April 15, 2019

Pauline Lapin
Director, Seamless Care Models Group
Center for Medicare & Medicaid Innovation
Centers for Medicare & Medicaid Services
U.S. Department of Health and Human Services
7500 Security Boulevard
Baltimore, MD 21244

Re: Feedback on CMS Waivers to Inform Future Advanced Risk Model Development

Dear Director Lapin:

The Health Care Transformation Task Force (HCTTF or Task Force) appreciates the opportunity to provide feedback on the existing set of waivers available to Center for Medicare and Medicaid Innovation (CMMI) accountable care organization (ACO) and bundled payment model participants. As you consider the design of future advanced risk models, we hope this feedback will help facilitate an approach that will lead to meaningful, consistent, and widely-used waivers to promote improved care coordination.

The Task Force is a consortium of over 40 private sector stakeholders that support accelerating the pace of delivery system transformation to better pay for value over volume. Representing a diverse set of organizations from various segments of the industry – including providers, health plans, employers, and consumers – we share a common commitment to transform our respective businesses and clinical models to deliver better health and better care at reduced costs. Our member organizations aspire to have 75 percent of their business in value-based arrangements by 2020. We strive to provide a critical mass of policy, operational, and technical support from the private sector that, when combined with the work being done by CMMI and other public and private stakeholders, can lead to a person-centered, value-based delivery system.

Task Force members have deep experience operating value-based payment models in Medicare as well as commercial lines of business. Our members have extensively discussed their experience with waivers in the context of CMS payment models, including the Medicare Shared Savings Program (MSSP), Next Generation ACO model, and Bundled Payments for Care Improvement (BPCI) Advanced. This letter summarizes our members' feedback and recommendations for waivers and is organized into three categories: 1) general waiver feedback, 2) comments on specific waivers, and 3) ideas for new waivers to improve APMs.

I. General Waiver Feedback

Task Force members identified general challenges with existing waivers and recommend improvements, which fall into four areas broadly applicable to all waivers: A) waiver design, B) waiver guidance and feedback, C) uniformity of waivers across models, and D) opportunities for direct model participant connections.

A. Waiver Design

Waiver design was identified as a frequent barrier to wide scale waiver use. Examples of design related challenges include limitations on waiver applicability by provider type that do not reflect current care delivery practices, and waiver reporting requirements that are burdensome or expensive to implement in clinical settings. We encourage CMS consider the following recommendations:

Engage model participants in waiver design: CMS should engage with current and future model participants when designing waivers to elicit feedback on the potential implementation challenges for a given waiver and potential approaches to adjust the waiver to ease implementation.

Streamline data collection for compliance requirements: CMS should eliminate manual data collection and submission to track waiver use, and instead use claims data or other standard processes to monitor waiver utilization. Leveraging existing reporting structures to support data collection and verification requirements for waivers would greatly reduce the cost and administrative burden of waivers and increase uptake by model participants. We understand the need for CMS to track waiver utilization, yet when the tracking process is overly burdensome, the reality is participants will likely choose not to use the waiver.

B. Waiver Guidance and Feedback

Task Force members expressed interest in using several waivers but indicated they did not because they were unable to obtain clear guidance from CMS on their implementation questions (*e.g.,* confirmation of eligible provider types and places of service). Members felt that CMS was reluctant to provide detailed feedback, and when feedback was provided, it was often hard to interpret. Consequently, legal counsel for participants generally advised against pursuing waivers out of an abundance of caution regarding the potential legal liability due to misinterpretations of the scope of the waiver. CMS should consider developing the following:

Formal waiver feedback pathway: CMS should create a formal pathway for providers to offer feedback on waivers, including opportunities to provide anonymous feedback to minimize perceived compliance risk with sharing internal legal interpretations with CMS. Our members believe that CMS intended these waivers to be used and that a formal pathway for model participants to provide feedback would make it easier for CMS to generate guidance for FAQs, adjust waivers to address common issues, and increase overall waiver uptake.

Rapid response process: Task Force members identified instances of delays in clinical decision making while providers attempted to determine if a specific treatment or care delivery approach was allowed under a waiver. CMS should create a system to allow providers to quickly resolve waiver questions that directly impact imminent care delivery decisions. A rapid response system (phone line or electronic communication with a short turnaround time) for questions in these situations would facilitate the timely provision of care.

C. Uniformity of Waivers Across Models

The inconsistent application of waivers across models is a barrier to uptake and use. Task Force members have participated in multiple models over the years and stated that waivers with similar names and the same underlying goals often had different provisions and reporting requirements, limitations on use, and allowable activities. This caused confusion among model participants and resulted in the need for costly and time-consuming staff retraining which cuts into time dedicated to patient care.

> **Standard waiver set/safe harbor for APMs:** CMS should specify a core set of waivers for all APMs which would serve as a minimum approach to regulatory relief, without the need for an opt-in approach, and CMS should add additional waivers on a model-by-model basis as needed. Furthermore, CMS Office of General Counsel and HHS Office of the Inspector General should coordinate to review waivers with a focus on the financial incentive structures created by CMS/CMMI APMs and consider whether some waivers could be transformed into a safe harbor for APM model participants.

D. Opportunities for Direct Model Participant Connection

Task Force members stated that it was difficult to identify what waivers were working well for model participants across the board. They were aware of some high performing model participants who have made particularly effective use of waivers but were not aware of official sources of information on how waivers are performing across participants and models. Members expressed interest in directly connecting with providers that have successfully used waivers to discuss best practices. Members seek assistance from CMS in fostering more opportunities for direct connections between model participants to discuss operational challenges and best practices in depth on their own time. While recognizing CMS has organized virtual meetings with a similar objective, the consensus perspective was that those opportunities were not as useful as direct interaction and shared learnings among model participants would be.

> **Shared learning:** CMS should allow/support direct interaction between ACO/bundled payment model participants by making a contact list available to model participants. This would facilitate direct interaction between model participants to engage in cross-model synchronization at the provider level and support the sharing of best practices.

II. Comments on Specific Waivers

Task Force members provided feedback on specific waivers they have used as participants in CMS bundled payment and ACO models. This feedback highlighted the importance of specific waivers to participants' ability to succeed under a given model and identified issues with specific waivers that negatively impacted the waiver uptake.

A. Post Discharge Home Visit Waiver (Next Generation ACO)

Task Force members explicitly cited the importance of the post discharge home visit waiver to their ACO work. Members commended CMS for adjusting the waiver to clarify requirements and offer greater flexibility under the Next Generation ACO model as compared to a similar (but less clear) waiver available under the Pioneer ACO program. However, some questions remain regarding the professionals

qualified to bill under this waiver. Specifically, CMS should clarify whether paramedics and community health workers could qualify to provider services and bill under this waiver.

B. Care Management Home Visit Waiver (Next Generation ACO)

Members stated that this waiver, when used in conjunction with the post discharge home visit waiver, was effective in improving care. We recommend that CMS retain this waiver in combination with the post discharge home visit waiver for current and future models.

C. Three-Day SNF Waiver (Next Generation ACO and Medicare Shared Savings Program)

Members identified the three-day SNF waiver as critical to their success in ACO models. While this waiver is working, members indicated that there is confusion regarding how to implement the waiver in cases where the waiver language is not explicit on what is allowed. An example is whether a patient could be referred to a SNF directly from a physician's office rather than a hospital. Members were not clear if this referral would be covered under the waiver or represent a compliance issue. We recommend CMS retain this waiver option in current and future models and provide additional guidance on allowable waiver uses, especially recognizing that the ACO models incentivizes avoiding hospitalization when appropriate.

D. Cost Sharing Waiver (Next Generation ACO)

Members identified three issues that prevented them from taking advantage of cost sharing waivers. First, the high prevalence of MediGap coverage limits the number of beneficiaries that would be exposed to the financial incentivizes made available by the waiver. Second, the administrative reporting burden associated with the cost sharing waiver makes it time consuming and expensive to implement. The final factor limiting uptake of this waiver is that the waived copays are not reflected in ACO benchmarks and represent a loss of funds for many ACOs. We recommend CMS simplify reporting requirements for this waiver and consider incorporating waived cost sharing amounts into benchmarks.

E. Telehealth Waivers (BPCI)

Task Force members identified a misconception related to the telehealth waiver. Specifically, some model participants believe that the telehealth waiver requires the patient to be in a clinical setting to receive telehealth services under the waiver. This confusion resulted in participants assuming patients must travel to a clinical setting for care, which limits participant expectations for how useful the waiver would be in practice. We recommend that CMS address this misperception and issue guidance to improve waiver uptake.

F. Home Visit Waivers

Task Force members identified two misconceptions regarding home visit waivers. The first is that the waiver required direct physician supervision. The second misperception is that this waiver requires the provider delivering home care to be an employee of a physician's practice. Direct supervision is resource intensive and physician's practices generally do not directly employ home care providers. Consequently, the misperception around these two areas greatly diminished participant interest in this waiver unnecessarily. We recommend that CMS address this misperception and issue guidance to improve waiver uptake.

III. New Waiver Ideas to Improve APMs

Task Force members identified three areas where additional waivers would improve the ability of APM model participants to improve quality and control costs. We recommend that CMS consider developing the following waivers:

A. Home Bound Waiver

There are several patients who do not meet the criteria for being home bound who would, nonetheless, benefit greatly from home health services. Offering APM model participants the option to waive the home bound requirement for the Medicare home health benefits would provide additional flexibilities to treat beneficiaries in a less resource intense environment in a manner that could both improve quality and reduce costs.

B. Flexibility in Post-Acute Care Payments

Permitting flexibility in the rates and structure of post-acute care payments would allow APM participants to tailor the use of post-acute services to increase the proportion of patients that could efficiently be treated outside of an inpatient setting. For example, members identified home health services as an area where this concept could be applied. Home health services are currently paid as an all or nothing benefit; a waiver in this case would allow providers participating in an APM to negotiate different rates for home care – such as smaller payments for shorter/more frequent home health visits – that better address patient needs. Also, explicitly allowing post-acute providers to accept less than the Medicare fee-for-service payment rates in APM arrangements would add flexibility that fosters clinical decision making that is less affected by cost considerations.

C. Beneficiary Inducement Rules around Home Assessments

Some Task Force members have been advised that home safety checks or structural modifications prior to a surgery to foster a prompter return to home qualify as beneficiary inducements. A waiver of beneficiary inducements in these cases would allow APM participants to proactively access a patient's home environment prior to surgery and help ensure that the patient has the best chance of being able to recover at home rather than in an inpatient or SNF setting where costs are higher and there is an increased risk of facility acquired infections.

The Task Force stands ready to further support CMS efforts to improve waivers for all APM participants to achieve the desired outcomes of improved patient care and outcomes and lower health care spending. Our recommendations are intended to facilitate increased waiver uptake among model participants and to improve the impact of future CMMI models.

Please contact HCTTF Executive Director Jeff Micklos (jeff.micklos@hcttf.org or 202.774.1415) with questions related to this statement.

Respectfully,

The Health Care Transformation Task Force