the opportunity to provide comments on this proposed rule. The AAFP looks forward to working with CMS to improve equitable access to high-quality, comprehensive care for all. Please direct any additional questions to Kate W. Gilliard, JD, Sr. Manager of Federal Policy and Regulatory Affairs at kgilliard@aafp.org or (202) 510-2174.

Steve Furr, M.D., FAAFP

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American Academy of Family Physicians, Board Chair

[1] https://www.hhs.gov/healthcare/maternal-health/index.html
[2] https://www.commonwealthfund.org/publications/issue-briefs/2023/jan/us-health-care-global-perspective-2022
[3] https://www.cdc.gov/media/releases/2022/p0919-pregnancy-related-deaths.html
[4] https://www.cdc.gov/nchs/products/databriefs/db468.htm