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Andrew Slavitt
Acting Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Room 445-G
Hubert H. Humphrey Building
200 Independence Avenue, SW
Washington, D.C. 20201

Re: Frequently Asked Questions Regarding Verification of Special Enrollment Periods

Dear Acting Administrator Slavitt:

The American Cancer Society Cancer Action Network (ACS CAN), appreciates the opportunity to comment on the proposed pre-enrollment verification pilot program for special enrollment periods (SEPs). ACS CAN is the nonprofit, nonpartisan advocacy affiliate of the American Cancer Society, and supports evidence-based policy and legislative solutions designed to eliminate cancer as a major health problem. As the nation's leading advocate for public policies that are helping to defeat cancer, ACS CAN ensures that cancer patients, survivors, and their families have a voice in public policy matters at all levels of government.

ACS CAN supports the Affordable Care Act (ACA) because we know how important it is for all Americans – particularly those with serious illness like cancer – to have health insurance coverage. For those without insurance a cancer diagnosis is often made at later stages when costs are higher and often unaffordable and outcomes are worse. As the Centers for Medicare and Medicaid Services (CMS) has stated in previous rules, SEPs provide a “critical pathway to coverage” through the marketplaces. SEPs allow consumers with qualifying life changes – like divorce, marriage, birth, moves, or loss of employer-sponsored insurance – to remain insured in a plan that best meets their needs.

ACS CAN recognizes that CMS must continue to make changes to the marketplaces in order to keep the system working and we support refinements that continue to improve care. However, we remain seriously concerned about the actions CMS has taken to complicate and restrict eligibility for SEPs. We strongly urge CMS to delay proceeding with a pre-enrollment verification pilot program until there has been a thorough examination of the impact of CMS' current SEP confirmation process.

Our specific concerns with the SEP confirmation process are as follows:

Abuse of SEPs has not been documented. Many of CMS' changes are based only on the perception that enrollees are using SEPs to “game the system” and enroll in insurance only when they get sick. Yet there is no credible evidence that enrollees are inappropriately using SEPs. According to the Urban Institute,

less than 15 percent of eligible people elect to use a SEP to enroll in a health plan.¹ While an industry-funded report indicates that individuals who enroll in health plans through a SEP have higher health care costs compared to individuals who enroll during an open enrollment period, the report does not provide data on how the individuals qualified for their SEPs.² For instance, it is unknown how many of these additional costs were due to newborn babies. SEP-qualifying individuals are naturally going to generate new costs, but it does not mean they are intentionally abusing the SEP system.

Restricting access to SEPs will negatively affect cancer patients and their families. Restricting SEPs and requiring enrollees to document their eligibility can lead to gaps in insurance coverage. Individuals in active cancer treatment need regular access to care and services; when that access is disrupted, the effectiveness of the treatment could be jeopardized and the individual's chance of survival could be significantly reduced. Evidence-based protocols for chemotherapy and other cancer treatments often require treatment delivery on a prescribed timeline. Interruptions to this timeline because of coverage gaps can be detrimental. A gap in coverage can also cause a fatal delay in initiation of a treatment protocol. Recent research shows that delays in the initiation of chemotherapy for breast cancer patients result in adverse health outcomes.³

We are particularly concerned about the potential for gaps in coverage if enrollees are required to submit documents before they are able to enroll, as proposed in this pre-enrollment verification pilot program. Under the proposed pilot, SEP eligibility would be required to be verified prior to enrollment for some portion of consumers. This prior verification will lead to gaps in coverage, which can be detrimental to an individual who needs access to cancer treatment. The FAQ does not provide for an exception of expedited process by which an individual can obtain coverage when medically necessary.

In addition, we are concerned that the federally-facilitated marketplace (FFM) may not be technically or operationally capable of implementing a pre-enrollment SEP verification process in a real-time, streamlined eligibility and enrollment system. As a result, individuals will have to wait for verification before being able to select a health plan. This will result in a two-step process before an individual can enroll in a health plan, which will serve as a deterrent for some to enroll – particularly younger enrollees. As noted in its effort to reduce data matching issues, CMS acknowledges that in 2015 “younger open enrollment consumers who experienced a data matching issue were about a quarter less likely to have resolved their problem than older consumers.”⁴

¹ Buettgens M, Dom S, Recht H, “More than 10 Million Uninsured Could Obtain Marketplace Coverage through Special Enrollment Periods,” Washington: Robert Wood Johnson Found. & Urban Institute, Nov. 2015 available at <http://www.urban.org/sites/default/files/alfresco/publication-pdfs/2000522-More-than-10-Million-Uninsured-Could-Obtain-Marketplace-Coverage-through-Special-Enrollment-Periods.pdf>.

² Carlson C, Giesa K, “Special Enrollment Periods and the Non-Group, ACA-Compliance Market,” Washington: Oliver Wyman, Feb 2016, available at <https://www.ahip.org/Wyman-SEP-Enrollment/>.

³ Chavez-MacGregor M, Clarke CA, Lichtensztajn DY, Giordano SH. Delayed Initiation of Adjuvant Chemotherapy Among Patients With Breast Cancer. *JAMA Oncol.* 2016;2(3):322-329. doi:10.1001/jamaoncol.2015.3856.

⁴ Centers for Medicare and Medicaid Services, Strengthening the Marketplace – Actions to Improve the Risk Pool, June 8, 2016, available at <https://www.cms.gov/Newsroom/MediaReleaseDatabase/Fact-sheets/2016-Fact-sheets-items/2016-06-08.html?DLPage=2&DLEntries=10&DLSort=0&DLSortDir=descending>.

Better data are needed on the current SEP enrollment confirmation process before further requirements are instituted. In its FAQ, CMS emphasizes its current special enrollment confirmation process, saying that SEP plan selections were almost 15 percent lower in the seven weeks after the confirmation process was implemented compared to the same period in 2015. However, CMS fails to provide information on individuals who were denied a SEP through this process. Some of these individuals may not have legitimately been eligible for an SEP, as CMS implies. However, we are concerned that many individuals otherwise qualified for a SEP simply chose not to pursue coverage because of the extra requirements or could not produce the required documentation. In many cases these individuals who chose not to pursue a SEP are people who were healthy and therefore less motivated to follow through with extra process and complete enrollment. This could have negative effects on the risk pool. ACS CAN urges CMS to collect more and better data on the current confirmation process, and to answer the following questions:

- 1) How many people who did not complete plan selection when asked to confirm eligibility were actually ineligible for a SEP?
- 2) Which SEPs were these individuals attempting to use?
- 3) Was the completion/plan selection rate different for individuals using navigator or broker assistance versus individuals using no assistance?
- 4) Is the 15 percent decrease consistent, or does it change over time?
- 5) How do these changes affect the risk pool?

ACS CAN urges CMS to carefully consider these questions and collect and publish more data before moving forward with changes that will further restrict SEPs or complicate the enrollment process.

CMS Posed Questions

The following section addresses the specific questions CMS has raised in the FAQ.

- 1. Should the pilot be geographically targeted, or should it involve a sample of consumers throughout the Federally-Facilitated Marketplaces? If it is geographically targeted, what states or sub-state regions should be included?**

ACS CAN strongly urges CMS not to proceed with the pilot program until more data can be gathered and analyzed regarding CMS' current SEP verification process. However, if CMS insists on proceeding with the pilot, we urge that it be constructed as narrowly as possible so as to create barriers for as few consumers as possible. In order to limit barriers, the pilot should only be conducted in areas where:

- a) Navigators, insurance agents and brokers have been adequately trained to help consumers use the pre-enrollment verification process; and
- b) Insurers participating in the marketplace agree to pay commissions, consistent with what they pay during open enrollment, to agents and brokers who successfully enroll consumers using an SEP.

- 2. Should the pilot focus on a subset of special enrollment periods that may be most prone to abuse? If so, which would those be?**

ACS CAN urges CMS to proceed with any pilot program only after there has been evidence to suggest that documented abuse has occurred with a specific SEP. No proof of abuse of any SEP has yet been presented. If CMS proceeds with the pilot despite this lack of evidence, it should focus on SEPs for which documentation is more easily obtained. ACS CAN notes that employers are not required to automatically provide former employees with documentation of loss of minimum essential coverage (MEC). This makes documentation for qualification under a loss of MEC SEP difficult, and we encourage CMS to not include this SEP in its pilot.

3. How should we conduct the pilot in a manner that minimizes burdens on consumers and disruptions in coverage?

The FFM should provide clear and accurate notices that inform people about their rights and responsibilities and information about any additional actions they need to take to secure coverage. Affected consumers will also need assistance with the process from well-trained call center personnel, navigators, and insurance agents and brokers. This may require additional resources than would otherwise be available.

We strongly urge CMS to ease the burden on consumers to ensure that individuals who are eligible can enroll in a plan without experiencing any gaps in coverage. If CMS decides to proceed with this pilot program, we strongly urge the Agency to ensure the FFM (or another third party) bears the responsibility of determining whether an individual qualifies for an SEP. This determination should not be left to the health plan to decide, given the potential for adverse selection. In addition, any data should be routinely analyzed to determine whether consumers face any undue burdens when exercising their rights to an SEP.

4. How should we measure the impact of the pilot on compliance, enrollment, continuity of coverage, and the health of the risk pool, and do so in a timely way as to inform potential policy changes for 2018?

Before CMS imposes any pre-enrollment verification pilot program, it must determine the specific goals of such a program, including whether there is evidence to suggest that certain SEPs are actually being abused by enrollees. Once that research has been conducted, CMS can then proceed to determine whether the pilot program is necessary and if so, can develop policies to determine how best to address the specific concerns determined by the research.

In addition, CMS should engage in vigilant monitoring to ensure the policies enacted under the pilot program are not resulting in unintended consequences that deny eligible individuals from utilizing their SEP rights. For example, CMS specifically should examine the extent to which pre-enrollment SEP verification deters eligible people from using their SEP rights. This analysis should also look at the extent to which the pre-enrollment verification pilot program deters healthier individuals from enrolling in a marketplace plan.

Conclusion

On behalf of the American Cancer Society Cancer Action Network we thank you for the opportunity to comment on the proposed pilot program. If you have any questions, please feel free to contact me or have your staff contact Jennifer Singleterry, Senior Policy Analyst, at Jennifer.Singleterry@cancer.org or 202-585-3233.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kirsten Sloan", is positioned above a yellow rectangular highlight.

Kirsten Sloan
Senior Policy Director
American Cancer Society Cancer Action Network