

May 11, 2009

The Honorable Max Baucus  
Chairman, Senate Finance Committee  
219 Dirksen Senate Office Building  
Washington, DC 20510

The Honorable Chuck Grassley  
Ranking Member, Senate Finance Committee  
219 Dirksen Senate Office Building  
Washington, DC 20510

***Sent Via Email***

Chairman Baucus and Senator Grassley:

The Association for Community Affiliated Plans (ACAP) is pleased to submit the following comments in response to the Senate Finance Committee's April 29<sup>th</sup> policy options paper entitled "*Transforming the Health Care Delivery System: Proposals to Improve Patient Care and Reduce Health Care Costs.*"

ACAP is a national trade organization representing 42 not-for-profit safety net health plans that serve more than 6 million Americans in Medicare, Medicaid, SCHIP, and other public health programs. At this time, twenty-one ACAP members operate Special Needs Plans (SNPs) as an integral part of their mission to care for low-income and medically needy populations. ACAP believes that SNPs assure continuity of care to dual eligibles who are served by the plan through a Medicaid contract with the state or who are enrolled with the plan immediately prior to their Medicare eligibility.

ACAP's comments are limited to the section IV of your policy options paper that addresses the Medicare Advantage Program.

**Comments on "Linking Payment to Quality"**

ACAP believes that the purpose of the health delivery system should be to improve the health of the population. Providers and plans that excel in providing quality care should be rewarded for that effort. That is why ACAP is proud that safety net health plans have been able to reduce health disparities and demonstrate improvement in health quality measures.

However, ACAP urges Congress to ensure that any "paying for quality" approach that is developed as part of health reform recognize that the risk of populations served can vary widely, particularly with regard to low-income populations. Underlying disparities in education, literacy, primary language, health status and other challenges such as homelessness or co-occurring mental health and substance abuse must be considered and incorporated into any system that seeks to link health plan and provider payments to 'quality'. Likewise, it is critical that reforms

to the health system provide incentives to serve a high risk population. Current risk adjustment methods fail to recognize psycho-social issues and are not sufficiently refined to address enrollees with multiple, chronic conditions, limitations in activities of daily living, and the persistency of chronic health conditions.

ACAP also has a strong concern about developing and refining rating systems that accurately reflect the experience of dual eligibles in plans that primarily serve dual eligible members. For example, the current rating system in the Consumer Assessment of Health Plans (CAHPS) has a slight downward adjustment for the responses given by dual eligibles. The researchers who developed CAHPS found that dual eligibles tend to give slightly more positive ratings than non-dual enrollees. While such an adjustment may be valid in for internal quality improvement, the adjustment may not be appropriate for true plan-to-plan comparisons. The result of this adjustment can move a 5-star ranking to a 4-star ranking simply because of the concentration of dual eligibles in a plan. We are very concerned that the 5-star ratings do not provide an accurate picture for dual eligibles who may perceive that a 5-star MA plan may be “better” than a 4-star Dual Eligible SNP when the initial ratings by dual members was the same prior to the adjustment.

***Recommendation:** ACAP urges Congress to ensure that the nature of any MA plan’s enrollee population (particularly a dually eligible population) be considered in any proposal to link quality to payment and to ensure that health plans are not penalized because they choose to serve a dually eligible population.*

### **Comments on ‘Developing a More Efficient Payment Structure’**

#### *Approach 1: Modify Current Benchmarks*

Like all health plan associations, ACAP has members in both high and low payment areas. As a matter of public policy, ACAP wishes the discussion of Medicare Advantage payments considered the sufficiency of absolute dollar payment to an area, not simply the underlying comparison to Medicare fee-for-service. ACAP believes it is important that beneficiaries receive value from the Medicare program regardless of their physical location. It is with that in mind that ACAP supports the following Committee statement, “The goals should be to allow high quality, efficient plans to participate in Medicare in a cost effective manner.”

#### *Approach 2: Set Benchmarks Based on Plan Bids*

Plans bids may be an efficient way to fix the current variation in Medicare Advantage payments throughout the country. However, small, local plans, especially safety net health plans should be encouraged to participate in the program. These plans could be at a disadvantage if the bidding rules are poorly designed and do not recognize a plan’s bid due to a small membership, thereby inadvertently creating the opportunity for large, multi-state plans to unfairly ‘lowball’ their bids to drive out local competition.

In addition, all dual-eligible SNPs would be significantly disadvantaged in a competitive bidding environment since they cannot charge a premium. SNPs also have additional operational and

reporting requirements, including resource-intensive Model of Care requirements and SNP-specific HEDIS measures, that result in higher administrative costs. A competitive bidding model that does not consider these additional costs specific to SNPs, could result in SNPs being priced out of the market by regular Medicare Advantage plans.

It is with that in mind that ACAP urges the Committee to either find a way to exempt all dual eligible plans from the competitive bidding process or, at a minimum, adopt a definition of “small dual eligible SNP” in the final legislation that allows CMS to structure rules fairly for the small, local plans.

This definition of “small, local plan” may also be useful if the Committee’s other recommendation passes which would reduce payments by two percent if HIT is not used. Our plans are committed to HIT improvements and many already have that capacity, but others may need support to develop these models. As plans whose primary contracts are with states for Medicaid or CHIP, we also urge CMS to align HIT requirements across Medicare and Medicaid. We will work with your staff to develop acceptable language around this safety net definition.

***Recommendations:** ACAP supports (1) adequate payments to plans based on quality, efficiency, and appropriate risk adjustment and (2) providing a definition of “small, local health plans” to ensure they are protected against predatory or anti-competitive bidding behaviors from larger health plans, (3) excluding dual-eligible SNPs from competitive bidding, (4) excluding administrative costs associated with SNP-specific requirements in the competitive bid calculation and reimburse these costs separately through proposed plan-specific Chronic Care Management payments and/or other supplemental payments.*

### **Comments on Pay for Chronic Care Management**

ACAP is pleased to see the Committees support for payment for the management of chronic illness and believes it is a good approach to direct payment appropriately towards health improvement.

However, because the current payment model does not adequately address health plans that focus on serving a high-risk population, ACAP urges the Committee modify its language around risk adjustment from “**maintaining** the current risk-adjusted payment model” to “**refining**” the current payment model. The current payment system works best for large plans that enroll all Medicare beneficiaries, not those plans that focus on serving a subset of the population such as dual eligibles. The current risk adjustment system is not adequately sensitive to multiple chronic conditions, mental health status, and persistency of diagnoses. In addition, the current payment model has an inherent bias towards the outdated institutional model by paying a demographic adjustor for residing in a nursing home, but not paying a “frailty” adjustor for the nursing home certifiable individual who lives in the community. The system is also inadequate in recognizing risk in the payments for the e first year of Medicare enrollment. This failure to recognize previous conditions is especially devastating to plans whose “new to Medicare” members are the under 65 person with disability who was previously served by the plan as a Medicaid member under a Medicaid contract.

***Recommendation:*** ACAP urges the Committee to direct CMS to refine the risk adjustment system to address the inadequacy of the Medicare Advantage risk adjustment system for health plans serving enrollees with greater needs.

**Comments on Simplify Extra Benefits**

ACAP believes that this proposal could reduce the current variation, and, therefore offer consumers a better means to compare among plan choices.

However, ACAP urges some flexibility by creating a “preferred tier” of additional benefits rather than an ordinal list of cost sharing reductions and benefits that must be offered. Because States are responsible for the cost sharing liability of dual eligibles, the proposal offers no additional protection to the dual eligible beneficiaries. Instead, duals who should be encouraged to avail themselves of integrated care with strong care management are less likely to see any reason to enroll in an MA or SNP. We urge that the Committee focus on the needs of duals and to not unintentionally eliminate options for them.

Thank you for all of your efforts to reform the health care system and for an opportunity to submit comments on the policy options you are considering. If you have any questions or would like to follow-up on ACAP’s comments, please do not hesitate to contact Mary Kennedy, Director for Medicare Programs, at 202-701-4749 or at [mkennedy@communityplans.net](mailto:mkennedy@communityplans.net).

Thank you again for your consideration of our comments.

Sincerely,



Meg Murray  
Chief Executive Officer