American College of Emergency Physicians®
ADVANCING EMERGENCY CARE

August 14, 2020

Alex Azar
Secretary
Department of Health and Human Services
200 Independence Avenue SW
Washington DC 20201

Eugene Scalia
Secretary
Department of Labor
200 Constitution Ave NW
Washington, DC 20210

Steven Mnuchin
Secretary
Department of Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

Re: Grandfathered Group Health Plans and Grandfathered Group Health Insurance Coverage Proposed Rule

Dear Secretary Azar, Secretary Scalia, and Secretary Mnuchin:

On behalf of our 41,000 members, the American College of Emergency Physicians (ACEP) appreciates the opportunity to comment on a proposed rule issued by the Departments of Health and Human Services, Labor, and Treasury (the Departments) that would allow greater flexibility for certain grandfathered health plans to make changes to their cost-sharing amounts without causing a loss of their grandfather status. In all, if this rule is finalized, these plans would be allowed to increase cost-sharing for their enrollees by a higher amount than they could today while still being able to maintain their grandfather status. **ACEP opposes the proposed changes in this rule and requests that the Departments NOT finalize them.**

Health plans that existed before the passage of the Patient Protection and Affordable Care Act (PPACA) are deemed "grandfathered plans" and not subject to all the requirements included in the Act--such as the requirement to cover ten essential health benefits (EHBs). According to the Kaiser Family Foundation, in 2019, 22 percent of firms offering health benefits offered at least one grandfathered health plan, and 13 percent of covered workers were enrolled in a grandfathered plan.[1] Currently, these plans are allowed to make certain changes each year and still keep their grandfathered status. The rule proposes two modifications to the policies around maintaining grandfathered health plan status. First it allows grandfathered group health plans and grandfathered group health insurance coverage that are high deductible health plans to make certain changes to fixed-amount cost-sharing

[1] Kaiser Family Foundation. 2019 Employer Health Benefits Survey. 25 Sep. 2019. https://www.kff.org/report-section/ehbs-2019-section-13-grandfathered-health-plans/.

WASHINGTON, DC OFFICE
2121 K Street NW, Suite 325
Washington, DC 20037-1886

202-728-0610
800-320-0610
www.acep.org

requirements that would previously have caused them to lose their grandfather status. Second, the Departments are proposing an alternative method of determining the maximum amount that cost-sharing can increase each year (in addition to the current method, which is based on medical inflation, CMS is proposing to allow grandfathered plans to use the "premium adjustment percentage" instead.)

According to examples in the rule, the second policy change would, in some circumstances, allow health plans to increase their cost-sharing amounts by significantly more than they could have under current rules without losing their grandfathered status. Although the Departments do not estimate how many grandfathered health plans will decide to keep their grandfathered status because of the changes in the rule, they do admit the following possible outcomes:

- "Potential increase in adverse health outcomes if a participant or beneficiary would forego treatment because the necessary services became unaffordable due to an increase in cost sharing.
- Potential increase in adverse health outcomes if there is an increase in the uninsured rate if participants and beneficiaries choose to cancel their coverage because of the increases in cost-sharing requirements associated with grandfathered group health plans and grandfathered group health insurance coverage.
- If an employer would have otherwise switched to a non-grandfathered plan, potential increase in adverse health outcomes if a participant or beneficiary foregoes treatment for medical conditions that are not covered by their grandfathered group health plan and grandfathered group health insurance coverage but that would have been covered by non-grandfathered health plan coverage subject to PPACA."[2]

Unfortunately, ACEP believes that the possible outcomes that the Departments include in their analysis are probable if these proposals are finalized. Grandfathered health plans will likely use these new flexibilities to raise cost-sharing by more than they would of otherwise, making health care more unaffordable for their enrollees. If these enrollees can no longer afford their insurance because their cost-sharing obligation becomes too great—and subsequently they become uninsured—they will increasingly rely on the emergency care safety net for services. This would increase costs in our health care system and put more strain on our already overburdened emergency departments (EDs).

Further, we believe the rule could lead to more grandfathered health plans keeping their status instead of appropriately transitioning to non-grandfathered plans. ACEP has long supported the important requirements in PPACA that non-grandfathered plans must follow, especially the coverage of the EHBs. We believe that it is critically important for all health plans to cover all ten EHBs. Without such guaranteed coverage of the EHBs, consumers can be left with a narrow set of benefits that do not ensure access to the items and services they need to manage their health conditions. Consumers who purchase less comprehensive health plans may wind up deferring more routine care or visiting a primary care physician or specialist for more minor conditions or symptoms. Such deferral or delay will often result in their condition or symptoms becoming exacerbated, and eventually result in a trip to the ED. At this point, due to the progression of their condition, their care in the ED will be much costlier and more complex than if they had earlier access to more routine care in a physician's office. Overall, we oppose any policy that would allow more health plans to circumvent the requirement of covering the EHBs.

For these reasons, we strongly urge the Departments not to finalize the rule.

[2] Grandfathered Group Health Plans and Grandfathered Group Health Insurance Coverage Proposed Rule, 85 Fed. Reg. 42789 (July 15, 2020).

We appreciate the opportunity to share our comments. If you have any questions, please contact Jeffrey Davis, ACEP's Director of Regulatory Affairs, at jdavis@acep.org.

Sincerely,

William P. Jaquis, MD, MSHQS, FACEP

ACEP President