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July 28, 2021

Chiquita Brooks-LaSure  
Centers for Medicare & Medicaid Services  
Department of Health and Human Services  
Attention: CMS-9906-P  
7500 Security Boulevard  
Baltimore, MD 21244-1850

**RE: CMS-9906-P: 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**

Dear Administrator Brooks-LaSure:

The Medicare Rights Center (Medicare Rights) appreciates this opportunity to comment on the **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)**. Medicare Rights is a national, nonprofit organization that works to ensure access to affordable health care for older adults and people with disabilities through counseling and advocacy, educational programs, and public policy initiatives. Each year, Medicare Rights provides services and resources to nearly three million people with Medicare, family caregivers, and professionals.

Medicare Rights applauds policies to protect and strengthen programs to make high-quality health care accessible and affordable for every American no matter how they access coverage. Callers to our national helpline demonstrate that many consumers, caregivers, and even experts can find health insurance overly complicated. Without access to information, tools, and personal help, many people can struggle to make the best coverage decisions for their particular circumstances. And the stakes are high—making the wrong decision can lead to lack of access to care, worsening health, and financial instability.

The proposed rule would help address this, by providing people seeking Affordable Care Act (ACA) coverage with expanded education and outreach, improved affordability, and reduced administrative burden. We strongly support these goals.

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## **B. Part 155 – Exchange Establishment Standards and Other Related Standards under the Affordable Care Act**

### **2. Navigator Program Standards (§ 155.210)**

The Centers for Medicare & Medicaid Services (CMS) proposes to reinstitute a requirement for ACA Navigators to provide information and assistance for certain post-enrollment topics. Currently, Navigators are authorized to provide such assistance, but are not required to do so. Post-enrollment assistance can include help understanding the process of filing eligibility appeals; basic information about tax credits and how to find help with tax filing; and fundamental concepts and rights related to health coverage and how to use it, such as locating providers and accessing care. We support the availability of high-quality consumer assistance to help people find, keep, and use health coverage. Any expansion of the federal Navigator program must come with sufficient funding to support those efforts, as well as trainings on other potentially applicable coverage sources, including Medicare and Medicaid. We also encourage elevating and supporting state and local entities who are already engaged in this important work, such as Consumer Assistance Programs (CAPs) and State Health Insurance Assistance Programs (SHIPs).

### **3. Exchange Direct Enrollment Option (§ 155.221(j))**

CMS proposes to eliminate the Exchange Direct Enrollment option that would shift the primary pathway for people to enroll in and receive information about ACA coverage away from HealthCare.gov or state exchange websites to private sites. We strongly support this proposal. As we stated in our comments on both the Georgia 1332 waiver<sup>1</sup> and the Notice of Benefit and Payment Parameters rule for 2022,<sup>2</sup> we strongly oppose any shift to decentralize information and access to coverage. Based on our experience, such a shift would likely heighten confusion about where and how to access good-quality health coverage, thus hindering enrollment. Private actors have a role to play in health coverage, but so does the government. Since coverage and enrollment information must be unbiased and without financial incentive, the latter is better positioned to operate and oversee a one-stop-shop of centralized, accurate, neutral information on the comprehensive coverage options available to consumers.

### **4. Open Enrollment Period Extension (§ 155.410(e))**

CMS proposes to extend the ACA open enrollment period from 45 to 75 days. We support this extension, in particular because it allows individuals who were automatically re-enrolled into a plan to reevaluate their options after receiving updated plan cost information in the new year and select a new plan that is more affordable to them. In addition, we urge you to similarly ease enrollment into other programs, including Medicare. Most immediately, flexibilities are needed to help older adults and

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<sup>1</sup> Medicare Rights Center, “Comments: Georgia Section 1332 Waiver” (September 16, 2020),

<https://www.medicarerights.org/policy-documents/comments-on-georgias-proposed-1332-waiver>.

<sup>2</sup> Medicare Rights Center, “Comments: CMS-9914-P: Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2022 and Pharmacy Benefit Manager Standards; Updates to State Innovation Waiver (Section 1332 Waiver) Implementing Regulations” (December 30, 2020), <https://www.medicarerights.org/policy-documents/comments-on-notice-of-benefit-and-payment-parameters-for-2022>.

people with disabilities access their Medicare swiftly and easily during the COVID-19 emergency period and its aftermath. This includes re-establishing two critical rapid enrollment pathways—Equitable Relief for Premium Part A and Part B<sup>3</sup> and a Special Enrollment Period for Part C and Part D<sup>4</sup>—and allowing people to correct pandemic-related Medicare enrollment errors whenever they are discovered.<sup>5</sup>

## **5. Monthly Special Enrollment Period for APTC-Eligible Qualified Individuals with a Household Income No Greater than 150 Percent of the Federal Poverty Level (§ 155.420(d)(16))**

CMS proposes to establish a monthly special enrollment period (SEP) for individuals or dependents of individuals who are eligible for tax credits and whose household income is expected to be no greater than 150% of the federal poverty level. We support this proposal to better ensure individuals with lower incomes have access to care and coverage and can enroll as soon as they understand their options. We also urge extensive outreach to all communities, with a focus on underserved communities and communities where English is not the predominant language, to notify people of the availability of low or no cost coverage.

CMS asks for comment on whether to make this SEP permanent, as the difficulties lower-income individuals have in accessing coverage are likely to continue indefinitely. We strongly support this being a permanent SEP. While some of the circumstances surrounding the COVID-19 pandemic have changed enrollment patterns, lower income and other underserved communities have long been overrepresented in the rolls of the uninsured. We urge the use of this SEP and other levers to close these gaps and reduce the disparities and inequities in the system.

## **C. Part 156 – Health Insurance Issuer Standards under the Affordable Care Act, Including Standards Related to Exchanges**

### **1. User Fee Rates for the 2022 Benefit Year (§ 156.50)**

CMS proposes to increase the user fee rates for 2022 to better fund expanded outreach and education, support Navigators, and ensure wider reach to underserved communities. We support these increased rates.

## **IV. Provisions of the Proposed Rule for Section 1332 Waivers – Department of Health and Human Services and Department of the Treasury**

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<sup>3</sup> Centers for Medicare & Medicaid Services, “Enrollment Issues for COVID-19 Pandemic-Related National Emergency Questions and Answers for Medicare Beneficiaries” (last accessed February 1, 2021), <https://www.cms.gov/files/document/enrollment-issues-covid-ab-faqs.pdf>.

<sup>4</sup> Centers for Medicare & Medicaid Services, “Special Enrollment Period (SEP) for Individuals Affected by a FEMA-Declared Weather-Related Emergency or Other Major Disaster: Applicable for COVID-19” (May 5, 2020), <https://www.cms.gov/files/document/special-enrollment-period-sep-individuals-affected-fema-declared-weather-related-or-other-major.pdf>.

<sup>5</sup> Medicare Rights Center, *et al.*, “Letter to CMS on Extending Enrollment Flexibilities” (February 5, 2021), <https://www.medicarerights.org/pdf/020521-letter-on-medicare-enrollment-flexibilities.pdf>.

### 3. Section 1332 Application Procedures – Statutory Guardrails (31 CFR 33.108(f)(3)(iv) and 45 CFR 155.1308(f)(3)(iv))

CMS proposes to reinstate regulatory guardrails that ensure that ACA Section 1332 waivers do not reduce enrollment in affordable and comprehensive coverage. We strongly support this proposal. As we stated in our comments in opposition to the approved Georgia Section 1332 waiver,<sup>6</sup> Section 1332(b)(1) of the ACA requires that such waivers are only permissible if the new implementation will cover as many people, with coverage as affordable and comprehensive, as without the waiver.<sup>7</sup> It is not within the power of any administration to ignore this statutory requirement, but misstatements of the statute can and do cause confusion and improper state action.

#### Conclusion

Thank you again for this opportunity to provide comment on this proposed rule. For further information, please contact Lindsey Copeland, Federal Policy Director at [LCopeland@medicarerights.org](mailto:LCopeland@medicarerights.org) or 202-637-0961 and Julie Carter, Senior Federal Policy Associate at [JCarter@medicarerights.org](mailto:JCarter@medicarerights.org) or 202-637-0962.

Sincerely,



Fred Riccardi  
President  
Medicare Rights Center

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<sup>6</sup> Medicare Rights Center, “Comments: Georgia Section 1332 Waiver” (September 16, 2020), <https://www.medicarerights.org/policy-documents/comments-on-georgias-proposed-1332-waiver>.

<sup>7</sup> Patient Protection and Affordable Care Act, Pub. L. 111-148, Sec. 1332(b) (“(1) IN GENERAL—The Secretary may grant a request for a waiver under subsection (a)(1) only if the Secretary determines that the State plan—(A) will provide coverage that is at least as comprehensive as the coverage defined in section 1302(b) and offered through Exchanges established under this title as certified by Office of the Actuary of the Centers for Medicare & Medicaid Services based on sufficient data from the State and from comparable States about their experience with programs created by this Act and the provisions of this Act that would be waived; (B) will provide coverage and cost sharing protections against excessive out-of-pocket spending that are at least as affordable as the provisions of this title would provide; (C) will provide coverage to at least a comparable number of its residents as the provisions of this title would provide; and (D) will not increase the Federal deficit.”)