



American Society of Transplant Surgeons

February 21, 2013

The Honorable Marilyn Tavenner
Acting Administrator
Centers for Medicare and Medicaid Services
Department of Health and Human Services
7500 Security Boulevard
Baltimore, MD 21244

RE: CMS-2324-P: Medicaid, Children's Health Insurance Programs, and Exchanges: Essential Health Benefits in Alternative Benefit Plans, Eligibility Notices, Fair Hearing and Appeal Processes for Medicaid and Exchange Eligibility Appeals and Other Provisions Related to Eligibility and Enrollment for Exchanges, Medicaid and CHIP, and Medicaid Premiums and Cost Sharing.

Dear Acting Administrator Tavenner:

The American Society of Transplant Surgeons (ASTS) appreciates the opportunity to comment on the above-referenced proposed rule that addresses the critical issue of the benefits that will be available under the new category of Medicaid eligibility.

ASTS is a medical specialty society comprised of over 2000 transplant surgeons, physicians, scientists, advanced transplant providers and allied health professionals dedicated to excellence in transplant surgery through education and research with respect to all aspects of organ donation and transplantation. The efforts of ASTS members save lives and enhance the quality of life of patients with end stage organ failure, and we can think of no more essential benefit to preserving a patient's life than organ transplantation and related transplant care.

ASTS believes strongly that comprehensive oversight and enforcement of the essential health benefits (EHB) and nondiscrimination standards at the state and federal level will help insure consistent coverage of transplant benefits and effectively eliminate discriminatory insurance practices.

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Toward that end, it is critical that Medicaid Alternative Benefit Plans (ABP) cover all EHB categories without discriminating against those beneficiaries who have, or will acquire in the future, health conditions that lead to end stage organ failure. Furthermore, there are a wide range of required medical services at different points of the transplant process, including ambulatory services, hospitalization services, chronic disease management, mental health services, rehabilitative services, and prescription drugs. All of these treatments fall under one or more categories of essential health benefits, and all must be covered under ABPs.

Minimum Essential Health Benefits Coverage under ABPs

We strongly support the requirement that all ABPs cover essential health benefits (EHBs) as they are listed in the Affordable Care Act (ACA). However, we are concerned that the proposed regulation lacks standards for determining adequate coverage within each EHB category (42 CFR §440.347). This is a failing of the EHB proposed rule as it relates to the exchange-based insurance plans, but the lack of specificity of that rule has significant implications on the coverage of benefits under Medicaid plans as well. In light of this, ASTS recommends that CMS state in the final rule that every service offered through a Medicaid ABP plan “be sufficient in amount, duration, and scope to reasonably achieve its purpose.” ASTS also recommends that CMS require states to supplement the benefits contained in a benchmark plan when an ABP benefit is insufficient in amount, duration, or scope to reasonably achieve its purpose.

Nondiscrimination Standards for ABPs

It is critical that Medicaid Alternative Benefit Plans cover all EHB categories without discriminating against those beneficiaries who have, or will acquire in the future, chronic conditions and disabilities. The Affordable Care Act requires qualified health plans to meet a number of nondiscrimination criteria, and we support the proposed rule’s application of these same nondiscrimination provisions to Medicaid ABPs as well.

Specifically, ASTS supports the policy that benefit design in all ABPs must:

- “reflect an appropriate balance among the categories” (ACA, § 1302(b)(4)(A));
- may “not make coverage decisions, determine reimbursement rates, establish incentive programs, or design benefits in ways that discriminate against individuals because of their age, disability, or expected length of life” (ACA, § 1302(b)(4)(B)); and
- “take into account the health care needs of diverse segments of the population, including women, children, [and] persons with disabilities” (§ 1302(b)(4)(C)).

Benefits Coverage and Health Status Changes

The new eligibility category is likely to attract younger and healthier populations than traditional Medicaid. A percentage of those who are newly eligible, though, will acquire a condition or disability after they are enrolled in an ABP. ASTS recommends that CMS standardize an effective

process for ensuring that beneficiaries whose health status changes have the opportunity to access in a timely manner other ABP or traditional state Medicaid plans which meet their needs. These standards should include:

- A process for participants to request and receive clinically appropriate benefits not routinely covered by the plan;
- A process for participants to request and receive coverage for benefits beyond the limits set by the plan where extraordinary circumstances exist; and
- A process for participants to request and receive coverage of specialty care not routinely covered by the plan when medically necessary and appropriate.

Immunosuppressive Drug Coverage

Prescription drug coverage under the ABPs should recognize that transplant recipients are required to take immunosuppressive medications for their entire lives post-transplant to prevent rejection of the transplanted organ. Any interruption of this drug regimen risks rejection of that organ with dire consequences. Indeed, 70% of U.S. kidney transplant programs report patient deaths and failed kidney transplants attributable to unaffordable medications. It is essential that physicians be able to prescribe medications that are best for the patients, based on independent clinical judgment, and that patients are afforded access to these medications as part of the ABPs.

Protected Six Classes of Drugs: ASTS urges CMS to include protections that require ABPs to cover “all or substantially all drugs” in six critical lifesaving drug classes for patients with certain serious and often life-threatening conditions, such as cancer, HIV/AIDS, schizophrenia, epilepsy, and organ transplant recipients. This policy has successfully protected vulnerable patients under Medicare Part D who need access to biocompatible medications and the same policy should be extended to Medicaid ABPs.

In closing, organ transplantation is a life-saving and well established treatment that transplant recipients often refer to as the “Gift of Life.” There is no better way to respect this gift than by ensuring coverage of organ transplantation as well as related services such as dialysis and immunosuppressive medications to prolong the life—and enhance the quality of life—of the organ recipient for as long as possible. Such a result is consistent with the goals of ACA and the broader goals of health care reform generally.

Thank you for your consideration of our comments. Please contact Kim Gifford, ASTS Executive Director, at Kim.Gifford@asts.org with any questions.

Sincerely,



Kim M. Olthoff, MD
President