via electronic communication

August 25, 2017

Audrey Morse Gasteier, Chief of Policy and Strategy
Emily Brice, Deputy Chief of Policy and Strategy
Massachusetts Health Connector
100 City Hall Plaza, 6th Floor
Boston, MA 02108

Re: Comments for 1332 Waiver Request
Requests for State Flexibility to Support Commercial Insurance Market Stability and Reforms (July 24, 2017)

Dear Ms. Gasteier and Ms. Brice:

The American Cancer Society Cancer Action Network (ACS CAN) appreciates the opportunity to comment on the Commonwealth of Massachusetts' Requests for State Flexibility to Support Commercial Insurance Market Stability and Reforms (Massachusetts' 1332 waiver request), released for public comment July 24, 2017. ACS CAN, the nonprofit, nonpartisan advocacy affiliate of the American Cancer Society, supports evidence-based policy and legislative solutions designed to eliminate cancer as a major health problem. As the nation's leading advocate for public policies that are helping to defeat cancer, ACS CAN ensures that cancer patients, survivors, and their families have a voice in public policy matters at all levels of government.

Section 1332 of the Affordable Care Act (ACA) provides states with flexibility to respond to the unique characteristics of their insurance markets while still maintaining the underlying goal of the ACA to increase access to affordable, comprehensive, quality coverage. 1332 waivers are a valuable tool for enabling states to test marketplace innovations but we believe the waivers must never be used to avoid ACA requirements or to nullify patient protections. That is why ACS CAN strongly supports the requirements that any waiver provides coverage that: (1) is at least as comprehensive in covered benefits, (2) is at least as affordable, including premiums and cost-sharing, (3) covers at least a comparable number of state residents, and (4) does not increase the federal deficit.

ACS CAN looks forward to working with you and the Health Connector to continue to ensure that all patients, including cancer patients and survivors, have access to quality, comprehensive and affordable health insurance coverage. Following are our specific comments on sections 1-3 of the proposal.

Request #1: Promote Market Stability with a Premium Stabilization Fund in Lieu of Cost-Sharing Reductions
Recognizing the serious instability being caused by the lack of permanent, guaranteed funding for cost-sharing reduction (CSR) plans, Massachusetts requests a "fast-track premium stabilization waiver." The waiver would "waive requirements associated with CSRs, and…replace these requirements with a state-

based Premium Stabilization Fund (PSF)." The proposal states that removing the uncertainty of CSR funding will reduce premiums, and the state proposes that the federal savings from these reduced premiums "could then be shared back with the state to fund the PSF," "in keeping with the logic of the recently-approved Alaska State Innovation Waiver," which established a reinsurance program. The proposal states that the plan would meet all 1332 waiver guardrails, as "Massachusetts residents would receive coverage that is at least as comprehensive and affordable as today."

ACS CAN applauds Massachusetts for attempting to address the instability of CSR funding. We strongly support CSRs as a way to help low-income cancer patients and survivors afford their cost-sharing.[1] We also share the state's grave concerns about the lack of permanent funding for CSRs, which has real costs and consequences for the millions of Americans who rely on subsidies to afford their health care coverage.[2]

In addition to CSRs, ACS CAN also supports creating state reinsurance programs. A well-designed reinsurance program can help to lower premiums and mitigate the plan risk associated with high-cost enrollees. Reduced premiums would not only benefit the federal government by reducing federal subsidy payments, but would also benefit consumers who enroll in coverage through the exchange and need assistance but are not eligible for subsidies. A reinsurance program may also encourage insurance carriers to continue or begin offering plans through the exchange. This maintenance or increase in plan competition may also help to keep premiums from rising. Premium savings could help cancer patients and survivors afford health insurance coverage, and may enable some individuals who previously could not afford coverage to enroll in a plan.

It appears that the intent of the Massachusetts proposal is to remove the instability caused by uncertainty regarding federal CSR payments, create a reinsurance program, and hold consumers harmless by not changing the generosity of benefits or patient protections available through the Health Connector. ACS CAN fully supports the intention of this proposal. However, it is unclear how the various mechanisms in this proposal will work together, and work with state law, to accomplish these goals.

Specifically, we are concerned that the proposal requests to "waive requirements associated with CSRs" without substituting state requirements or any other guarantees that low-income enrollees will receive similar subsidized cost-sharing. As stated above, ACS CAN strongly supports CSRs and opposes removing the subsidies without replacing them with similar subsidies or other cost-sharing reductions for low-income individuals. Reducing premiums is an important goal, but a cheaper premium will not help a cancer patient if the cost-sharing is so high the patient cannot afford to use the policy. Given the assurance in the proposal that "Massachusetts residents would receive coverage that is at least as comprehensive and affordable as today," it is clear the proposal document is missing information on how low-income residents will continue to have similar coverage if CSR requirements are discontinued.

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[1] See American Cancer Society Cancer Action Network. "The Need to Fund Cost-Sharing Reduction (CSR) Subsidies." June 5, 2017. Available at https://www.acscan.org/policy-resources/need-fund-cost-sharing-reduction-csr-subsidies

[2] American Cancer Society Cancer Action Network. Statement of Chris Hansen. "CBO: Health Insurance Premiums Would Spike 20 Percent Next Year Without Critical Cost-Sharing Payments." August 15, 2017. Available at https://www.acscan.org/releases/cbo-health-insurance-premiums-would-spike-20-percent-next-year-without-critical-cost

ACS CAN urges Massachusetts to address the following questions in detail in its ultimate waiver request submission to the Centers for Medicare and Medicaid Services (CMS):

- Upon removal of the CSR requirements, how exactly will Massachusetts guarantee that low-income individuals who were previously CSR-eligible will continue to receive subsidized cost-sharing plans? If this will be addressed through a state requirement, is this requirement already implemented? If the state intends to address this through its ConnectorCare program, we urge them to include that information in detail. Would the CMS approval of the waiver and its future continuation be contingent upon such a state law being in place?
- The proposal states that the stabilization fund would be financed by the savings from reduced premiums gained by removing CSR requirements. But the proposal also references the Alaska reinsurance program as a model – that program is funded through a state tax as well as savings from reduced premiums gained by having the reinsurance program in place. Does Massachusetts plan to contribute funding to the PSF initially or continually? How will reduced premiums due to the presence of the reinsurance program factor in to its continued funding?
- Does Massachusetts intend this program to only become effective if the administration does NOT provide CSR funding? If so, what is the exact trigger for the program? One month of no funding? Multiple months? An announcement that the administration will stop making CSR payment indefinitely?
- If Massachusetts creates the PSF in this proposal, but the administration continues to make CSR payments, what happens to those payments in Massachusetts? Do they continue to flow to the issuers? Or are they captured by the state and put in to the PSF?
- What protections are in place to ensure that any federal funding passed through to the state under this waiver is used for the intent of the program, and not diverted to other state budget priorities?

ACS CAN encourages Massachusetts to provide answers to these questions in its waiver submission to CMS, and we stand ready to work with you in continuing to formulate this proposal.

Request #2: Revive State Employer Shared Responsibility Program in Lieu of Delayed and Less Comprehensive Federal Program

Prior to passage and enactment of the ACA, Massachusetts maintained a mandate for certain employers in the state to provide employees with health insurance coverage (the Employer Medical Assistance Contribution, or EMAC). When the federal ACA employer mandate was implemented, the state discontinued EMAC. Massachusetts proposes to revive elements of EMAC in place of the current federal mandate, and has passed state legislation that enacts the revised EMAC program as of January 1, 2018.

ACS CAN supports policies that increase the number of individuals – especially cancer patients and survivors – who are able to enroll in quality health insurance coverage, and believe any waivers to ACA requirements should accomplish this goal while maintaining the patient protections in current law and following the requirements of Section 1332 of the ACA. We are supportive of this request for flexibility to the extent that it will reduce the number of uninsured in the state, and we encourage Massachusetts to carefully evaluate the effects this change has on enrollment if this request is approved. Furthermore, to the extent that this policy change requires individuals to transition from one type of health care coverage to another (from Medicaid to employer-sponsored insurance, for example), we encourage the

state to provide assistance and education to individuals in this transition – particularly because higher cost-sharing is likely to be required if an individual transitions off of Medicaid.

Request #3: Revive Permissibility of Section 125 Plans for Non-Benefits Eligible Employees to Enhance Consumer Savings and Promote Private Coverage

Prior to 2014, Massachusetts required employers with at least 11 employees to offer Section 125 "cafeteria" plans to those employees not eligible for benefits (mostly part-time and contract employees). This allowed the employee to pay insurance premiums pre-tax, which according to the proposal could save an individual up to 40 percent of their payroll deductions, and at least partially address problems with premium affordability.[3] Employers were allowed, but not required, to contribute money towards these premiums. Employers could establish such a plan directly with an issuer or broker, but the Massachusetts Health Connector also operated a "Voluntary Plan," allowing employers to fulfill their requirement by offering Section 125 plans through the exchange. Federal requirements led to the state closing this program and suspending the Section 125 requirement in 2014.

Noting that approximately 80,000 individuals purchase nongroup insurance in the state without a contribution from an employer and without federal and/or state subsidies, Massachusetts proposes to explore the revival of these Section 125 plans and the accompanying employer requirement. The state proposes several ways HHS could give them this authority, and indicates a desire to discuss further details and options.

ACS CAN offers the following preliminary feedback based on the details available in the current proposal document, but our support is conditional upon receiving more details about the proposed program and HHS' mechanism for granting authority for the program.

ACS CAN agrees that policymakers must find a way to help individuals who do not receive employer-sponsored insurance and who are not eligible for Medicaid or subsidies afford health insurance premiums. We believe the proposal to allow such individuals to pay premiums pre-tax will help at least some employed individuals better afford health insurance coverage. This type of policy could particularly benefit cancer patients. Many working cancer patients in active treatment must reduce their work hours because of their treatments or side effects, and this reduction in hours sometimes causes them to lose their employer-sponsored health insurance. While these patients are usually offered coverage through COBRA, that is often unaffordable. But if their income from part-time work is still too high to qualify them for subsidies, buying a plan through the Health Connector can also be unaffordable. Allowing these cancer patients to buy insurance through the Health Connector pre-tax is at least a good first step in helping them afford needed insurance coverage.

ACS CAN believes this proposal is worth exploring further, and would be supportive of such a proposal if the details ensure that (1) all individuals gaining coverage through this program are enrolling in comprehensive, quality coverage that includes the patient protections required by the ACA; and (2) the program will not harm the individual or small group markets by segmenting risk. The best way to meet these criteria is to make the Health Connector's Voluntary Plan a requirement instead – e.g. require employers to offer Section 125 plans only through the Health Connector. This would ensure that all eligible individuals are using their pre-tax dollars to purchase quality insurance coverage that covers the

[3] See pg. 25 of Requests for State Flexibility to Support Commercial Insurance Market Stability and Reforms.

Essential Health Benefits, meets other important standards and incorporates key patient protections. Such a requirement would also give these individual employees the choice of several plans, where available, so they can choose a plan that best meets their needs. Lastly, this requirement would also avoid market segmentation and help to continue to balance the risk pool in Health Connector plans.

Additionally, ACS CAN notes that this proposal does not address affordability problems for all of the approximately 80,000 individuals who purchase nongroup health insurance without subsidies in the state. ACS CAN encourages Massachusetts to work on proposals that address affordability for individuals who are unemployed, have employers who do not have to meet Section 125 requirements, or otherwise are not eligible for any other subsidy or financial help.

Conclusion

On behalf of the American Cancer Society Cancer Action Network Massachusetts we thank you for the opportunity to comment on the flexibility requests. We stand ready to work with you and other stakeholders to ensure that this and future Massachusetts 1332 waivers are designed in a manner that provides the long-term viability of the individual market while also maintaining patient protections crucial to cancer patients and survivors. If you have any questions, please feel free to contact me at marc.hymovitz@cancer.org or 781.361.9661

Sincerely,

Marc Hymovitz
Government Relations Director
Massachusetts American Cancer Society Cancer Action Network