Via Electronic Submission

December 27, 2017

Re: CMS-9930-P—Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2019

Dear Administrator Verma,

The American Society of Clinical Oncology (ASCO) is the national organization representing over 42,000 physicians and other healthcare professionals specializing in cancer treatment, diagnosis, and prevention. ASCO members are also dedicated to conducting research that leads to improved patient outcomes, and we are committed to ensuring that evidence-based practices for the prevention, diagnosis and treatment of cancer are available to all Americans.

ASCO has worked on a bipartisan basis to advance access, quality and affordability of cancer care. In January 2017, we published the “ASCO Principles for Patient-Centered Health Care Reform,” which establish the guideposts we use to assess any efforts to reform our nation’s health care insurance markets. We write today to reiterate some of these principles and to request that CMS exercise all of its regulatory discretion to be a vigilant advocate for cancer patients as new policies are developed, including those proposed in the notice “Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2019.”. The “ASCO Principles for Patient-Centered Health Care Reform” of greatest relevance to our discussion are:

- All Americans should have access to affordable and sufficient healthcare coverage regardless of their income or health status. To ensure protected access, the current ban on pre-existing condition limitations, elimination of annual and lifetime coverage caps, and maintenance of guaranteed renewability should be preserved.
• All individuals with cancer should have health insurance that guarantees access to high-quality cancer care that is delivered by a cancer specialist and that provides the full range of services needed by patients with cancer in a timely manner.

• Policymakers should, in any policy changes, promote and protect cancer prevention and screening services, as they are key to reducing cancer mortality. Policymakers should preserve the “no copay” access to screening services that currently exists.

The Notice of Benefit and Payment Parameters for 2019 proposes changes in policy that would fundamentally alter many of the consumer and patient protections in the individual and small group markets. We urge CMS to forgo implementing any changes to policies concerning the essential health benefits no earlier than 2020 to preserve market stability and provide adequate time for states to determine appropriate mechanisms to secure affordable and meaningful cancer coverage for their residents.

**EHB Benchmarks**

ASCO is concerned that the Agency’s efforts to create additional flexibility for state regulators will lead to the development of qualified health plans that fail to address the comprehensive medical needs of citizens at risk for cancer and existing cancer patients and would offer substantially less benefits than those provided in most employer sponsored health plans. For instance, states currently select an employee health benefit (EHB) benchmark plan from a defined set of plan offerings within their state or the Federal EHB plan offerings. Plans provide the EHB where their benefits in each EHB category are “substantially similar” to benefits provided in each EHB category by the benchmark, with the exception of prescription drug coverage (discussed below). The CMS proposal would permit a state to use additional options to define its EHB benchmark by allowing a state to adopt all or part of an EHB benchmark plan from another state, or to select a set of benefits to define a new EHB benchmark, as long as those benefits are no more generous than existing EHB benchmark options. Although these changes will undoubtedly promote the Administration’s goal of returning additional regulatory authority and flexibility to the states, they may also create incentives for states to select less generous benchmarks that could reduce access to life saving screening and prevention services and endanger the provision of comprehensive coverage for our cancer patients.

ASCO is deeply concerned about the potential application of the new benchmarking rules to the prescription drug benefit category of the essential health benefits. Under current rules, a plan only meets the EHB standards for prescription drug coverage if it covers the greater of at least one drug in each USP category or class, or the number covered by the benchmark in each category or class. Although this standard would remain unchanged if finalized, the proposal would enable a state to adopt another state’s prescription drug EHB category benchmark or establish a less generous benchmark of its own. This flexibility may grant states the license to design benchmarks that have a net effect of reducing the number of prescription drugs that must be covered by a qualified health
plan and would undermine the limited protections the previous EHB standards provided for cancer patients. We urge CMS to amend the proposed rule by creating specific protections that prohibit states from offering less generous prescription drug benefits than those that are required today.

**Benefit Substitution**

ASCO is also opposed to the proposal that would expand EHB benefit substitution by allowing plans to substitute benefits from one EHB category for benefits in another EHB benefit category for the first time. Although the proposed policy bans benefit substitutions involving prescription drugs, it establishes more lenient substitution rules that are based solely on actuarial equivalency between the benefits and not medical similarity. This may leave certain EHB benefit categories with levels of coverage that are insufficient to meet the needs of cancer patients. We urge CMS to abandon this proposal and reaffirm the existing benefit substitution protections.

**State Mandated Benefits**

We also urge HHS to change the date by which a new mandated benefit would require cost defrayal by the state to either concur with the effective date of the final Notice of Benefit & Payment Parameters for 2019, or the date upon which a new EHB category or benchmark is selected. Substantial changes are expected in EHB benchmarks through the various 2017 rules from HHS, it makes sense to update this date accordingly.

**National EHB Standard**

The proposed rule seeks comments regarding a potential national standard for the essential health benefits. Any national EHB standard should be constructed to guarantee robust and meaningful access to cancer screening and prevention services as well as cancer care that provides access to a cancer specialist and the full range of services needed by cancer patients. ASCO has a longstanding position that supports mandatory prescription drug coverage of each unique molecular entity used in the treatment of cancer. The current EHB benefit requirements fall short of this level of protection, even though all antineoplastic drugs with distinct active ingredients are covered within the protected class requirements of Medicare Part D program. We urge CMS to adopt identical protections to the Medicare Part D protected class requirements to promote robust patient access in any potential national standard for essential health benefits.

**Network Adequacy**

Finally, ASCO is disappointed in the Agency’s proposal to continue the policies finalized in the 2018 Market Stabilization Rule regarding network adequacy assessments. ASCO continues to believe that minimum and quantifiable network adequacy standards are necessary at the federal level to ensure adequate access to oncology care for QHP enrollees. The absence of any federal assessment of network adequacy will exacerbate historically known deficiencies in access to cancer care. ASCO urges the Administration to implement federal protections to secure adequate numbers of oncology
providers in QHP networks for cancer patients, who face particular challenges as a result of narrow networks and other discriminatory practices because of the cost of cancer care.

As CMS moves toward greater state regulation of health insurance sold in the individual and small group markets, it is critical that the federal government employ active and continuous oversight to ensure that plans do not discriminate against cancer patients. A discriminatory plan is one that fails to provide benefits that are consistent with well-established standards of care or does not include sufficient access to cancer specialists that provide the full range of cancer care services.

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Thank you for your willingness to consider our feedback on changes in CMS policy. ASCO looks forward to continuing to work with the Administration to pursue goals that are consistent with the “ASCO Principles for Patient-Centered Health Care Reform.” Please contact Sybil Green at Sybil.Green@asco.org with any questions.

Sincerely,

Bruce Johnson, MD, FASCO

President, American Association of Clinical Oncology