American Hospital Association

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June 29, 2016

Andrew M. Slavitt
Acting Administrator
Centers for Medicare & Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244

RE: CMS-9933-IFC: Patient Protection and Affordable Care Act: Amendments to Special Enrollment Periods and the Consumer Operated and Oriented Plan Program

Dear Mr. Slavitt:

On behalf of the American Hospital Association's (AHA) nearly 5,000 member hospitals, health systems and other health care organizations (more than 100 of which sponsor health plans), and our 43,000 individual members, thank you for the opportunity to comment on the Centers for Medicare & Medicaid Services' (CMS) interim final changes to the special enrollment periods (SEPs) available to Health Insurance Marketplace consumers. **The AHA believes CMS's changes to the SEP eligibility criteria strike the appropriate balance between ensuring consumer access to coverage and protecting plans from potential SEP abuses.** CMS also may wish to consider other mechanisms, outlined below, for both federal and state governments to facilitate marketplace stability.

The stability of the public marketplaces is critically important to our members. Both plans and their network providers depend on functioning insurance markets to ensure consumer access to affordable coverage. A core component of a functioning insurance market is robust consumer enrollment. The SEPs have served as an important pathway to coverage for many individuals, particularly in the early years of the marketplaces when consumers were still learning about coverage requirements and the options to fulfill them. However, some consumers have delayed enrollment until they need care. As a result, some insurers have suffered financial losses that puts their participation in the marketplaces at risk. For example, one of our members with a health plan recently reported that the average medical loss ratio (MLR) for its marketplace plan enrollees who purchased coverage during open enrollment is 77 percent. In contrast, the average MLR for enrollees who purchased coverage using an SEP is 114 percent. The primary SEPs used by this plan's enrollees are "permanent move" and "loss of other coverage."

The AHA supports CMS's efforts to tighten eligibility criteria for the "permanent move" SEP and conduct oversight of the use of all SEPs. Specifically, we agree with CMS's approach to limiting the "permanent move" SEP to those individuals who had minimum essential coverage in at least one of the 60 days prior to the move. This policy should discourage individuals from moving solely to obtain health care coverage when an acute need arises, thereby jeopardizing the risk pool.

We also support CMS's efforts to ensure that these new eligibility criteria are enforced. CMS recognized the need for greater oversight of the SEPs when it required through the 2017 Notice of Benefit and Payment Parameters Final Rule that individuals provide documentary evidence of their eligibility for SEPs. We reiterate our support for this policy and ask that CMS dedicate the proper resources to ensure compliance.

Even with these changes, the AHA remains concerned that significant marketplace volatility will continue without additional action on the part of both the federal and state governments. Our members' experience to date suggests that a more comprehensive marketplace stability plan should include, but not be limited to:

- **Fully funding the risk corridor program.** While CMS has stated that it intends to fully fund the risk corridor program, it is unclear how or when such funding and payments will be made. We ask CMS to provide additional detail on risk corridor payments, including the timing of payments, whether payments will be made incrementally or in full, if some insurers will be prioritized for payment and, if so, the criteria that will be used and the source of funding.

- **Continuation of the reinsurance program through at least 2018.** The temporary reinsurance program made $8 billion in payments in 2014 and 2015, and is anticipated to make an additional $4 billion in 2016. This program has played an important role in protecting insurers from unanticipated costs and stabilizing their participation in the marketplaces. For example, a recent report by McKinsey and Company found that the reinsurance program contributed 16 percent of provider-sponsored health plan payments for their marketplace business in aggregate.[1] While the program is set to expire at the end of this year, plans continue to face challenges in appropriate pricing for the marketplace population. We therefore encourage CMS to explore its options for extending the program through 2018 or implementing a new, but similar, reinsurance program.

- **Improve the risk-adjustment program.** CMS's analysis of the risk-adjustment program suggests that, while the model generally works well, some adjustments are needed to more consistently align payments with actual costs. We have reviewed and agree with many of the changes discussed in the agency's March 2016 Risk Adjustment Methodology White Paper, including use of prescription drug data to help identify diagnoses and transitioning to a prospective risk-adjustment model. We encourage CMS to propose these changes during the next rulemaking cycle for further stakeholder input.

[1] Khanna, G. et al. "The market evolution of provider-led health plans," McKinsey & Company, April 2016.

We recognize that CMS may not have the statutory authority to implement some of these policies. We agree with CMS that states also could explore state-level solutions. For example, states may consider wrap-around risk-adjustment, reinsurance and risk corridor programs. States also should evaluate their role in approving plan pricing and ensure that they allow plans to make adjustments that will enable them to continue their participation without suffering ongoing losses. States also must prohibit plans from setting prices too low solely to attract market share, which has led to inappropriately low pricing in some markets during the first years of marketplace operations, resulting in significant insurer losses and the closure of a number of plans.

Thank you for the opportunity to provide these comments. We again reiterate our support for CMS's changes to the SEPs. We appreciate that both the federal and state governments have a role in developing policies and programs to support the marketplaces as they mature. If you have any questions, please contact Molly Smith, senior associate director of policy, at (202) 626-4639 or mollysmith@aha.org.

Sincerely,

/s/

Ashley Thompson
Senior Vice President
Public Policy Analysis & Development