January 17, 2016

The Honorable Sylvia Mathews Burwell, Secretary
Health and Human Services
200 Independence Avenue SW
Washington, D.C. 20201

Re: Comments on Draft 2017 Letter to Issuers in the Federally-facilitated Marketplaces

Dear Madame Secretary:

The Association of Asian Pacific Community Health Organizations (AAPCHO) appreciates the opportunity to comment on HHS' Notice of Benefit and Payment Parameters for 2017 proposed rule.

AAPCHO is a national not-for-profit association of 35 community-based health care organizations, 29 of which are Federally Qualified Health Centers (FQHCs). AAPCHO members are dedicated to promoting advocacy, collaboration, and leadership to improve the health status and access of medically underserved AA&NHOPIs in the U.S., its territories, and its freely associated states.

AAPCHO members focus on providing services that are uniquely appropriate to their patient populations including: comprehensive primary medical care, culturally and linguistically appropriate health care services, and non-clinical supportive enabling services such as interpretation and case management. On average, AAPCHO's health centers serve a much higher rate of patients who are Limited English Proficient (LEP) (50% vs. 23%), with some health centers serving as many as 99% LEP individuals. AAPCHO health center patients serve a high percentage of complex patients, including those with chronic conditions such as diabetes and hepatitis B, who also may need support with social conditions (e.g. transportation to/from center).

As an Association of Community Health Centers supporting the needs of Asian American, Native Hawaiian, and Other Pacific Islanders, AAPCHO clinics see first-hand the impact of and need for effective and appropriate in-language care to better serve their patients. We support the need to provide standards on the provision of in-language care, to ensure that patients are receiving adequate care within their plans.

Network Adequacy

AAPCHO submitted strong comments on the network adequacy standard in our comments to the 2017 Payment Notice Proposed rule. Strong HHS regulation of QHP networks is essential, as QHPs serve a comparatively vulnerable population. Within the AAPCHO clinic network, many are seeing their patients face barriers in accessing essential providers. Network adequacy protections are critical to achieve adequate and effective care for the patients that have been enrolled. We encourage HHS to develop appropriate measures and parameters of network resiliency that can be incorporated into future regulations and we would like to ensure that the languages spoken by providers are also included in the rating system.

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We commend HHS for proposing additional consumer protections aimed at ensuring that QHP enrollees can actually obtain the essential health benefits covered under their plans. We urge HHS, however, to go further to adopt more specificity in this regulation to ensure that consumers have robust protections to ensure their access to the essential health benefits through adequate provider networks.

When the 2017 Payment Notice is finalized, we call on CMS to strongly implement and enforce the network adequacy standard in the methods outlined in this Draft Letter to Issuers. We again strongly call on CMS to ensure that network adequacy standards at the state level and for the federal default consider more than time and distance standards, and to ensure that the languages spoken by providers are included in the plan network review.

Network Transparency

AAPCHO supports transparency in networks design and breadth, and that this information be available to consumer to compare QHP plans' provider network in their geographic area at the time of enrollment. The Draft Letter suggests that CMS will compare based on hospitals, adult primary care and pediatric care as illustrative of network breadth. We encourage CMS to include FQHCs as a category of the network particularly because newly insured beneficiaries may have a history with the FQHC as their usual source of care.

More importantly, we call on CMS to include languages spoken to network breadth requirements so that patients with linguistic or cultural needs are able to find in-network providers who are able to provide them the culturally sensitive and appropriate care they need. We encourage HHS to require the Exchanges to ensure that QHPs assess the language proficiency of their contracted providers, and the providers' staff, who provide services directly in a non-English language. Otherwise, enrollees, as a result of ineffective communication, may experience adverse medical consequences due to a lack of language proficiency.

Essential Community Providers

As FQHCs, AAPCHO's members are Essential Community Providers (ECPs) and provide linguistically and culturally competent care to a wide range of vulnerable populations. Issuers should be required to contract with ECP in order to ensure that these beneficiaries are able to access in-network coverage at FQHCs. The proposed ECP standard is similar to previous years' standards and while we support CMS' intent, we underscore our previous concerns that the proposed standard lacks strong enforcement mechanisms to require issuers to include ECPs in their networks and to pay them adequately for serving the vulnerable populations they see.

Discriminatory Benefit Design

EHB Discriminatory Benefit Design

AAPCHO strongly supports policies designed to curb discriminatory issuer practices, including those that disproportionately impact to health care services or prescription drugs for patients with chronic conditions. One example that will dramatically impact AA&NHOPI populations is when an issuer places all drugs that treat a specific chronic condition on the highest cost formulary tiers. This puts life-saving drugs out of reach for beneficiaries enrolled in the plan and allows plans to cherry-pick beneficiaries without chronic conditions. We support that CMS has identified these practices as discriminatory and encourage CMS to add specificity wherever possible about the types of practices that are considered discriminatory. We strongly encourage that this language be as strong as possible, and that plan review and enforcement occurs.

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QHP Discriminatory Benefit Design

AAPCHO supports CMS review of QHP benefit designs, such as out-of-pocket costs and cost-sharing, that could have a chilling effect on enrollment of patients with chronic conditions. We strongly encourage this language be maintained and strengthened to include as many discriminatory practices as possible. We do support the review of standard treatment protocols of certain chronic and high cost medical conditions. We encourage CMS to expand the list of medical conditions for which it will conduct a review to ensure that all beneficiaries with chronic conditions can get the same access to covered services as other beneficiaries. We also strongly support CMS and OCR enforcement when discriminatory practices are discovered during plan review.

Prescription Drugs

We are supportive of CMS' intent to review adequate prescription drug coverage in QHPs by conducting a 1) formulary outlier review; 2) clinical guidelines-based review; and 3) review of tier placement of prescription drugs recommended of specific medical conditions. We are pleased that CMS states it will review for "an unusually high number of drugs that are subject to prior authorization and/or step therapy requirements in a particularly United States Pharmacopeia (USP) category or class." While we are pleased CMS will review a plan's drug coverage in order to determine if it meets clinical guidelines for the treatment of specific medical conditions, it is only doing so for nine conditions. Beneficiaries rely on Marketplace plans for many more health conditions, and adequate drug coverage is necessary for them to have meaningful access to care. We urge CMS to review all plans for adequate drug coverage for all medical conditions. We are also pleased that CMS will review for unusually high cost-sharing requirements for specific drugs.

We are particularly pleased that CMS has stated that it is "concerned about adverse tiering, which occurs when a formulary benefit design assigns most or all drugs in the same therapeutic class needed to treat a specific chronic, high cost medical condition to a high cost-sharing tier." We agree with CMS that this practice, which is being employed by many issuers across the country, is potentially discriminatory.

Web-brokers

AAPCHO appreciates CMS' work to provide oversight to web-brokers and to give strong guidance on their relationship with products sold in the Marketplace. We strongly support the 2016 Payment Notice requirement that web-brokers are required to provide oral interpretation services or telephonic interpreter services in at least 150 languages. In general, we are supportive of the language access proposals in the Draft Letter that will require web-brokers to include multi-language taglines and translation of critical website content. The Draft letter requires that taglines must be available in at least the top 15 languages spoken by LEP individuals in the state. We raise concerns that CMS must take a broad definition of "critical" documents to ensure that beneficiaries are able to enroll and access health care services; the current Draft Letter does not provide substantial definition for what these critical documents are. We look forward to the anticipated February 2016 data that will determine HHS' standards on the non-English languages that are triggered by these standards.

Thank you for the opportunity to comment on this proposed Letter to Issuers. For further questions and clarifications, please contact Heather Skrabak at hskrabak@aapcho.org or Isha Weerasinghe at isha@aapcho.org.

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