I AM (Still) ESSENTIAL

May 15, 2015

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

Re: Adequate Review of 2016 Qualified Health Plans

Dear Madame Secretary:

We, the undersigned x patient and community organizations representing millions of patients and their families, remain dedicated to the successful implementation of the Affordable Care Act (ACA). With the close of the second open enrollment period, millions of Americans now have gained health coverage and the number of uninsured in the country has dramatically decreased. **As you begin to review the Qualified Health Plans (QHPs) for 2016, we want to ensure that the many positive patient protections that were included in the *Notice of Benefit and Payment Parameters for 2016* and the *Letter to Issuers* are adhered to and strictly enforced.**

As we have detailed to you in the past, many patients have had troubling experiences with some Qualified Health Plans (QHPs). In particular, patients living with chronic conditions have found that some plans offer limited benefits, high cost-sharing and discriminatory plan designs, and lack of transparency. We are very pleased that beginning in 2016, you will require plans to address some of these barriers with new transparency and exceptions provisions. Having accurate, complete, and up-to-date lists of drugs and providers that are easily accessible to patients will help them select the plan that best meets their needs. Plans must also disclose any restrictions, including prior authorization, step therapy, and quantity limits for covered medications. The added exceptions processes will help patients access medically necessary medications prescribed by their providers. The Centers for Medicare and Medicaid Services (CMS) has also stated that plans cannot remove drugs from their formularies mid-year unless it is due to the availability of the drug.

In addition, CMS has stated that it will review plans for adequate drug coverage and discriminatory plan design. CMS has stated in the past that it would conduct these reviews. However, the growing number of plans engaging in discriminatory practices is evidence that thorough reviews have not taken place. In the *Letter to Issuers*, CMS cautions issuers from discouraging enrollment of individuals with chronic health needs and provides examples of discriminatory plan designs. One example is "if an issuer places most or all drugs that treat a specific condition on the highest cost tiers, that plan design might effectively discriminate against, or discourages enrollment by, individuals who have those chronic conditions."

In order to identify discriminatory plan designs, CMS states it will conduct outlier analysis on plan cost sharing, including co-payments and co-insurance, and total out of pocket costs

associated with standard treatment protocols for specific conditions. It will also review any medical management techniques, such as prior authorization and/or step therapy, to ensure they are based on clinical guidance, and analyze formularies to ensure drug coverage is consistent with treatment guidelines for certain conditions.

We strongly urge you to ensure that CMS fulfills its duties and adequately reviews the 2016 plans in accordance with the above stated requirements and reject QHPs that do not meet the ACA's anti-discrimination standards.

There is growing evidence that more plans are placing all medications in certain classes on the highest tier and charging patients high co-insurance. A recent analysis conducted by Avalere found increases between 2014 and 2015 in the number of formulary tiers used by federally facilitated marketplace plans and in the use of cost-sharing for drugs on specialty tiers. The proportion of bronze and silver plans using specialty tier co-insurance greater than 30 percent increased by 14 percent from 2014 to 2015. In five classes used to treat cancer, MS, and HIV, more than one-fifth of all exchange plans are requiring 30 percent co-insurance or higher for all drugs in the class—a significant increase over 2014.

We are concerned that without meaningful review and enforcement by CMS, these trends will continue and become worse, creating greater barriers for patients to access their health care.

Again, we greatly appreciate all you and the rest of the Department are doing to improve the health of all Americans. We thank you for your continued dedication to improving implementation of the ACA so that it meets the needs of patients throughout the country.

Sincerely,

The AIDS Institute
American Autoimmune Related Diseases Association
Easter Seals
Epilepsy Foundation
National Alliance on Mental Illness

[list in formation]

cc: Andy Slavitt, Acting Administrator, CMS
Kevin Counihan, Deputy Administrator and Director, CCIIO