



March 2, 2020

VIA ELECTRONIC SUBMISSION

The Honorable Alex Azar  
Secretary, U.S. Department of Health and Human Services  
200 Independence Ave SW  
Washington, DC 20201

**RE: Public Comments on Notice of Benefit and Payment Parameters for 2021  
(RIN 0938-AT98, CMS-9916-P)**

Dear Secretary Azar:

The undersigned members of the Coalition to Preserve Rehabilitation (CPR) appreciate the opportunity to comment on the Department of Health and Human Services' (HHS) proposed rule, Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2021<sup>1</sup> (the Proposed Rule).

CPR is a coalition of national consumer, clinician, and membership organizations that advocate for policies to ensure access to rehabilitative care so that individuals with injuries, illnesses, disabilities, and chronic conditions may regain and/or maintain their maximum level of health and independent function.

The Proposed Rule sets forth benefit and payment parameters, changes the automatic enrollment process, expands special enrollment periods, and sets out many other policies implementing the Patient Protection and Affordable Care Act (ACA). This comment letter will focus on key proposed provisions that specifically impact enrollees in need of medical rehabilitation and post-acute care.

**I. Rehabilitative Services and Devices under the ACA**

The ACA includes statutory language that requires coverage of essential health benefits, including one of ten categories of benefits known as “rehabilitative and habilitative services and devices.” Inclusion of this language in the statute was a major milestone for

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<sup>1</sup> Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2021, 85 Fed. Reg. 7088 (Feb. 6, 2020). Available at: <https://www.federalregister.gov/documents/2020/02/06/2020-02021/patient-protection-and-affordable-care-act-hhs-notice-of-benefit-and-payment-parameters-for-2021>.

the rehabilitation and disability community, in that Congress recognized the importance of these benefits to improve the health and functioning of the American people.

In the February 2015 Notice of Benefit and Payment Parameters Final Rule<sup>2</sup>, the Centers for Medicare and Medicaid Services (CMS) defined “rehabilitation services and devices” as follows:

“Rehabilitation services and devices—Rehabilitative services, including devices, on the other hand, are provided to help a person regain, maintain, or prevent deterioration of a skill or function that has been acquired but then lost or impaired due to illness, injury, or disabling condition.”

For the first time, this regulation established a uniform definition of rehabilitation services and devices that states could understand and consistently implement. This definition became a standard for private insurance coverage and a floor of coverage for individual insurance plans sold on the exchanges. Importantly, the definition includes both rehabilitative services and rehabilitative devices. The adoption of a federal definition of rehabilitation services and devices minimized the variability in benefits across states and uncertainty in coverage for children and adults in need of medical rehabilitation and post-acute care.

## **II. Changes to the Automatic Enrollment Process under the Proposed Rule**

In the Proposed Rule, CMS proposes to end the automatic enrollment process for individuals who qualify for \$0 premium plans as a result of advance premium tax credits. CPR urges CMS to encourage individuals to take an active role in their coverage options, instead of instituting measures that have the effect of driving individuals out of the private insurance market.

This change follows this administration’s previous reductions to Navigator funding, which decreased the education and outreach services available to consumers. We are concerned that these steps tend to punish individuals who have qualified for \$0 premium plans by driving up premiums, ultimately resulting in more individuals leaving the health care marketplace. As these individuals cannot turn to Medicaid, this proposed change would lead to more individuals being uninsured. In a prior CMS analysis for plan year 2020, CMS stated that the automatic enrollment process was designed to “promote continuity of coverage, support a stable risk pool, and limit administrative burden for enrollees, issuers, and Exchanges.”<sup>3</sup> We feel these benefits of automatic enrollment apply equally today and, therefore, we oppose restricting the re-enrollment process as

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<sup>2</sup> Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2016, 80 Fed. Reg. 10,750, 10,871 (Feb. 27, 2015).

<sup>3</sup> Centers for Medicare and Medicaid Services, *Key 2020 Payment Notice Issues* (Aug. 29, 2018).

Available at:

<https://energycommerce.house.gov/sites/democrats.energycommerce.house.gov/files/documents/August%202018%20Verma%20Azar%20Memo.pdf>.

envisioned by the proposed rule, as well as any modification that would unnecessarily reduce coverage.

We strongly oppose CMS finalizing this proposal to change the automatic enrollment process. However, if CMS insists on moving forward with this proposal, CPR urges CMS to institute a three-month grace period from the time an individual is notified of the premium increase. Under this proposal, enrollees would be automatically enrolled in the same qualified health plan at a higher premium and would be notified by CMS of this change. The enrollee would then have three months to log on to HealthCare.gov to re-qualify for a \$0 premium plan using advance premium tax credits. This three-month grace period would allow HHS to conduct consumer outreach and education to alert consumers about the new process. The grace period would also alleviate some of CMS' prior concern with the current automatic enrollment process. This grace period suggestion is a secondary alternative if CMS moves forward with this flawed proposal despite the clear impact on health care coverage for American consumers.

CMS explained in the proposed rule that introducing a requirement to take active steps to maintain enrollment would stress administrative systems to the point where consumers would be unable to re-enroll by the December 15 deadline due to high traffic volume.<sup>4</sup> While CPR believes the grace period would be a more effective alternative to CMS' proposal, we reiterate our overall concern about modifying the re-enrollment process without a sound basis for doing so. Enrollees have grown accustomed to current marketplace functionality and its many requirements. We expect that the most vulnerable individuals, including those with disabilities and chronic conditions, will be seriously impacted by CMS' proposal as they leave the health care marketplace.

### **III. Expanding Special Enrollment Periods under the Proposed Rule**

CPR supports CMS expanding the special enrollment periods under the Proposed Rule. We understand CMS' concern of enrollees using the special enrollment process to change qualified health plan metal tiers depending on their health needs throughout the year. However, the proposed additional special enrollment periods allow enrollees to maintain health care coverage to the maximum extent possible, while minimizing this concern. We believe this provision will help ensure that enrollees have access to affordable, comprehensive health care coverage.

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<sup>4</sup> *Id.*

We greatly appreciate your attention to our concerns involving this important proposed rule. Should you have further questions regarding this information, please contact Peter Thomas or Joe Nahra, coordinators for CPR, by e-mailing [Peter.Thomas@PowersLaw.com](mailto:Peter.Thomas@PowersLaw.com) or [Joseph.Nahra@PowersLaw.com](mailto:Joseph.Nahra@PowersLaw.com), or by calling 202-466-6550.

Sincerely,

**The Undersigned Members of the Coalition to Preserve Rehabilitation**

ACCSES

American Association on Health and Disability

American Congress of Rehabilitation Medicine

American Medical Rehabilitation Providers Association

American Music Therapy Association

American Network of Community Options and Resources

American Occupational Therapy Association

American Physical Therapy Association

American Speech-Language-Hearing Association

American Spinal Injury Association

American Therapeutic Recreation Association

The Arc of the United States

Brain Injury Association of America

Clinician Task Force

Christopher and Dana Reeve Foundation

Disability Rights Education and Defense Fund

Falling Forward Foundation

Lakeshore Foundation

National Association for the Advancement of Orthotics and Prosthetics

National Association of State Head Injury Administrators

National Athletic Trainers' Association

National Council on Independent Living

National Multiple Sclerosis Society

Rehabilitation Engineering and Assistive Technology Society of North America

Spina Bifida Association of America

United Cerebral Palsy

United Spinal Association