COUNCIL FOR AFFORDABLE
HEALTH COVERAGE

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May 18, 2016

Mr. Andy Slavitt
Acting Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
7500 Security Boulevard
Baltimore, MD 21244-1850

RE: Feedback on the Special Enrollment Confirmation Process

Submitted Electronically via SEP@cms.hhs.gov

Dear Acting Administrator Slavitt,

The Council for Affordable Health Coverage (CAHC) is pleased to comment on the Centers for Medicare and Medicaid Services' (CMS) Request for Feedback on the Special Enrollment Confirmation Process, issued on February 24, 2016.

CAHC is a broad-based alliance with a singular focus: bringing down the cost of health care for all Americans. Our membership represents a broad range of interests – organizations representing small and large employers, manufacturers, retailers, insurers, patient groups, and physician organizations. Our full membership list is available on our website at www.cahc.net.

We are pleased that CMS has recognized the need to refine the insurance exchange rules and procedures to ensure that only those who are eligible enroll through the special enrollment periods (SEPs). SEPs serve a valuable role in helping individuals who lose health coverage during the year or who experience major life changes to maintain continuous coverage—but it is equally important for the stability of exchange plan risk pools and premiums to ensure that SEPs are not misused or abused.

We appreciate the opportunity to comment on the new Special Enrollment Confirmation Process. CAHC's comments reflect the positions of the Council, but may not necessarily reflect the individual views of our members.

The new Special Enrollment Confirmation Process for the 38 states that utilize the HealthCare.gov enrollment platform is an important step forward. For the first time, CMS will require all consumers who enroll or change plans using an SEP for the following triggering events to submit qualifying documentation to verify their eligibility: 1) loss of minimum essential coverage, 2) permanent move, 3) birth, 4) adoption, and 5) marriage. According to CMS, these SEPs represent three-quarters of HealthCare.gov consumers who enrolled or changed plans using an SEP in 2015. CMS pledges to offer a seamless system in which consumers will be able to upload documents to their HealthCare.gov account or mail them in, and the agency will review those documents to verify eligibility. Similar to approaches used by the Internal Revenue Service, CMS will follow-up with consumers after enrollment if there are issues or problems with documentation. Consumers who fail to submit sufficient documentation could be found ineligible for their SEP and could lose their coverage. In implementing this process, it will be crucial for CMS to provide clear guidance and resources for advocates, assisters, agents, and brokers to help them

understand the new process and to equip them to best serve consumers in providing appropriate documentation for SEP enrollment.

Our primary concern with the proposed confirmation process is that the verification of consumer eligibility appears to be retroactive. We strongly urge CMS to institute a prospective eligibility verification process that occurs before coverage becomes effective, similar to the processes that are traditionally employed off-exchange by private insurers. Once eligibility is determined, retroactive coverage could occur at the point of application for benefits and services that would normally be covered under a particular plan. Otherwise, ineligible individuals may generate significant claims costs before CMS completes the verification process to determine whether coverage was appropriately obtained through the SEP. This is concerning because claims costs for SEP enrollees are higher, on average. According to the Blue Cross and Blue Shield Association, "individuals enrolled through SEPs are utilizing up to 55 percent more services than their open enrollment counterparts." Furthermore, in their first month of coverage alone, SEP enrollees were much more likely to generate large claims in 2015 than traditional enrollees.[1] Furthermore, according to Aetna, a CAHC member, SEP enrollees generated a total of $132.5 million dollars of coverage in their first two months of coverage last year.

Therefore, even if CMS is able to collect and review SEP enrollee documentation within 30-60 days of enrollment, the exchange marketplace could still be exposed to millions of dollars in inappropriate claims, if even a small percentage of those enrollees were illegitimate. Once claims are paid for an individual, it is both unlikely and costly for an insurer to recoup those funds even if consumer ineligibility or fraud is determined later. Retroactive verification would likely still mean that legitimate premium-paying customers bear the costs for ineligible SEP enrollees.

CMS could more effectively support the viability of exchange risk pools and reduce the risk of premium increases by preventing SEP fraud before it occurs in the first place. We recommend that CMS implement three initiatives to bolster the Special Enrollment Confirmation Process and improve the sustainability of the exchange market:

1) In the short-term, the proposed Special Enrollment Confirmation Process will help improve SEP enrollee verification, but the retroactive process will leave the market vulnerable to unwarranted expenditures. To counter this, we recommend that CMS use the existing settlement process for the remittance and collection of risk adjustment and reinsurance payment and charges, as a vehicle to reimburse insurers for claims paid to SEP enrollees that were in fact ineligible.

2) For 2017, CMS should implement a prospective eligibility system, similar to what insurers already utilize off-exchange. We understand that a prospective process would require system changes and time to implement, but this adjustment would serve as a critical long-term investment for the program.

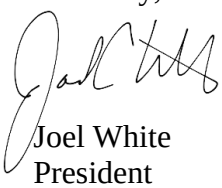
3) While we believe that verification of SEP eligibility is important to the integrity of the program, this alone will not completely address the full scope of concerns with SEP enrollment. For example, risk adjustment does not adequately compensate for SEP enrollees. In 2015, SEP enrollees averaged a 91 percent loss ratio, but risk adjustment made it significantly worse by increasing it to 108 percent. We recommend that CMS modify risk adjustment by recognizing that

[1] Pear, Robert. "Insurers Say Costs Are Climbing as More Enroll Past Health Act Deadline." *The New York Times*, 9 Jan 2016. http://www.nytimes.com/2016/01/10/us/politics/insurers-say-costs-are-climbing-as-more-enroll-past-health-act-deadline.html

zero sum risk transfers will not be adequate. External funds must be infused in order to address potential catastrophic costs such as those generated by SEP, short duration enrollees, and accidents.

CAHC appreciates your careful consideration of our comments. We stand ready to serve as a resource to you and your staff on issues related to insurance exchange enrollment, risk pool stability, and premium affordability.

Sincerely,



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