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October 31, 2011

Donald Berwick, M.D

Administrator

Centers for Medicare & Medicaid Services

Department of Health and Human Services

Room 445-G, Hubert H. Humphrey Building

200 Independence Avenue, SW

Washington, DC 20201

Re: Medicaid Program: Eligibility Changes under the Affordable Care Act of 2010

Dear Dr. Berwick:

National Patient Advocate Foundation (NPAF) is the voice for millions of patients who have sought care after a diagnosis of a chronic, debilitating or life-threatening illness. Its advocacy activities are informed and influenced by the experience of patients who receive direct, sustained services from its companion organization, Patient Advocate Foundation (PAF), a business that employs 212 people in 9 states. Founded in 1996, PAF is a national non-profit, 501(c)(3) direct patient services organization with a mission "to safeguard patients through effective mediation assuring access to care, maintenance of employment and preservation of their financial stability." PAF provides professional case management assistance to patients with chronic, debilitating or life-threatening conditions.

PAF serves as an active liaison between patients and their insurer, employer and/or creditors to resolve insurance, job retention, and/or debt crisis matters relative to their diagnosis through professional case managers and a national network of health care attorneys. PAF case managers work with patients and their providers to identify local, state, and federal programs that provide assistance for their individual needs, ensure appropriate reimbursement for healthcare services by their insurers and educate them on their employment rights during an illness. In 2010, PAF resolved 82,963 patient cases and received more than four million additional inquiries from patients nationally.

The comments found in the balance of this letter are informed by the collective experiences of patients, and particularly Medicaid patients, who have contacted PAF for assistance in accessing quality care. Those experiences have been quantified in the PAF's Patient Data Analysis Report (PDAR) which illustrates the data collected across 260 variables by PAF senior case managers. As noted above, PAF resolved 82,963 patient cases and received more than four million additional inquiries from patients nationally in 2010. Thus, while CMS staff will certainly review an unprecedented number of perspectives regarding the proposed regulation, NPAF's perspective is an invaluable one as it reflects the quantification of over a decade and a half of collective patient experience in health system navigation.

NPAF appreciates the opportunity to provide comments on the Medicaid eligibility changes under the Affordable Care Act. The Medicaid program has had a profound impact on various segments of the nation's population. According to the Kaiser Family Foundation, over 69 million people were Medicaid beneficiaries during 2011.¹ However, that figure is only the tip of the iceberg in terms of the program's impact. Data on the nonelderly population in 2006, revealed at least 57% have participated in Medicaid sometime during the previous two decades or lived with someone who participated in Medicaid during that period.² The report identifies the importance as well as unique features of the Medicaid program. The program covers the diverse health needs of enrollees; directly supports safety-net providers; covers long-term services and supports for low-income Medicare beneficiaries, and reduces uncompensated care.³

Medicaid's impact is certain to expand as the Medicaid program enrollees grow under the new eligibility requirements. Starting in calendar year (CY) 2014, the complex categorical groupings and limitations will be replaced. In 2014, Medicaid eligibility will be expanded to all individuals under age 65 with income at or below 133 percent of the Federal Poverty Level (FPL), provided that the individual meets certain non-financial eligibility criteria, such as citizenship or satisfactory immigration status. NPAF understands that children and, in some states, pregnant women will be eligible at income levels equal to or higher than the 133 percent level, depending on existing State-established income eligibility standards. In addition, States will have a new option to expand eligibility beyond the new simplified Federal minimums.

NPAF appreciates CMS' attention to promulgating regulations that implement one of the most important sections of the Patient Protection and Affordable Care Act (PPACA).⁴ Enhanced Medicaid eligibility and enrollment provides health insurance coverage for populations which have not enjoyed the benefit of being able to afford health insurance premiums. The proposed regulation identifies the modified adjusted gross income (MAGI) formula to help determine eligibility. The proposed regulation also defines individuals for whom MAGI will be used to define Medicaid financial eligibility, defines the new MAGI-based financial methodologies, and identifies those individuals whose eligibility will not be based on MAGI. NPAF appreciates the considerable effort that was necessary to assure eligibility requirements that complied with the PPACA. Section 2001(a) of the PPACA adds new section 1902(a)(10)(A)(i)(VIII) which allows for Medicaid coverage for individuals under age 65, (excluding those under 19 who are otherwise eligible), who are not otherwise mandatorily eligible for Medicaid and have household income, under the new MAGI methods, at or below 133 percent of the FPL. This population is referred to as the new adult group.

Medicaid Eligibility Methodology - General Patient Impact

As the proposed rule indicates, determining Medicaid eligibility prior to the PPACA CY2014 changes is complicated due to a patchwork of multiple mandatory and optional eligibility groups for different categorical populations. The rules for counting income vary from state to state and also differ based on the category through which an individual is eligible for the program. Many states cover 50, 60, or more distinct eligibility groups. Financial eligibility is determined using methodologies based on other programs, such as Social Security and the former Aid to Families with Dependent Children. The sections below identify the regulation's impact on Medicaid eligibility determinations.

Today families of low to moderate incomes can be penalized for contributing to the financial well-being of their families. Current Medicaid eligibility determination laws permit applicants to disregard payments such as some child support payments and the first \$90 of earned income as well as deduct certain childcare expenses. While child support is not counted as income under federal tax rules, any amount over \$50 is included as income for purposes of Medicaid eligibility. Federal law also provides states flexibility to disregard additional income and deduct other expenses. According to the Kaiser Family Foundation, states' use of deductions and income disregards has resulted in increasing income eligibility standards for many families, but they also have resulted in a somewhat more complex application and renewal process.⁵

¹ "Medicare, Medicaid, and the Multiplier Effect," *Kaiser Family Foundation: Pulling It Together*, 10 June 2011.

² *Kaiser Family Foundation: Pulling It Together*, page 1.

³ Pear, Robert (2011, June 15), As Number of Medicaid Patients Goes Up, Their Benefits Are About to Drop, *The New York Times*. Retrieved from <http://www.nytimes.com/2011/06/16/health/policy/16medicaid.html>

⁴ Patient Protection and Affordable Care Act, Pub. L. No. 111-148 (2010).

⁵ The New Rules for Determining Income Under Medicaid in 2014, *Kaiser Family Foundation*, June 2011

NPAF Recommendations NPAF applauds the changes proposed in the regulations regarding Medicaid qualification and recommends placement in the final rule. The implementation of MAGI creates a unified system for income determination for eligibility. This change is a beneficial one for patients. Rather than having to navigate their state's current disregards and deductions in determining whether they qualify for benefits, income will be determined by a single methodology. The current process is a difficult one as states may change their rules regarding disregards and deductions and a person's income level may fluctuate for reasons beyond their control, such as the intermittency in which some child support payments are paid. The proposed changes also empower the patient advocacy community. They will now be able to rely upon a standardized Medicaid eligibility system across states. The use of MAGI for Medicaid, CHIP and exchange premium subsidies also helps patient advocates in eligibility across programs.

The utilization of the MAGI calculation for Medicaid determination will directly benefit people under 65 who are disabled and live in states that have a low Medicaid disability asset/income test. Although Social Security benefits are excluded as income under the tax code for those with low or moderate incomes, such benefits may be counted as income under current Medicaid rules. The new MAGI definition allows disabled people who receive Social Security benefits but are not yet eligible for Medicare because of the two-year waiting period, to become eligible for Medicaid if their income without the Social Security benefit is below 133 percent of the FPL.

In general, aligning income for purposes of the Medicaid program closer to federal income tax definition of income results in a federal benefit system that is not only better coordinated, but accounts for the financial challenges likely to serve as barriers to insurance coverage for many patients. Rather than penalize patients for their fiscally responsible behavior, the current Medicaid program punishes them by using such payments to preclude them from receiving Medicaid benefits. Thus, NPAF applauds CMS's decision to exclude child care costs, retirement savings, certain commuting costs, employee's share of employer-sponsored health insurance premiums paid through a cafeteria plan, and flexible spending accounts from the definition of income for Medicaid eligibility determinations.

NPAF Tax Filing Recommendation NPAF also applauds the approach identified in the proposed regulation which is to align family size and household income with the tax filing unit and suggest it be incorporated in the final rule. Currently, Medicaid programs do not have the ability to disregard the incomes of parents and spouses in determining an individual's eligibility. Income of other family members is counted only if they are also applying for coverage. The proposed regulation bases family size and household income on the tax filing unit. A taxpayer's family size is based on all individuals claimed as a dependent on the taxpayer's return. The total income of a household will thus equal the MAGI of all individuals in the tax filing unit, including the MAGI reported on a separate tax return for any of these individuals if they were required to file a separate return. Aligning tax filings with Medicaid eligibility determinations allows families to determine custodial and dependent status in a manner that provides them with advance notice of likely Medicaid coverage based on those decisions.

As noted above, the proposed regulation creates a new population category of Medicaid eligibility- the adult group. NPAF commends the agency for utilizing the authority granted to it under Executive Order 13563 requiring streamline and simplify Federal regulations, coupled with section 1902(a)(19) of the PPACA mandating eligibility to be determined in a manner consistent with simplicity of administration and in the best interest of recipients, to consolidate eligibility requirements into three categories to complement the new adult group.

The proposed regulation separates Medicaid eligibility into three categories to complement the new adult groups - parents and caretaker relatives, pregnant women and children. CMS proposes to collapse existing Medicaid eligibility categories to make the program significantly easier for States to administer and for the public to understand. Essentially, in states that have an income standard for the parent/caregiver relative group at below 133 percent FPL, the proposed regulation allows for parents and other caregiver relatives with income above that income standard and at or below 133 percent 133 to qualify for Medicaid under the new adult group. NPAF commends the simplification of the income methods for determining eligibility under the new parent and other caretaker relative group. NPAF understands the proposed rule amends the current two-step income methods under section 1931 of the Act which requires a family to 1) have a gross

income at or below 185 percent of the State's consolidated standard of need under its AFDC program, in effect as of July 16, 1996 and 2) have a net countable income after subtracting various income exclusions and disregards and expenses at or below the State's AFDC payment standard or a higher income standard set under section 1931 of the Act. The regulation proposes to eliminate the 185 percent gross income test and to base income eligibility on the net countable income standard converted to a MAGI-equivalent income standard. NPAF commends CMS for the simplification of this process as it provides patients with fewer intervening variables to determine eligibility for Medicaid. The simplified process also reduces the likelihood of error and is consistent with other public program eligibility criteria.

The expansion of health insurance coverage is in the best interest of patients. While there is considerable debate regarding the impact of Medicaid expansion on state budgets, NPAF was pleased to read a Kaiser Family Foundation report, conducted by the Urban Institute, which revealed Medicaid expansion will result in large reductions in the uninsured, particularly in those states that have higher levels of uninsured today.⁶ The same report predicts Medicaid enrollment could increase by 22.8 million by 2019 resulting in a 17.5 million reduction in uninsured adults under 133 percent of poverty (a 70 percent reduction).⁷ Health insurance coverage for a greater number of people will afford them access to necessary health care that many have not been able to afford.

Related NPAF Recommendation Although not addressed in the regulation, NPAF encourages CMS to consider the important role that education must play in assuring those eligible for Medicaid avail themselves of this important benefit. The patchwork system upon which Medicaid is implemented today makes eligibility determinations difficult. Americans need to understand the many changes proposed in this rule and its impact on their eligibility for Medicaid program participation. While aligning tax unit filing with eligibility makes the eligibility process an easier one to understand, many will likely not realize the direct impact their tax filings will have on Medicaid program eligibility. This is particularly important for blended families, i.e. those with stepchildren or custodial parents who do not claim the child as a dependent. The decisions families make for tax filing purposes will now directly impact Medicaid eligibility status.


The nonprofit community should be afforded a role in educating families about these important changes, especially families that have people whose access to health care services is dependent upon their Medicaid status. The patient community trusts nonprofits, particularly patient advocate nonprofits. NPAF is concerned that absent considerable education of the changes contemplated in the proposed rule, many people may file their income taxes without a clear understanding of how that filing will impact current or future Medicaid eligibility. This is particularly true because unlike the current system, eligibility determinations will be made annually, and not monthly. Thus, a family filing taxes in an uninformed manner will do so at their peril. The nonprofit, patient advocate community can educate families about the ramifications of tax filing choices and benefit availability. NPAF suggests CMS partner with the patient advocate community to assist it in educating families long before tax filing season occurs. CMS and the IRS should partner with the nonprofit patient advocate community to educate tax filers of the nexus between the Medicaid program and the tax return.

NPAF would be pleased to respond to any questions about our recommendations that may arise in the future. We are also available to discuss, in greater detail, our suggestions regarding a role for the nonprofit community in the implementation of the rule.

Respectfully submitted,



Nancy Davenport-Ennis
Chief Executive Officer



Rene Cabral-Daniels
Executive Vice President, Regulatory Affairs

⁶ Henry J. Kaiser Family Foundation, "Medicaid Coverage and Spending in Health Reform: National and State-by-State Results for Adults at or Below 133% FPL" May 2010

⁷ *Ibid*