



July 27, 2021

Chiquita Brooks-LaSure
Administrator
Centers for Medicare & Medicaid Services
U.S. Department of Health and Human Services
Attention: CMS-9906-P
P.O. Box 8016
Baltimore, MD 21244-8016

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 Administrator Brooks-LaSure:

On behalf of the American Speech-Language-Hearing Association, I write to offer comments on the proposed rule, Patient Protection and Affordable Care Act; Updating Payment Parameters, Section 1332 Waiver Implementing Regulations, and Improving Health Insurance Markets for 2022 and Beyond.

The American Speech-Language-Hearing Association (ASHA) is the national professional, scientific, and credentialing association for 218,000 members and affiliates who are audiologists; speech-language pathologists; speech, language, and hearing scientists; audiology and speech-language pathology support personnel; and students.

ASHA appreciates the opportunity to provide comments on the following topics:

- 31 CFR Part 33 and 45 CFR Part 155 – Section 1332 Waivers; and
- Provision of EHB.

31 CFR Part 33 and 45 CFR Part 155 – Section 1332 Waivers

ASHA supports the Centers for Medicare & Medicaid Services' (CMS) proposal to rescind the 2018 Section 1332 State Relief and Empowerment Waiver Concepts Guidance (2018 Guidance) and to repeal the previous codification of its guardrail interpretations in Part 1 of the 2022 Payment Notice final rule.^{1,2} ASHA believes that the current proposals will increase access to and enrollment in comprehensive and affordable health care coverage for Americans, including the underinsured and uninsured.

The 2018 Guidance presents a considerable expansion of state authority under section 1332 in that “[a] section 1332 state plan should foster health coverage through competitive private coverage, including Association Health Plans (AHP) and short-term limited-duration insurance (STLDI) plans, over public programs.” ASHA previously commented that it does not support the approval of waivers for AHPs and STLDIs that are deemed affordable if comprehensive coverage, at greater expense than STLDI, remains available. The availability of coverage and actual coverage are not synonymous. In addition, “comprehensive” and “affordable” should not be viewed as separate inquiries; they are dual prongs of a single, essential statutory requirement. Satisfying one element to the detriment of the other fails to meet consumer needs. Moreover, the clear language of the statute states that 1332 waivers must be measured by the

coverage that they actually *provide*, not by the coverage that they *make available*.³ Therefore, ASHA agrees with CMS's proposed interpretations for the comprehensiveness, affordability, and coverage guardrails.

Specifically, to meet the comprehensive guardrail, health care coverage under a Section 1332 waiver must be forecast to be at least as comprehensive overall for residents of the state as coverage absent the waiver. In other words, the 1332 waiver cannot decrease:

- 1) the number of individuals with coverage that satisfies EHB requirements;
- 2) the number of individuals with coverage of any particular category of EHB; or
- 3) the number of individuals with coverage that includes the services covered under the state's Medicaid or Children's Health Insurance Programs.

For affordability, health care coverage must be forecast to be as affordable overall for residents of the state as coverage absent the waiver. To meet the coverage guardrail, a comparable number of state residents must be forecast to have coverage under the Section 1332 waiver as would have had coverage absent the waiver. In other words, the forecast of covered individuals is no less than the forecast of covered individuals absent having the waiver.

The non-ACA compliant coverage options encouraged within the 2018 Guidance document may accommodate relatively healthy individuals but not consumers from vulnerable or underrepresented populations, including individuals with chronic conditions and disabilities. Nor does it provide coverage for unexpected injury, illness, or disability. ASHA strongly agrees with CMS's efforts to abandon the harmful 2018 Guidance document and regulatory codification related to section 1332 state waivers.

Provision of EHB

ASHA reiterates its strong objections to the EHB benchmark plan selection and benefit substitution policies finalized in the 2019 Notice of Benefits and Payment Parameters final rule.⁴ We maintain that these policies erode important consumer protections and reduce access to comprehensive coverage. Consumers with speech, language, and hearing needs are particularly vulnerable and can be negatively impacted based on the approach selected by their state. For example, an individual with Parkinson's disease who has difficulty with speech and swallowing requires speech-language pathology services to treat those deficits. Another example is a 3-year-old child with severe congenital hearing loss who requires the fitting of hearing aids and audiologic treatment to develop auditory and speech-language skills provided by an audiologist and speech-language pathologist respectively. Depending on the EHB benchmark plan selected by the state in these scenarios, the rehabilitative and habilitative services and devices' benefit category could be weakened; thereby limiting or preventing access to medically necessary services.

ASHA urges CMS to carefully review the additional flexibilities afforded to states in §156.111 and §156.115. The purported flexibility provided to states under §156.111 does not justify or outweigh the potential loss of coverage for consumers or the added administrative and financial burdens on states. In addition, because of the changes to §156.115, consumers face additional burdens in comparing plans when states allow between-benefit substitution and one or more qualified health plans in the state utilize such a substitution.

All Americans deserve access to affordable, comprehensive health insurance coverage and ASHA supports CMS's efforts to ensure that health insurance plans live up to the statutory requirements as prescribed in the ACA.

We appreciate the opportunity to provide comments on this proposed rule. If you or your staff have any questions, please contact Daneen Sekoni, MHSA, ASHA's director for health care policy, health care reform, at dsekoni@asha.org.

Sincerely,



A. Lynn Williams, PhD, CCC-SLP
2021 ASHA President

¹ Centers for Medicare & Medicaid Services. (2018). *Section 1332 State Relief and Empowerment Waiver Concepts Discussion Paper*. <https://www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation-Waivers/Downloads/Waiver-Concepts-Guidance.PDF>.

² Centers for Medicare & Medicaid Services. *Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2022; Updates to State Innovation Waiver (Section 1332 Waiver) Implementing Regulations*, 86 FR 6138. (2021). <https://www.federalregister.gov/documents/2021/01/19/2021-01175/patient-protection-and-affordable-care-act-hhs-notice-of-benefit-and-payment-parameters-for-2022>.

³ Cornell Law School. (2010). *42 U.S. Code § 18052 - Waiver for State innovation*. <https://www.law.cornell.edu/uscode/text/42/18052>.

⁴ Centers for Medicare & Medicaid Services. *Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2019*, 83 FR 16930. (2018). <https://www.federalregister.gov/documents/2018/04/17/2018-07355/patient-protection-and-affordable-care-act-hhs-notice-of-benefit-and-payment-parameters-for-2019>.