January 8, 2019

Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-9922-P
Mail Stop C4-26-05
7500 Security Boulevard
Baltimore, MD 21244-1850

Re: Patient Protection and Affordable Care Act; Exchange Program Integrity. CMS-9922-P

Dear Administrator Verma,

The American Academy of Nursing (Academy) submits the following comments in response to the Proposed Rule titled, “Patient Protection and Affordable Care Act; Exchange Program Integrity,” published in the Federal Register on November 9, 2018, by the U.S. Department of Health and Human Services, Centers for Medicare & Medicaid Services (CMS). Specifically, the Academy expresses concern that the provisions in the proposed rule, which would require qualified health plans (QHP) to separately bill and invoice consumers for their non-Hyde Amendment abortion premiums from their premiums for the remainder of their healthcare coverage, is overly burdensome.

The Academy serves the public by advancing health policy through nursing expertise to improve healthcare delivery and outcomes. Ensuring all consumers have access to safe and affordable high-quality care is a priority of the Academy and its 2,700 fellows. The provision outlined in the proposed rule has the potential to create confusion and burden, which can ultimately lead to a direct impact on quality care.

Section 1303 of the Patient Protection and Affordable Care Act [Pub. L. 111-148], as amended by the Health Care and Education Reconciliation Act of 2010 [Pub. L. 111-152], currently outlines specific accounting and notice requirements, as implemented in 45 CFR §156.280, to ensure QHPs comply with the Hyde Amendment. The 2016 Payment Notice provided guidance on acceptable methods that QHPs could use to comply with the separate payment requirement under Section 1303. These requirements include: 1) QHP notice to enrollees if non-Hyde abortions are covered; 2) QHP determination and collection from consumers of a separate payment that equals the cost, determined on an average actuarial basis, for covering non-Hyde abortion services, and such payment must be at least $1 per enrollee per month; and 3) QHP issuers must segregate funds for non-Hyde abortion services collected from enrollees into a separate allocation account that is to be used exclusively to pay for non-Hyde abortions. The 2016 Payment Notice specifically permits the consumer to make the payment for non-Hyde abortion services, and the separate payment for all other services within a single transaction.

As noted in the proposed rule, the Administration’s review suggests the current 2016 Payment Notice does not adequately reflect Congress’ intent regarding separate billing. Therefore, the proposed rule would require QHPs to send two entirely separate monthly bills in two separate envelopes with separate
postage to the policy subscriber - one for the premium for the non-Hyde abortion coverage, which must be a minimum of $1 per enrollee per month - and one for the premium for all other coverage. The same requirement is proposed for a similar separation of bills sent electronically. The QHP would also be required to instruct the policy subscriber to pay the separately billed or invoiced portion of the premium for non-Hyde abortion coverage in a transaction separate from the transaction for the payment of the premium for all other coverage under the policy, and demonstrate it made reasonable efforts to collect the payments separately.

There are tremendous financial and administrative burdens imposed on insurers and consumers by the proposed rule. As noted in the proposed rule, it estimates that the cost burden of separating invoices and billing for 75 QHP insurers offering a total of 1,111 non-Hyde abortion plans in 17 states would be approximately $1.6 million annually.¹ It is also estimated that compliance with the proposed rule would increase the financial burden imposed on approximately 1.3 million consumers in an amount of $30.8 million annually.²

This financial cost is distinct from the unquantifiable cost of confusion consumers will experience in receiving multiple bills and multiple return envelopes. This confusion accelerates the likelihood that a missed payment could occur, which could result in termination of coverage.

The proposed rule notes inconsistencies in application of the billing methods in its October 6, 2017, CMS Bulletin Addressing Enforcement of Section 1303 the Affordable Care Act. However, a thorough assessment is warranted to identify violations of the Hyde Amendment under the current billing methods. Imposing a $1.6 million annual burden on insurers and a $30.8 million annual burden on consumers (excluding the cost of consumer confusion) without evidence of violations is unnecessary.

Finally, the proposed rule would still require that a consumer’s combined payment must be accepted to avoid loss of coverage and not permit a QHP to refuse to accept separate premium payments paid in a single return envelope. Because such actions are already permissible under the current regulations, the additional guidance adds financial and administrative burdens on insurers and consumers without necessarily achieving a different result.

The Academy believes the proposed rule as written is financially and administratively burdensome, confusing to consumers, and therefore, unwarranted. Should you have any questions concerning our response, please contact Kim Czubaruk, the Academy’s Policy Manager, at kczubaruk@aannet.org. We appreciate the opportunity to provide our concerns.

Sincerely,

Karen S. Cox
President
American Academy of Nursing

¹83 FR 56026, Paragraph 1 Table
²83 FR 56028, Paragraph 5