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Association of
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August 12, 2020

Ms. Jeanne Klinefelter Wilson
Acting Assistant Secretary
Office of Health Plan Standards and
Compliance Assistance
Employee Benefits Security Administration
U.S. Department of Labor
Attention: RIN 1210-AB89
200 Constitution Avenue, NW
Washington, DC 20210

Mr. Charles P. Rettig
Commissioner
Internal Revenue Service
U.S. Department of the Treasury
Attention: RIN 1545-BP67
1111 Constitution Avenue, NW
Washington, DC 20224

Ms. Seema Verma
Administrator
Centers for Medicare & Medicaid Services
U.S. Department of Health and Human Services
Attention: RIN 0938-AT49
200 Independence Avenue, SW
Washington, DC 20001

Re: Grandfathered Group Health Plans and Grandfathered Group Health Insurance Coverage (RIN 1210-AB90, RIN 1545-BP67, RIN 0938-AT49)

Dear Acting Assistant Secretary Klinefelter Wilson, Commissioner Rettig, Administrator Verma:

The Association of American Medical Colleges (AAMC or the Association) welcomes the opportunity to submit comments on the proposed rule entitled “Grandfathered Group Health Plans and Grandfathered Group Health Insurance Coverage,” 85 *Fed. Reg.* 42782 (July 15, 2020), issued by the Departments of the Treasury, Labor, and Health and Human Services (The Departments). The AAMC supports the availability of health insurance that is both affordable and comprehensive and that ensures that consumers are able to meet their healthcare needs. While we understand that many millions of individuals have grandfathered insurance, we oppose any efforts to make these insurance policies less affordable and are concerned that the Departments have proposed changes that will increase cost sharing for many consumers while allowing these plans to remain grandfathered. For the reasons discussed below, the AAMC asks that the Departments not finalize the proposed rule as we believe it puts at risk the consumer.

The AAMC is a not-for-profit association dedicated to transforming health care through medical education, patient care, medical research, and community collaborations. Its members are all 155 accredited U.S. and 17 accredited Canadian medical schools; more than 400 teaching hospitals and health systems, including Department of Veterans Affairs medical centers; and

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more than 70 academic societies. Through these institutions and organizations, the AAMC serves the leaders of America's medical schools and teaching hospitals and their more than 179,000 full-time faculty members, 92,000 medical students, 140,000 resident physicians, and 60,000 graduate students and postdoctoral researchers in the biomedical sciences.

Under the Affordable Care Act (ACA) coverage requirements for health plans changed, mandating that new plans provide certain services. However, plans that were in existence prior to the enactment of the ACA – known as grandfathered plans – could remain in force and were exempt from the ACA mandated coverage requirements, including covering essential health benefits. Grandfathered health plans will lose their grandfathered status if any of six changes are made, including any increase in a percentage cost-sharing requirement (coinsurance); an increase in a non-copay fixed amount (e.g., a deductible or out-of-pocket maximum) that exceeds certain thresholds; or an increase in a copay that exceeds certain thresholds. Once grandfathered status is lost it cannot be regained.

The Departments are proposing to allow some grandfathered group health insurance plans, including grandfathered high-deductible health plans (HDHPs), to increase consumers' cost sharing without losing grandfathered status. (p. 42783). The proposed rule would change the maximum percentage increase for certain non-copay fixed amount cost sharing, such as deductibles or out-of-pocket maximums, to the greater of the current standard (medical inflation plus 15 percent) or the change in the premium adjustment percentage plus 15 percent. (p. 42788). These changes would apply only to group grandfathered plans and would not affect grandfathered individual coverage; most enrollees in grandfathered plans are in group plans. Grandfathered plans, however, do not need to meet ACA requirements.

The AAMC supports efforts to provide comprehensive and affordable health insurance coverage to consumers. We are concerned that finalizing the proposed rule will allow these less comprehensive plans to continue while placing an increased financial burden on the individuals enrolled in them. Increasing consumers' cost sharing without expanding coverage will continue to make these plans less attractive for individuals needing more and what we consider to be acceptable coverage. Moreover, increasing cost sharing at a time when consumers are facing economic hardships as a result of the COVID-19 public health emergency (PHE) will unnecessarily increase the emotional and financial stress they already feel and may cause many to delay or forgo needed care. Requiring consumers to assume increased cost sharing could further increase the number of under- and uninsured individuals resulting in increased health care bad debt, further exacerbating the financial strain hospitals and physicians already face. Finally, the Departments offer no impact analysis of the financial burden that the proposals will impose on consumers, stating that they "are unable to quantify all benefits, costs, and transfers of these proposed rules." (p. 42789). The AAMC urges the Departments not to finalize this proposed rule.

Consumers' Current Cost Sharing Liability Under HDHPs is Already Too High

High-deductible health plans have been embraced by employers as a way to control costs by requiring employees to shoulder more of the health care costs. Nearly 70 percent of mid to large employers offered HDHPs and for 13 percent of these employers, an HDHP was the only option in 2019.¹ Thirty percent of workers with health insurance were enrolled in an HDHP in 2019.² According to the Kaiser Family Foundation, in 2019 the average annual premiums for workers enrolled in an health savings account (HSA) qualified HDHP was \$6,412 for single coverage and \$18,980 for family coverage.³

In addition to premiums, consumers enrolled in HDHPs are required to meet weighty deductibles before coverage begins. In 2019, the Internal Revenue Service set HDHP minimum deductibles at \$1,350 and \$2,700 for self-only and family, respectively.⁴ HDHP maximum out-of-pocket amounts that includes deductibles, co-payments, and other amounts, but excluding premiums, were \$6,750 and \$13,500 for self-only and family, respectively.⁵ Employees enrolled in a HDHP contribute to a health savings account to help pay for health care expenses; employers may also contribute to an employee's HSA. However, annual contributions to an HSA barely cover half of the deductible. In 2019, the maximum contributions to an HSA was \$3,500 for self-only and \$7,000 for a family.⁶

While studies have shown that HDHPs are associated with lower health care costs, this includes a reduction in utilization of both appropriate and inappropriate care.⁷ Additionally, significant reductions in drug spending and lower prescription drug adherence rates for chronic and low-income beneficiaries have been noted.⁸ The Departments acknowledge in the proposed rule that there is the "potential increase in adverse health outcomes if a participate or beneficiary would forego treatment because the necessary services became unaffordable due to an increase in cost sharing." (p. 42789). Increasing cost sharing for HDHPs has the potential to exacerbate consumers aversion to seek needed medical care, particularly during the COVID-19 PHE. We urge the Departments not to finalize this rule.

¹ The Challenges of High-Deductible Plans for Chronically Ill People. Health Affairs. April 22, 2019. Available at: <https://www.healthaffairs.org/doi/10.1377/hblog20190416.47741/full/>

² Kaiser Family Foundation. 2019 Employer Health Benefits Survey. September 25, 2019. Available at: <https://www.kff.org/report-section/ehbs-2019-summary-of-findings/>

³ Ibid.

⁴ HealthCare.gov. High-Deductible Health Plan (HDHP). Available at: <https://www.healthcare.gov/glossary/high-deductible-health-plan/>

⁵ Ibid.

⁶ Internal Revenue Services. Publication 969 (2019), Health Savings Accounts and Other Tax-Favored Health Plans. Available at: https://www.irs.gov/publications/p969#en_US_2019_publink1000204046

⁷ High-Deductible Health Plans Reduce Health Care Cost and Utilization, Including Use of Needed Preventive Services. Health Affairs. October 2017. Available at: <https://www.healthaffairs.org/doi/10.1377/hlthaff.2017.0610>

⁸ Ibid.

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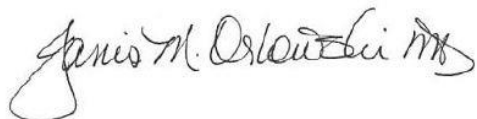
Consumers Delay Needed Care Because of Cost, Increasing Cost Sharing Liability May Exacerbate Delays

A quarter of Americans stated they or a family member delayed treatment for a serious medical condition in 2019 because of cost, a six percent increase over the previous year.⁹ Delaying needed health care leads to increased utilization of services in higher-cost sites of care such as emergency departments¹⁰ or can lead to preventable hospitalizations. When patients delay care, not only does it negatively impact the health of the patient, it causes health care costs to treat that patient to rise unnecessarily. Successful management of patients, particularly those with complex medical conditions, reduces overall health care spending and utilization. The proposed rule notes that there is the “potential increase in adverse health outcomes if a patient or beneficiary would forego treatment because the necessary services became unaffordable due to an increase in cost sharing.” (p. 42789). The proposed rule offers no specific impact on the financial burden consumers will face as a result of the proposed increases in cost sharing. The Departments should fully evaluate and publicly report on whether increased cost sharing will lead to decreased utilization of necessary medical care.

CONCLUSION

Thank you for the opportunity to comment on the grandfathered health plans proposed rule. We request that the Departments not finalize the proposed rule. The AAMC would be happy to work with the Departments on any of the issues discussed above to ensure that consumers have affordable insurance that adequately covers their health care needs. If you have questions regarding our comments, please feel free to contact Mary Mullaney at 202.909.2084 or mmullaney@aamc.org.

Sincerely,



Janis M. Orłowski, M.D., M.A.C.P.
Chief Health Care Officer

cc: Ivy Baer

⁹ More Americans Delaying Medical Treatment Due to Cost. December 9, 2019. Available at: <https://news.gallup.com/poll/269138/americans-delaying-medical-treatment-due-cost.aspx>

¹⁰ Ibid.