

December 22, 2014

U.S. Department of Health and Human Services  
Centers for Medicare and Medicaid Services  
Center for Consumer Information and Insurance Oversight

By Email: <http://www.regulations.gov>

**RE: [CMS-9944-P] HHS Notice of Benefit and Payment Parameters for 2016**

To Whom It May Concern:

The undersigned organizations are writing in response to the proposed rule on the "*HHS Notice of Benefit and Payment Parameters for 2016*" issued by the U.S. Department of Health and Human Services (HHS) and as published in the Federal Register on November 26, 2014. Our comments in part reflect previously submitted comments in response to the *2015 Draft Letter to Issuers in the Federally-Facilitated Marketplaces*. We are pleased to see continued focus on the Essential Community Provider (ECP) standards, and urge HHS to improve the ECP standards to ensure that consumers have meaningful access to quality, affordable health care. Congress established these ECP standards in order to ensure that individuals purchasing coverage through the marketplaces have access to a broad swath of critical primary and specialty care providers, including community health centers; disproportionate share, teaching, and children's hospitals; HIV/AIDS clinics; and family planning clinics.

Specifically, section 1311(c)(1)(C) of the Affordable Care Act was designed to ensure that low-income and medically underserved individuals living with chronic and complex health conditions have timely access to the appropriate providers of care in their community. However, we believe there is still significant work to be done to strengthen regulations regarding this provision.

First, while we appreciate ongoing annual guidance from HHS as noted in the preamble—whether that be in the annual Letter to Issuers or otherwise—we strongly believe that the minimum threshold as set out in the 2015 Letter to Issuers is inadequate. While not codified in this rule, the 30 percent threshold does little to ensure "a sufficient number and geographic distribution of essential community providers (ECPs), where available, to ensure reasonable and timely access to a broad range of such providers for low-income individuals or individuals residing in Health Professional Shortage Areas within the QHP's service area," as set out in section 156.235 of this proposed rule. We implore HHS to further strengthen the minimum ECP threshold, as we believe Congressional intent was that Qualified Health Plans (QHPs) be required to contract with any willing ECP operating within their service area.

Second, we are concerned that the current grouping of ECPs into categories may not go far enough to ensure that there is an adequate mix of ECPs to meet the full range of enrollee health care needs. We are especially concerned that the current catch-all categories include multiple disparate provider types, which serve unique populations and are not interchangeable. We ask HHS to continue to evaluate and modify these categories so as to ensure that QHPs are truly contracting with an appropriate mix of ECPs, as intended by the ACA.

We believe that QHPs must include in their networks at least one ECP in each category (as modified per our recommendations above) in each county in the service area—rather than merely offering a contract—and urge HHS to strengthen the Marketplace requirements accordingly in order to truly guarantee access to the full range of services ECPs provide. It is our experience that many QHPs are offering inadequate contracts and are unwilling to engage in meaningful negotiations. Further, as stated in the preamble of this proposed rule, “a good faith contract should offer the same rates and contract provisions as other contracts accepted by or offered to similarly situated providers that are not ECPs.” However, given the unique role of ECPs and the patients that see them, by definition no such provider is like to be similarly situated and this is not an appropriate basis for comparison. The only way to ensure a good faith contract negotiation, and access to the full range of services provided by ECPs, is to require each QHP to *contract* with at least one of each ECP type in every county in the service area.

Additionally, we urge HHS to prohibit issuer practices that can impede access to needed care offered by ECPs, such as complicated and stringent prior approval requirements. These types of procedures cause undue stress for families and administrative burdens for providers, and may undermine the ability of ECPs to continue to serve the millions of people who depend on them for quality care.

In response to new language proposing inclusion of additional ECP types, we support the increased access this expansion would provide and HHS’ focus on ensuring that Marketplace plan networks adequately meet the needs of consumers. However, HHS must consider not merely the location of such providers to see if they provide care in Health Professional Shortage Areas, but also whether they serve predominantly low-income patients, including those with complex and chronic medical needs, and including Limited English Proficient individuals and/or individuals who need more culturally-specific care. HHS must maintain the integrity of the ECP provision as set out in statute so as to ensure adequate and appropriate access to care.

Finally, we recognize that the proposed rule applies only in the case of states participating in the Federally-Facilitated Marketplaces (FFMs) and that states are permitted to establish their own marketplace rules. We hope that HHS will encourage states to strengthen and improve upon the proposed rules for the FFMs by instating even stronger ECP protections in the state-

based marketplaces. It is vital to the success of the Affordable Care Act that all Americans are able to access critical health care services in a timely manner—including the important preventive and specialty health care services that ECPs excel in providing. If you have any questions please feel free to contact Susan Sumrell at the National Association of Community Health Centers at [ssumrell@nachc.org](mailto:ssumrell@nachc.org) or (202) 296-3800.

Sincerely,

America's Essential Hospitals

Association of Asian Pacific Community Health Organizations

Association of Clinicians for the Underserved

Children's Hospital Association

HIV Medicine Association

National Association of Community Health Centers

National Association of Pediatric Nurse Practitioners

National Family Planning and Reproductive Health Association