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February 13, 2013

Marilyn Tavenner
Acting Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-1588-P
PO Box 8011
Baltimore, MD 2124

Re: CMS-2334-P

Dear Ms. Tavenner:

On behalf of the American Thoracic Society (ATS), thank you for the opportunity to comment on the Center for Medicare and Medicaid Service's proposed rule on Medicaid, State Children's Health Insurance (SCHIP) and health insurance exchange eligibility. The ATS is an international educational and scientific multi-disciplinary society of 15,000 members focused on respiratory, critical care and sleep medicine. The ATS supports the intent of this rule to implement the Affordable Care Act's (ACA) Medicaid expansion. We believe that the Medicaid eligibility expansion and the creation of health insurance exchanges will significantly expand individual access to health insurance coverage, which in turn will enable greater access to affordable healthcare services. We have the following comments:

Eligibility and Enrollment Procedures for Medicaid, SCHIP and Exchanges
Some respiratory diseases such as tuberculosis (TB) and asthma disproportionally affect marginalized populations, which include immigrants, minorities and low-income people who lack resources and time to spend on forms and other administrative procedures for enrollment and eligibility appeals. The ATS urges CMS to ensure that eligibility and enrollment procedures for Medicaid, State Children's Health Insurance Program (SCHIP) and insurance exchange coverage are as simple and streamlined as possible.

Emergency Room Use Cost-Sharing

The burden of asthma among adults and children is growing in the United States. Comprehensive asthma management and education is critical to controlling asthma and preventing dangerous and costly asthma exacerbations. Research has shown that low-income children with asthma are high- users of hospital emergency rooms for treatment. According to the Centers for Disease Control and Prevention (CDC), asthma is the third leading cause of hospitalization among children under the age of 15.[i] The proposed rule sets limits for cost-sharing for Medicaid outpatient services, but for non-emergency use of emergency departments, it would allow states to determine the level of cost-sharing for Medicaid beneficiaries with incomes above 150% of the federal poverty level, including for children. In some rural and urban communities, including those designated as federal health professional shortage areas, hospital emergency departments are the only healthcare facility continuously available. The ATS is concerned that cost-sharing for these individuals and families could be excessive and may cause some Medicaid beneficiaries, including the parents of children with asthma and other conditions, to be reluctant to go to the emergency department in the event of an asthma exacerbation or other condition, placing a life in danger. We urge the Department to clarify the definition of "non-emergency use of the emergency department" in general and ensure that Medicaid beneficiaries, including parents of children with asthma, will not be dissuaded from seeking care when needed.

Prescription Drugs Benefit for Alternative Benefit Plans

The ATS notes that proposed rule CMS-9980-P sets out essential health benefit (EHB) standards for both health insurance exchange plans and Medicaid. We refer you to our comments on this rule that stated a key concern regarding the prescription drug coverage limits to two drugs per class and category. The ATS remains concerned that this rule limits patient access to a specific number of drugs rather than the range of drugs that best fit patient's needs. Limits per drug class and category can present a problem for patients with respiratory diseases such as drug resistant tuberculosis, asthma, patients undergoing lung transplant and patients taking combination therapies.

Sec. 440.330 of the proposed rule provides states with the flexibility to create new alternative benefit plans for certain populations and outlines the options for benchmark equivalent coverage. One of the permitted options for basing benchmark coverage is plans offered through a state's largest Health Maintenance Organization (HMO). The ATS is concerned that prescription drug coverage provided through such plans may not guarantee access to all medications that patients with respiratory diseases, critical illnesses and sleep disorders need. We urge CMS to establish specific standards for prescription drug coverage that ensures patients affordable access to all medically necessary medications in each drug category and class, including specifying procedures to ensure that Medicaid beneficiaries in alternative plans have timely access to drugs that are not included on a plan's formulary.

Optional Tuberculosis Eligibility Group

The ATS is pleased to note section 435.215, which maintains the optional Medicaid eligibility group for individuals infected with tuberculosis (TB). We congratulate the Department for clarifying to states that this option is available for coverage of TB diagnosis, treatment and prevention services. Increased state utilization of this eligibility category will increase access to diagnosis, treatment and prevention services for people with TB, who otherwise would go

without treatment, putting the public at risk of disease transmission. Medicaid coverage will also provide relief to states that are struggling to cover exorbitant drug treatment costs for drug resistant TB. We urge the Department to clarify, however, whether hospitalization is covered under this benefit. Hospitalization is often necessary for treatment of TB cases, including for individuals with drug resistant TB, and for individuals with delayed diagnosis who are in advanced stages of the disease. The ATS urges the CMS to include hospitalization as a covered service for TB-infected individuals in the final rule under section 453.215.

TB Services Should be a Standard Medicaid Benefit

The ATS is concerned that the proposed rule allows states the flexibility to determine income eligibility through a modified adjusted gross income formula (MAGI). Due to the unique need to protect the public from this airborne infectious disease, comprehensive TB diagnosis, treatment and prevention services must be available to all at no cost. The ATS recommends that CMS go further than the proposed rule and require all states to cover TB diagnosis, treatment and prevention services as a basic Medicaid benefit without co-pays. State Medicaid programs should coordinate TB care through state TB control programs that have the needed expertise in this disease to provide essential case management services, including contact investigations, to prevent emergence of drug resistance, ensure cure and prevent further disease transmission to the public.

Tobacco Cessation Medications

The ATS is also concerned about adequate coverage for tobacco cessation medications, including over-the-counter (OTC) medications, under the proposed rule. People trying to quit smoking may need to try several medications rather than just one. We urge CMS to clarify that tobacco cessation medications, including OTC medications, will be covered as part of the essential health benefits package for alternative plans.

Medicaid Tobacco Cessation Benefits

Cigarette smoking is the leading cause of death in the U.S., responsible for one in five deaths. We are pleased to note that the proposed rule exempts pregnant women from cost-sharing for tobacco cessation counseling and drugs. However, under the preventive services benefit, the proposed rule permits states to implement cost-sharing for tobacco cessation services for all other Medicaid populations. Research has shown that Medicaid beneficiaries smoke at much higher rates (30.5%) than the privately insured population, demonstrating that this population needs access to affordable tobacco cessation services.[ii] Tobacco cessation treatment has received an “A” rating from the U.S. Preventive Services Task Force and has been shown to reduce health system costs, even in the short term.[iii] Open access to preventive tobacco cessation services will reduce the incidence and severity of chronic diseases associated with smoking, such as COPD and lung cancer and significantly reduces future health system costs. As a society representing healthcare specialists who diagnose and treat patients with tobacco-related diseases and illnesses, the ATS urges CMS to include tobacco cessation services, including pharmacological therapies to counseling services, as a required standard Medicaid benefit in the final rule.

The ATS urges CMS to base Medicaid's coverage for comprehensive tobacco cessation services on model benefit coverage provided by the Federal Employees Health Benefits Program (FEHB) and to clearly define all tobacco cessation benefits, including duration of therapy, in accordance

with the 2008 U.S. Public Health Service guideline, *Treating Tobacco Use and Dependence*.[iv] The definition should include all tobacco cessation medications approved by the FDA, and individual, group and telephone counseling. To ensure full access for all Medicaid beneficiaries, tobacco cessation benefits must be provided without copays, deductibles or limits.

Thank you for the opportunity to comment on this important aspect of healthcare system reform.

Sincerely,

Monica Kraft, M.D.
President
The American Thoracic Society

[i] Centers for Disease Control and Prevention: National Center for Health Statistics, National Hospital Discharge Survey, 1995-2010.
[ii] Centers for Disease Control and Prevention. National Center for Health Statistics. National Health Interview Survey Raw Data, 2010.
[iii] Richard P, West K, Ku L (2012) The Return of Investment of a Medicaid Tobacco Cessation Program in Massachusetts. PLoS ONE 7(1): e29665.
http://www.plosone.org/article/info%3Adoi%2F10.1371%2Fjournal.pone.1129665
[iv] Fiore MC, Jaen CR, Baker TB, et al. Treating Tobacco Use and Dependance: 2008 Update. Rockville, MD: U.S. Department of Health and Human Services, U.S. Public Health Service; 2008.