



July 28, 2021

The Honorable Janet Yellen  
Secretary  
U.S. Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington, DC 20220

The Honorable Xavier Becerra  
Secretary  
U.S. Department of Health and Human Services  
200 Independence Avenue, SW  
Washington, DC 20201

The Honorable Chiquita Brooks-LaSure  
Administrator  
Centers for Medicare & Medicaid Services  
U.S. Department of Health and Human Services  
7500 Security Boulevard  
Baltimore, MD 21244

**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 (CMS-9906-P)**

Dear Secretary Yellen, Secretary Becerra and Administrator Brooks-LaSure:

Thank you for the opportunity to comment on the Updating Payment Parameters, Section 1332 Waiver Implementing Regulations, and Improving Health Insurance Markets for 2022 and Beyond Proposed Rule.

The American Lung Association is the oldest voluntary public health association in the United States, currently representing nearly 37 million individuals living with lung diseases, including asthma, lung cancer and chronic obstructive pulmonary disorder (COPD). As such, the Lung Association is uniquely positioned to comment on the impact this proposed rule will have on lung disease patients.

The Lung Association appreciates many of the steps the Administration has already taken to expand access to quality, affordable healthcare coverage through the marketplaces, including establishing a special enrollment period, increasing outreach and enrollment funding and implementing the expanded advance premium tax credits in the American Rescue Plan Act. We strongly support many of the policies in the proposed rule that further strengthen the Affordable Care Act (ACA) and the marketplaces, including strengthening the Navigator program standards, increasing in the 2022 marketplace user fees, and improving network adequacy standards. The Lung Association has submitted comments on many of the issues discussed in

the proposed rule in our previous comments on the Notice of Benefit and Payment Parameters (NBPP) for 2019, 2020, 2021 and 2022; the Exchange Program Integrity Rule; and the State Relief and Empowerment Waiver Guidance. We have attached those letters for your reference and urge you to review those recommendations as you finalize the proposed rule. In addition to those comments, the Lung Association offers the following suggestions on the proposed rule.

#### Exchange Direct Enrollment Option

The proposed rule would reverse a policy finalized in the 2022 NBPP that allows states to solely use private sector entities for enrolling people in healthcare coverage rather than using Healthcare.gov or a state-based exchange. The previous policy would create confusion for patients, reduce enrollment in comprehensive coverage and jeopardize access to quality and affordable healthcare for patients with lung diseases. It would limit patients' ability to compare the price and benefit design of qualified health plans (QHPs), in addition to masquerading non-compliant plans as a viable option for patients with lung disease. Patients and consumers who become enrolled in substandard health insurance coverage could experience denial of coverage for pre-existing conditions and lose key financial protections. This failure to appropriately shield consumers, particularly those with pre-existing conditions, from these outcomes is unacceptable. Since this Direct Enrollment Option policy was finalized in the 2022 NBPP, the rationale for this option, which was fundamentally deficient to begin with, has been further undermined by intervening changes in federal law — namely, enactment of the American Rescue Plan (ARP) Act. For these reasons, we strongly support the proposal to repeal the Exchange Direct Enrollment Option.

#### Open Enrollment Period Extension

We are pleased that the proposed rule recognizes the value to consumers of extending the annual open enrollment period. We urge the Department of Health and Human Services (HHS) to restore the open enrollment period to a full 90 days, which was the minimum length the period ran from 2014-2017. A full 90-day period would give consumers a better chance, during a busy time of year, to learn about their options and select a plan suited to their needs. Research has shown that 40 percent of uninsured adults are not aware of healthcare.gov or the state marketplaces, with individuals with low incomes and racial and ethnic minorities even less likely to be aware of their options.<sup>1</sup> These numbers highlight the great need for an extended open enrollment period, supported by a robust outreach and enrollment campaign. Additionally, we encourage HHS to ensure that all website and other technological updates and upgrades are in place prior to open enrollment so that the website does not need to be taken down, especially during prime scheduling times.

#### Monthly Special Enrollment Period for APTC-Eligible Qualified Individuals with a Household Income No Greater than 150 Percent of the Federal Poverty Level

We appreciate the Administration's recognition of the barriers and burdens that continue to limit enrollment in comprehensive coverage through the marketplaces and share its assessment that multiple outreach and enrollment strategies must be undertaken to reduce these obstacles. To these ends, we strongly support the proposal to establish a special enrollment period (SEP) for qualified individuals at low incomes who are eligible for advance payments of the premium tax credit (APTC). Our organizations urge the Administration to finalize this SEP as proposed for

2022 and to work with state-based marketplaces as necessary to ensure this option can be implemented effectively in all marketplaces that choose to pursue it.

We support the proposal to make this SEP available indefinitely. At the same time, we recognize that, because of the ARP, low-income individuals have significantly greater access to \$0 or very low premium marketplace plans, and this significantly increases the potential effectiveness of the proposed SEP. We encourage congressional action to make the ARP's affordability improvements permanent and believe a permanent SEP for qualified individuals with low incomes would serve as a strong complementary policy.

#### Section 1332 Waivers, Statutory Guardrails

Section 1332 waivers allow states to waive specified provisions of the Affordable Care Act (ACA), provided the state's waiver plan meets four statutory guardrails: coverage must be as affordable as it would be without the waiver; coverage must be as comprehensive as it would be without the waiver; a comparable number of people must be covered under the waiver as would be without it; and the waiver must not add to the federal deficit. In 2018, the Departments of Treasury and HHS issued new State Relief and Empowerment Waivers guidance, followed by a Section 1332 State Relief and Empowerment Waiver Concepts Discussion Paper, that supersedes guidance from 2015 for states on how to design these waivers.

Unfortunately, as the Lung Association and other patient advocacy organizations wrote in detailed comments submitted to Treasury and HHS in December 2018, some of the policies that states could pursue under the new guidance would significantly undermine quality and affordable healthcare for patients with pre-existing conditions. The guidance made it easier for states to use federal taxpayer dollars to promote sub-standard plans that do not provide comprehensive and affordable coverage, and it tipped the scales in favor of insurance products that are inadequate to meet the needs of the millions of patients and consumers our organization represents. The Lung Association firmly opposed the codification of this guidance in the 2022 NBPP, and we strongly support the proposal to rescind the guardrail interpretations announced in the 2018 guidance and codified by the 2022 NBPP. We also strongly support the policies and interpretations described in the preamble to the Improving Health Insurance Markets Proposed Rule.

#### Guaranteed Availability of Coverage, Past-Due Premiums

The statutory requirement that a participating issuer must make coverage available to all individuals who apply for it is a bedrock protection for the patients and consumers we represent, and for all Americans with preexisting conditions. In 2017, the prior administration announced it would permit issuers to deny coverage to people who the issuer says owe it, or a related entity, premiums. This policy is flatly inconsistent with the statute. It was adopted in response to concerns that were asserted but not supported by any evidence, and in spite of the clear barrier to coverage it imposes on individuals who for various reasons might find their enrollment rejected by an issuer. We are therefore pleased that HHS is reassessing this approach. We urge that the policy be reversed, and that full guaranteed availability rights be restored, in the 2023 Payment Notice rulemaking.

### Conclusion

The American Lung Association appreciates the opportunity to submit comments on this important rule. We urge HHS to finalize the rule as outlined above and to keep patients in the forefront when creating new policies that impact access to quality, affordable healthcare coverage.

Sincerely,



Harold P. Wimmer  
National President and CEO

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<sup>1</sup> Sara R. Collins, Munira Z. Gunja, and Michelle M. Doty. Following the ACA Repeal-and-Replace Effort, Where Does the U.S. Stand on Insurance Coverage? Findings from the Commonwealth Fund Affordable Care Act Tracking Survey, March–June 2017. The Commonwealth Fund. Accessed at: <https://www.commonwealthfund.org/publications/issue-briefs/2017/sep/following-aca-repeal-and-replace-effort-where-does-us-stand>.