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June 23, 2016

Andy Slavitt
Acting Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-9933-IFC
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
81 Fed. Reg. 29146 (May 11, 2016)

Dear Administrator Slavitt:

The American Cancer Society Cancer Action Network (ACS CAN), appreciates the opportunity to comment on the interim final rule regarding amendments to special enrollment periods. ACS CAN, the nonprofit, nonpartisan advocacy affiliate of the American Cancer Society, 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 supported 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 cancer diagnoses are often made at later stages when costs are higher and often unaffordable and outcomes are worse. Special enrollment periods (SEPs) in the health insurance marketplaces are a crucial component to the insurance infrastructure of the ACA. As the interim final rule states, SEPs provide a "critical pathway to coverage." Many life changes like marriages, childbirth, deaths, employment changes and moves can necessitate changes to a person's health insurance coverage, and most of these changes occur outside a standard open enrollment period. SEPs allow consumers with qualifying life changes to remain insured in a plan that makes sense for them.

ACS CAN recognizes that the Centers for Medicare & Medicaid Services (CMS) must continue to make changes to the marketplaces in order to make the system work and we support refinements that continue to improve care. However, we are concerned that some of the changes to SEPs proposed under this Interim Final rule go too far in restricting access to SEPs and could cause problems for cancer patients and their families who want and need to enroll in health insurance.

A. Special Enrollment Periods (§ 155.420)

Minimum Essential Coverage Requirement for Permanent Move SEP
The SEP implemented in 45 CFR 155.420(d)(7) may be granted to a qualified individual or enrollee, or his or her dependent, who gains access to new QHPs as a result of a permanent move. CMS suggests concern regarding the misuse of this SEP; that it creates "an opportunity for adverse selection where persons undertake a permanent move solely for the purpose of gaining health coverage, in which they otherwise would not be qualified to enroll." In light of the expressed concern, CMS proposes to institute a new requirement that individuals using this SEP must have been enrolled in minimum essential coverage (MEC) for one or more days in the 60 days preceding the permanent move. CMS includes three exceptions to this requirement:

- Individuals who lived outside the U.S. or in a U.S. territory before permanently moving to the U.S.
- Individuals released from incarceration
- Individuals who previously lived in a non-Medicaid expansion state and during the same timeframe, were ineligible for Medicaid, but who become newly eligible for advance payments of the premium tax credit as a result of a permanent move

ACS CAN opposes the proposed limitations to the availability of an SEP in this case. We believe that before CMS acts to restrict access to insurance coverage, it should first demonstrate with evidence that individuals are misusing the SEP and that this is destabilizing the market. According to the Urban Institute, less than 15 percent of eligible people elect to use an SEP to enroll in a health plan.[1] At the same time, we have seen no evidence that individuals are improperly utilizing the SEP for a move in order to access health insurance coverage. While a recently-released industry-funded report indicated that individuals who enroll in health plans through an SEP have higher health care costs compared to individuals who enrolled during an open enrollment period, the report did not provide data on how the individuals qualified for the SEP. The report did not provide a breakdown of costs based on the specific SEP. Thus, it is unknown whether higher costs are associated with particular SEPs.[2] CMS has not provided sufficient evidence that enrollees are misusing the permanent move SEP.

We are also concerned that the proposed new requirement will make it harder for individuals to gain access to insurance coverage. In addition, this new requirement will make it harder for enrollees – and those assisting enrollees in choosing a health plan – to understand whether they are entitled to an SEP.

The American Cancer Society operates a specialized Health Insurance Assistance Service (HIAS) which provides cancer patients information about health insurance and access to care. HIAS staff regularly interact with cancer patients who need health insurance coverage, are confused about whether they qualify for an SEP, and/or have difficulty applying for coverage through an SEP. This unnecessary

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[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/.

requirement will prove overly burdensome and could have the chilling effect of discouraging individuals to seek coverage through an SEP.

We also note that individuals sometimes make permanent moves to start caregiving for a loved one with cancer, or to be closer to a loved one at the end of his or her life. Caregivers often must quit their jobs to care for loved ones, resulting in gaps in insurance coverage. Recently, HIAS helped one such patient. The patient had been the full-time caregiver for his mother and therefore had left the workforce and was uninsured. After experiencing pain that did not get better, he went to the hospital and was diagnosed with stage IV pancreatic cancer. The patient is now moving to be closer to a specialized facility from which he can receive his cancer treatments, and the marketplace has granted him an SEP. If this policy is finalized, this individual would not be eligible for an SEP and would be forced to wait until open enrollment to start treatment, which would negatively impact his overall chance of survival. Constituents like this patient who have been uninsured due in part to caring for a loved one only to find themselves needing cancer treatment often must move to get the support they need. This requirement would render them unable to pursue coverage to get needed cancer care.

Removal of Requirement for an Advanced Relocation SEP
In its 2016 Payment Notice, CMS originally required all federal- and state-based marketplaces to start offering advanced availability (60 days) of the "permanent move SEP" by January 2017. In the current interim final rule, CMS rescinds this requirement and instead makes it at the option of exchanges. CMS believes "it is unnecessary and contrary to the public interest to require Exchanges to offer advanced availability of the special enrollment period…because it could introduce additional uncertainty to the risk pool at this time."[3]

ACS CAN is extremely concerned that exchanges will not be required to offer advanced availability of the SEP for permanent moves. This will almost certainly cause a gap in coverage for any individual using this SEP in a state that does not implement advanced enrollment. Some of these individuals could be cancer patients, who may move to another location in order to be closer to family and/or caregivers or to be closer to a specialized treatment facility.

Individuals with cancer need regular access to care and cancer treatment services and 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 proscribed 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.[4]

Cancer patients contact HIAS frequently to receive information that helps patients with enrolling in insurance to avoid gaps in coverage. HIAS staff recently helped one such patient who has pancreatic cancer and is receiving chemotherapy. This individual was losing his employer-sponsored insurance (ESI)

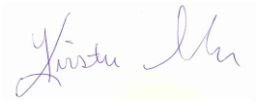
[3] 81 Fed. Reg. at 29147.
[4] Chavez-MacGregor M, Clarke CA, Lichtensztajn DY, Giordano SH. Delayed Initiation of Adjuvant Chemotherapy Among Patients With Breast Cancer. *JAMA Oncol.* 2016;2(3):322-329. doi:10.1001/jamaoncol.2015.3856.

because he left the workforce and was moving to a different state to be close to his daughters. Due to his medical condition, it was important that he not experience a gap in coverage so treatment would not be delayed. Constituents like these find themselves diagnosed with cancer, losing ESI and needing to move to another state to be near family during cancer treatment. Without advanced availability of the permanent move SEP these constituents may not be able to make a residence change due to the uncertainty of having adequate health coverage for needed cancer care upon their arrival in a new state.

In addition, we note that the Medicare program offers special enrollment periods similar to those offered in QHPs. When beneficiaries inform their plan of an anticipated move, Medicare allows an SEP that encompasses the month before the beneficiary's move, the month of the move, and two months following the beneficiary's move. Given that this policy has existed in the Medicare program with no known problems – and there has been no evidence to suggest the SEP would be misused in the QHP context – we see no reason for CMS to remove this requirement.

ACS CAN urges CMS to consider these comments before implementing changes that can make it harder for cancer patients, their caregivers and their families to access health insurance coverage. If you have any questions, please feel free to contact me or have your staff contact Jennifer Singleterry, Senior Analyst at Jennifer.Singleterry@cancer.org or 202-585-3233.

Sincerely,



Kirsten Sloan
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