



December 1, 2016

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

Re: Comments on *Draft 2018 Letter to Issuers in the Federally-facilitated Marketplaces*

Dear Madame Secretary:

The I Am Essential Coalition of patient and community organizations representing millions of patients and their families are pleased to submit comments on the [Draft 2018 Letter to Issuers in the Federally-facilitated Marketplaces](#). The comments below reflect the experiences that patients we represent have encountered as they have shopped for and utilized the Qualified Health Plans (QHPs) over the past three years. We submit them for your consideration as we all work to improve upon the patient experience and health outcomes, particularly for those with serious and chronic health conditions as they access prescription medications.

At the outset, we would like to acknowledge the important progress your Administration has made for beneficiaries, especially those with chronic and serious conditions, accessing comprehensive health coverage. The Affordable Care Act (ACA) and the regulations you have crafted to implement it continue to benefit the patients we represent. Offering coverage that many were previously excluded from, guaranteeing an essential set of benefits, eliminating annual and lifetime coverage limits, and providing many other groundbreaking patient protections have all been beneficial. Thank you for listening to our concerns and working with us to make improvements that have had a real impact on the lives of patients.

Although there is more work to be done to realize the full promise of quality, affordable coverage for all, the ACA's solid foundation makes that work possible. As we move forward with ACA implementation, **I Am Essential** remains committed to improving beneficiaries' ability to access their necessary care and treatment through advocating for access to a full-range of benefits with predictable, lower patient cost-sharing and rigorous enforcement of nondiscrimination and other patient protections.

The **I Am Essential** coalition recently submitted [comments](#) signed by 153 organizations on the *Notice of Benefit and Payment Parameters for 2018 Proposed Rule*. They focused on 1) Standardized Options approach for 2018; 2) revisions to the Risk Adjustment Program methodology; and 3) enhancing the Affordable Care Act's (ACA) important patient protections. As requested, we will not repeat the points included in those comments, but instead concentrate on other issues addressed in *Draft 2018 Letter to Issuers*.

Discriminatory Benefit Design

We are pleased to see a renewed commitment to reviewing and monitoring issuer compliance with ACA non-discrimination standards at both the state and federal levels. **We strongly support the proposed reviews for EHB Discriminatory Benefit Design and QHP Discriminatory Benefit Design and Treatment Protocol Calculator, as well as the proposed additional medical conditions to be reviewed.** We believe these reviews and tools remain critical to ensuring patients have access to the full range of benefits they need with affordable cost-sharing and are a necessary part of a well-functioning marketplace. The statement that "CMS retains the right to identify a benefit design as discriminatory even if it is not flagged in the outlier analysis," is especially encouraging. In the future, we recommend expanding these reviews and tools to encompass more health conditions and to better identify common discriminatory practices among QHPs as well as outliers.

Prescription Drugs

Adequate drug coverage is necessary for beneficiaries to have meaningful access to care, especially to treat chronic and serious conditions. **We strongly support CMS' intent to review QHPs for adequate prescription drug coverage by conducting formulary outlier review, clinical guidelines-based review, and review of tier placement of prescription drugs recommended for specific medical conditions.** We urge CMS to review all plans for adequate drug coverage for *all* medical conditions.

We strongly recommend that CMS move forward with the proposed "adverse tiering review" to evaluate QHP coverage of drugs to treat six commonly diagnosed, chronic, and high-cost conditions. We share CMS' concern about adverse tiering and agree that this practice, which is being employed by many issuers across the country, is potentially discriminatory. In developing a review tool and standard for assessing "adverse tiering," we recommend CMS employ multiple factors in determining the condition specific thresholds, including cost-sharing transparency and how cost-sharing impacts a beneficiary throughout the year (e.g., whether a deductible applies or co-insurance is used for all drugs to treat the condition). Ideally, the beneficiary's cost-sharing for treatment of these chronic conditions should be in line with cost-sharing for treatment of any condition.

Formulary Drug List and Formulary Lookup Tool

We are very supportive of the transparency requirements that CMS reiterates all issuers must utilize to help patients select an appropriate QHP that best meets their needs. This includes an accurate and

up-to-date machine readable drug list that includes tiering, utilization management and pharmacy network requirements. We agree with CMS that “the formulary drug list must be published in a manner that is easily accessible to plan enrollees, prospective enrollees, the State, the Marketplace, CMS, OPM and the general public” without having to create an account, and that the direct URL be included on the QHP’s summary of benefits and coverage.

We also recommend that the formulary look-up tool on HealthCare.gov continue to be improved to allow shoppers to view complete information about the coverage of a given drug, including tiering and utilization management.

Need for Enforcement

We would like to reiterate the need for HHS to enforce the strong patient nondiscrimination provisions contained in the Affordable Care Act (ACA). Some issuers continue to violate the ACA by discriminating against people with chronic and serious conditions through their plan designs. We appreciate your continued attention to these issues and recognize the statements included in the preamble to the final Section 1557 Nondiscrimination rule, previous Notices of Benefit and Payment Parameters, and the current draft and past Letters to Issuers regarding plan design and what constitutes discriminatory practices. While we will continue to be vigilant in identifying these issues and offering our ideas for how to solve them, CMS and states should not rely only on patient grievances and complaints but take a proactive approach to stopping them. We believe that through proper and meaningful state and federal review processes, these discriminatory practices can be eliminated. Therefore, we call upon CMS, the HHS Office for Civil Rights, and the states to enforce the important patient protections included in the ACA and other laws.

Thank you very much.

Sincerely,

Angela Ostrom
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Epilepsy Foundation

Carl Schmid
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The AIDS Institute

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Director of Federal Legislative Advocacy
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