September 9, 2024

The Honorable Xavier Becerra
Secretary of Health and Human Services
U.S. Department of Health and Human Services
200 Independence Avenue SW
Washington, DC 20201

Re: Medicare and Medicaid Programs: Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems; Quality Reporting Programs, including the Hospital Inpatient Quality Reporting Program; Health and Safety Standards for Obstetrical Services in Hospitals and Critical Access Hospitals; Prior Authorization; Requests for Information; Medicaid and CHIP Continuous Eligibility; Medicaid Clinic Services Four Walls Exceptions; Individuals Currently or Formerly in Custody of Penal Authorities; Revision to Medicare Special Enrollment Period for Formerly Incarcerated Individuals; and All-Inclusive Rate Add-On Payment for High-Cost Drugs Provided by Indian Health Service and Tribal Facilities (CMS-1809-P, RIN 0938-AV35)

Dear Secretary Becerra:

Thank you for the opportunity to comment on the Centers for Medicare & Medicaid Services (CMS) proposed rule regarding the Medicare hospital Outpatient Prospective Payment System (OPPS) and the Medicare Ambulatory Surgical Center (ASC) payment system for calendar year 2025. Our coalition strongly supports the changes made in the proposed rule on prior authorization timelines, the new statutory requirements for continuous eligibility coverage in Medicaid for children, and baseline health and safety standards for obstetrical services.

Together and separately, our non-profit, non-partisan organizations are dedicated to working with the administration, members of Congress and state governments on a bipartisan basis to protect the health and wellbeing of the patients and consumers we represent. Our organizations have a unique perspective on what patients need to prevent disease, cure illness, and manage chronic health conditions. Our breadth enables us to draw upon a wealth of knowledge and expertise that can be an invaluable resource in this discussion.

In March of 2017, our organizations agreed upon three overarching principles[i] to guide any work to reform and improve the nation's healthcare system. These principles state that: (1) healthcare should be accessible, meaning that coverage should be easy to understand and not pose a barrier to care; (2) healthcare should be affordable, enabling patients to access the treatments they need to live healthy and

productive lives; and (3) healthcare must be adequate, meaning healthcare coverage should cover treatments patients need, including all the services in the essential health benefit (EHB) package. In accordance with these principles, we offer the following comments on the rule.

XIX. Changes to the Review Timeframes for the Hospital Outpatient Department (OPD) Prior Authorization Process

Our organizations support CMS' decision to align Medicare FFS prior authorization review timeframe for standard review requests for hospital outpatient department services with the timeframe in the Interoperability and Prior Authorization final rule. As we said in our comments on the Interoperability proposed rule, prior authorization is a time-consuming process that can burden providers, divert valuable resources away from direct care, and cause delays in patient access to needed services and treatment.[i] Our organizations are pleased to see the administration's ongoing commitment to improving [ii], affordability, and adequacy of care for all patients.

We agree with CMS' decision to not align the expedited review decision timeframe—as the agency points out, the current 2-business day standard for Medicare FFS is shorter in some circumstances than the 72-hour standard set forth in the Interoperability final rule. As we recommended in our comments on the Interoperability proposed rule,[iii] we would support shortening the timelines to ensure that standard requests are resolved in 72 hours and expedited requests are resolved in 24 hours because individuals with chronic illness are frequently harmed by unnecessary delays in receiving needed treatments.[iv] If CMS takes our suggestion and shortens the timelines, we urge that these standards then be completely aligned.

XX. Provisions Related to Medicaid and the Children's Health Insurance Program (CHIP)

We recommend that CMS implement an annual Medicaid rule process similar to the annual Medicare and Marketplace rules. While the Federal government is not setting rates or standards in the same way for Medicaid, such an annual process would allow CMS to regularly address needed changes to the program and allow patient groups, states, and those with Medicaid coverage to raise challenges and provide our perspective on emerging issues.

A. Continuous Eligibility in Medicaid and CHIP (42 CFR 435.926 and 457.342)

Our organizations support implementing these provisions related to Section 5112 of Title V, subtitle B of the Consolidated Appropriations Act, 2023. Research has shown that individuals with disruptions in coverage during a year are more likely to delay care, receive less preventive care, refill prescriptions less often, and have more emergency department visits.[v] Gaps in Medicaid coverage have also been shown to increase hospitalizations and negative health outcomes for ambulatory care-sensitive conditions like respiratory diseases and heart disease.[vi] Furthermore, studies show that children of color are more likely to be affected by gaps in coverage that continuous eligibility would address, rendering it crucial for increasing equitable access to care.[vii] Continuous eligibility protects patients and families from gaps in care and promotes health equity.[viii] Overall, multi-year continuous coverage would improve access to and continuity of care for children during the critical early years of life[ix] while promoting health equity.

XXI. Health and Safety Standards for Obstetrical Services in Hospitals and Critical Access Hospitals

We also support the implementation of targeted baseline health and safety standards for obstetrical services. As the proposal acknowledges, people with chronic conditions and disabilities, such as those

patients and survivors we represent, frequently experience complications with pregnancies.[x] Especially since Medicaid provides health coverage for over 40 percent of births int the United States, these standards in Medicaid are particularly important.[xi] It is essential to clearly define which specific services would fall under "obstetric services" to avoid ambiguity and ensure focused implementation. CMS should be mindful of the potential to exacerbate disparities in care for already under-resourced facilities. Efforts should be made to ensure these facilities have the necessary resources to comply with established standards.

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Thank you for the opportunity to provide these comments. Should you have any questions, please contact Bethany Lilly at The Leukemia & Lymphoma Society (bethany.lilly@lls.org).

Sincerely,

American Cancer Society Cancer Action Network
American Kidney Fund
American Lung Association
Asthma and Allergy Foundation of America
Cancer*Care*
Crohn's & Colitis Foundation
Cystic Fibrosis Foundation
Epilepsy Foundation
Lupus Foundation of America
Muscular Dystrophy Association
National Alliance on Mental Illness
National Bleeding Disorders Foundation
National Organization for Rare Disorders
National Patient Advocate Foundation
Susan G. Komen
The AIDS Institute
The Leukemia & Lymphoma Society
WomenHeart: The National Coalition for Women with Heart Disease

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[i] American Heart Association website, "Healthcare reform principles." Available at: http://www.heart.org/idc/groups/heart-public/@wcm/@adv/documents/downloadable/ucm_495416.pdf.

[ii] Partnership to Protect Coverage, Comments on the Proposed Rule and Request for Information; Advancing Interoperability and Improving Prior Authorization Process (CMS-0057-P). Submitted March 13, 2023. Available at: https://www.protectcoverage.org/siteFiles/43080/03%2013%2023%20PPC%20Prior%20Auth%20Rule%20FINAL.pdf.

[iii] *Id*.

[iv] Kyle M A, Keating N, Prior Authorization and Association With Delayed or Discontinued Prescription Fill. Journal of Clinical Oncology, Vol 42, N 8. Available at: https://ascopubs.org/doi/abs/10.1200/JCO.23.01693.

[v] Sugar S, Peters C, De Lew N, Sommers BD. Medicaid Churning and Continuity of Care: Evidence and Policy Considerations Before and After the Covid-19 Pandemic. Assistant Secretary for Planning and Evaluation, Office of Healthy Policy. April 12, 2021. Available at: https://aspe.hhs.gov/sites/default/files/private/pdf/265366/medicaidchurning-ib.pdf.

[vi] "Effects of Churn on Potentially Preventable Hospital Use." Medicaid and CHIP Payment Access Commission. July 2022. Available at: https://www.macpac.gov/wp-content/uploads/2022/07/Effects-of-churn-on-hospital-use_issuebrief.pdf.

[vii] Osorio, Aubrianna. Alker, Joan, "Gaps in Coverage: A Look at Child Health Insurance Trends", Center for Children & Families (CCF) of the Georgetown University Health Policy Institute, November 21, 2021. Available at: https://ccf.georgetown.edu/2021/11/22/gaps-in-coverage-a-look-at-child-health-insurance-trends/.

[viii] Chomilo, Nathan. Building Racial Equity into the Walls of Minnesota Medicaid. Minnesota Department of Human Services. February 2022. Available at: https://edocs.dhs.state.mn.us/lfserver/Public/DHS-8209A-ENG

[ix] Burak, Elisabeth Wright. "Promoting Young Children's Healthy Development in Medicaid and the Children's Health Insurance Program (CHIP)." Center for Children and Families, Georgetown University Health Policy Institute. October 2018. Available at: https://ccf.georgetown.edu/wp-content/uploads/2018/10/Promoting-HealthyDevelopment-v5-1.pdf.

[x] See Caroline Signore, MD, et al; "The Intersection of Disability and Pregnancy: Risks for Maternal Morbidity and Mortality." J Womens Health (Larchmt). February 2021; 30(2): 147–153, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8020507/. See also, discussion in the rule on Fed. Reg Vol. 89, No. 140, page 59489.

[xi] KFF, State Health Facts, Births Financed by Medicaid (2022). Available at: https://www.kff.org/medicaid/state-indicator/births-financed-by-medicaid/.