

# I AM (Still) ESSENTIAL

November 19, 2014

The Honorable Sylvia Mathews Burwell  
Secretary of Health and Human Services  
200 Independence Avenue SW  
Washington, D.C. 20201

Re: Urgent Action Needed to Correct Lack of Transparency in Prescription Drug Formularies

Dear Madame Secretary:

On behalf of patient and community organizations representing millions of patients and their families, the “I AM (Still) ESSENTIAL” coalition congratulates you and your team on a much improved launch of this year’s open enrollment period for the Health Insurance Marketplace. We share your urgency on the need to enroll and re-enroll millions of people in a very short period of time. In some instances, people will have to make their plan selection in just a couple of weeks. In order for consumers to select the plan that best meets their medical and financial needs, they need to know what benefits are being offered in each plan and their cost. People with chronic health care needs, many of whom rely on prescription medications to keep them healthy, need to select plans that cover their medications at affordable prices. **We are writing to bring to your attention an urgent matter. The promise made that plans would easily display their plan drug formularies, including tiering, is not being realized. We urge you to take immediate corrective action to ensure that a direct link to plan drug formularies, including tiering, be included in each plan’s Summary of Benefits and Coverage and on healthcare.gov.**

In the 2015 Letter to Issuers your Department wrote the following:

As part of the QHP Application, issuers must provide a URL to their formularies and must also provide information regarding formularies to consumers, pursuant to 45 C.F.R. 147.200(a)(2)(i)(K). CMS expects the URL link to direct consumers to an up-to-date formulary where they can view the covered drugs, including tiering, that are specific to a given QHP. The URL provided to the Marketplace as part of the QHP Application should link directly to the formulary, such that consumers do not have to log on, enter a policy number or otherwise navigate the issuer’s website before locating it. If an issuer has multiple formularies, it should be clear to consumers which formulary applies to which QHP(s). CMS will make formulary links provided by issuers available to consumers on HealthCare.gov.

Earlier this summer, 333 patient organizations signed onto the “I AM (Still) ESSENTIAL” letter to you to identify some access to care issues enrollees have encountered in the Qualified Health Plans (QHPs). One of those issues identified was the lack of transparency in benefits, including prescription medications and providers. In your response to that letter, you referenced the above requirements and patient groups accordingly looked forward to implementation of this directive.

Unfortunately, while some plans do include a direct link to their drug formularies, including tiering, the vast majority do not. Instead, a link to the main website of the plan is provided and a user has to search and search for the formulary. In some instances the formularies cannot be found and others are out of date. We also see no direct formulary links for any plan on HealthCare.gov. For each plan summary on HealthCare.gov, there is a “List of covered drugs” entry, but they are all marked “N/A”.

**In order to have a successful open enrollment and re-enrollment process, we urge you to take immediate corrective action to ensure that these requirements are met immediately.**

We are concerned that plans apparently do not want to inform patients fully about the scope of their prescription drug benefits. The impact of this practice falls largely on those with chronic health conditions, who know when choosing a plan that they will require medications to keep them healthy. We hope the lack of transparency in formularies is not an effort to persuade potential enrollees from enrolling in their plans. This would be a clear violation of the strong anti-discrimination provisions included in the ACA.

We trust you will address this matter immediately and look forward to a quick, successful resolution. We congratulate you on the many improvements we have seen already in this year’s open enrollment process, and hope the lack of attention to this matter will soon be corrected.

Thank you.

Carl Schmid  
Deputy Executive Director  
The AIDS Institute

Andrew Sperling  
Director of Federal Legislative Advocacy  
National Alliance Mental Illness

Angela Ostrom  
Chief Operating Officer & Vice President Public Policy  
Epilepsy Foundation

cc: Kevin Counihan, Marketplace CEO/CMS