November 27, 2017

The Honorable Eric D. Hargan
Acting Sectary and Deputy Secretary
Department of Health and Human Services
Room 445-G
Hubert H. Humphrey Building
200 Independence Avenue, S.W.
Washington, D.C. 20201

Attention: CMS-9930-P

Dear Acting Secretary Hargan:

Thank you for the opportunity to submit comments on the Notice of Benefit and Payment Parameters for 2019 Proposed Rule (CMS-9930-P). The Healthcare Leadership Council (HLC) welcomes the opportunity to share its thoughts with you.

HLC is a coalition of chief executives from all disciplines within American healthcare. It is the exclusive forum for the nation's healthcare leaders to jointly develop policies, plans, and programs to achieve their vision of a 21st century health system that makes affordable, high-quality care accessible to all Americans. Members of HLC – hospitals, academic health centers, health plans, pharmaceutical companies, medical device manufacturers, laboratories, biotech firms, health product distributors, pharmacies, post-acute care providers, and information technology companies – advocate for measures to increase the quality and efficiency of healthcare through a patient-centered approach.

Like you, HLC is committed to bolstering the stability of the health insurance marketplace, encouraging greater competition, and giving all Americans enhanced choice and flexibility in their coverage. We appreciate the steps that the Department of Health and Human Services (HHS) has taken under your leadership to meet these goals. The below comments offer additional suggestions for HHS as it works to give states flexibility, reduce regulatory burdens caused by the Affordable Care Act (ACA), and ensure operational ease and simplicity.

<u>Small Business Health Options Program</u>
HLC supports efforts to provide the Small Business Health Options Program (SHOP) with flexibility. However, we are concerned about the proposal to require the small group market to set a group's effective date based on the plan selection date. Plan

selection dates do not have as much of an impact off the SHOP exchanges since most carriers allow employers flexibility in plan selection dates.

Risk Adjustment

The risk adjustment program is intended to mitigate the potential impact of adverse selection and stabilize the cost of health insurance. HLC appreciates HHS's proposals that acknowledge the requests of market issuers to reform the program to improve its accuracy and effectiveness and promote market stability. HLC supports a 60 percent coinsurance rate for the high-cost risk pool, which will prevent states and issuers with very high-cost enrollees from bearing a disproportionate amount of risk. We also welcome HHS's proposal to reduce the statewide average premium in the risk adjustment transfer formula by 14 percent. This will proportionately reduce the magnitude of risk adjustment transfers. However, we are concerned about the proposal to allow state regulators to request a percentage adjustment in the calculation of their risk adjustment transfer amounts, which could destabilize the market by failing to give plans their needed risk adjustment payments. We ask HHS to review the risk adjustment model to ensure that it is fully meeting plans' needs and providing them with incentives to enroll all consumers, including those who are high-risk.

Student Health Insurance

Student health insurance plans are open only to students and their dependents and are exempt from single risk pool rating requirements. In addition, these plans need flexibility in plan design to better meet student needs and the utilization of on-campus providers. HLC, therefore, supports HHS's proposal to exempt student health insurance from federal rate review. However, we recommend that the exemption of these plans from review be made effective for policy years beginning on or after July 1, 2018 (rather than the proposed rule's date of January 1, 2019). The July 1 date will better align with school-year based policy years.

Rate Review

HLC is concerned about HHS's proposal to allow states to set a later date for submission of rate filings from issuers that are not on the exchange. We believe that this could lead to a non-level playing field where there are two different sets of prices for plans on and off the exchange. For that reason, we are also concerned about posting proposed and final rate filing information on a rolling basis.

HLC supports raising the 10 percent threshold for rate increases that are subject to federal review to 15 percent at the product level and 20 percent at the plan level. In addition, we support HHS's proposed change that states only be required to submit proposals for state-specific thresholds if the proposed threshold is higher than the federal default threshold.

Essential Health Benefits

HLC supports allowing greater flexibility on benefits, plan design, and actuarial value as long as the variation includes all of the 10 categories of Essential Health Benefits (EHBs). We are concerned about HHS's proposal to give states flexibility in their selection of an EHB-benchmark plan for plan year 2019, as that does not give plans enough time to implement the necessary changes. We also think that giving states the option to change the EHB-benchmark plans annually would result in uncertainty among plans and consumers.

Medical Loss Ratio

HLC believes that the proposal to allow issuers to deduct employment taxes from the medical loss ratio (MLR) will encourage greater issuer participation in the markets.

HLC also supports the proposed safe harbor for quality improvement activity (QIA) expenses, and recommends a threshold of 1 percent (rather than the proposed rule's threshold of 0.8 percent).

HLC agrees that states should be given the flexibility to lower the MLR threshold to help stabilize the individual market and we appreciate the streamlined requirements for states. While an 80 percent threshold may be appropriate in some states, in others having a lower MLR rate may have competitive benefits that outweigh potential costs- and we believe states are in the best position to assess those tradeoffs. We seek clarification that the streamlined process is available only to states that are requesting a lower MLR threshold in order to stabilize the market. Additionally, we note that HHS did not specify a timeline or effective date for these changes. We recommend that, if the state adjustment is meant to be available for the 2019 benefit year, HHS provide notice of these adjustments no later than January 31, 2018. If this timeline cannot be implemented, we recommend that state adjustments only be permitted for benefit years 2020 and later.

Thank you again for the opportunity to submit comments on the proposed benefit and payment parameters. HLC looks forward to continuing to work with you on our shared priorities. Should you have any questions, please do not hesitate to contact Debbie Witchey at (202) 449-3435.

Sincerely,

Mary R. Grealy

Mary R. Grealy
President

cc: Seema Verma, MPH, Administrator, Centers for Medicare and Medicaid Services