



March 7, 2017

The Honorable Tom Price
Secretary of Health and Human Services
200 Independence Avenue SW
Washington, D.C. 20201

Re: Comments on *Patient Protection and Affordable Care Act; Market Stabilization*

Dear Secretary Price:

The **I Am Essential** coalition of patient and community organizations representing millions of patients and their families is pleased to submit comments on the proposed rule entitled: [*Patient Protection and Affordable Care Act; Market Stabilization*](#). The comments below reflect the experiences of the communities we represent and their needs for quality, affordable health care. 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 our continued commitment to the goal of the Patient Protection and Affordable Care Act (ACA). Overall, the ACA and the regulations that the Department of Health and Human Services (HHS) have crafted to implement the law continue to benefit the individuals 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 to the communities we represent.

Although there is more work to be done to realize the full promise of quality, affordable health care for individuals who rely on the health plans offered in the ACA marketplaces, the ACA's solid foundation makes that work possible. As we move forward in the new administration, **I Am Essential** remains committed to preserving the patient protections and essential health benefits available through the health plans offered in the ACA marketplaces.

We will continue to advocate for predictable, lower patient cost-sharing; rigorous enforcement of nondiscrimination and other patient protections; and increased transparency so that individuals living with chronic conditions and disabilities can have meaningful access to quality, affordable health care.

We believe that more can and should be done to ensure a strong marketplace that makes quality, affordable coverage available to all consumers. However, we are concerned that the proposed rule is focused on improving the business concerns of issuers while not considering the impacts on consumers. Particularly, we are apprehensive about several of the proposals because of the premise on which HHS has developed the rule. HHS drafted this proposed rule on the assumption that individuals are choosing to enroll “only after they discover they require services.” We would like HHS and/or the insurers to share with us evidence of abuse and explore the impact of the proposed change more carefully before moving forward. We feel that many of the limits proposed would discourage individuals from obtaining health care coverage when they legitimately have a qualifying life event or have a change of circumstances. These proposals may prevent individuals who are attempting to take improper advantage of the system from doing so, but they would also block many other individuals, including many young, healthier individuals who would help ensure robust risk pools. Imposing ever-higher bureaucratic barriers to enrollment has already been shown to discourage healthy young people from enrolling and would ensure that only those most desperate for coverage would enroll, worsening the risk pool.

Initial and Annual Open Enrollment Period Length

We are concerned that shortening the open enrollment period would negatively impact the stability of the ACA marketplaces. We urge HHS to maintain the existing open enrollment period, or at least allow open enrollment until December 31, 2017. If HHS decides to move forward with a shortened open enrollment period for the 2018 plan year, we strongly encourage a robust outreach strategy to ensure that individuals understand the new timeline and the importance of enrolling on a health plan.

Special Enrollment Periods

Many of the changes that are proposed to the Special Enrollment Periods (SEPs) seem to stem from allegation of abuse; however, data has not been presented to demonstrate abuse and to justify the narrowing of SEPs. We strongly encourage HHS to evaluate available data on the current situation with SEPs before moving forward with changes that narrow the opportunity for individuals to obtain coverage. The broader goal of health care reform is affordable health care coverage for all, which would lead to more balanced risk pools and a stronger marketplace.

Levels of Coverage – Plan Actuarial Value

We believe that the proposed expansion of the acceptable variance in actuarial value is not “de minimis,” which is required under the law. The law specifically allowed this limited variation “to account for difference in actuarial estimates” – not to encourage competition in the market or put

downward pressure on premium costs, which are the goals HHS stated in the proposed rule summary. While we strongly support lowering cost-sharing for consumers, we do not believe this is the appropriate strategy to accomplish this goal.

The current rules surrounding actuarial value of plans are important to ensure that the metal classifications are useful guides for individuals when choosing plans and seeking a subsidy. We strongly support greater plan transparency and clear descriptions of plan details for individuals to make informed choices when comparing and selecting plans. The plan metal levels play a role in helping individuals navigate the ACA marketplaces. HHS should more closely consider the impact of these proposals, by engaging the diverse stakeholders that rely on the ACA marketplace plans for health care coverage, beyond this comment period before making changes to actuarial values of metal levels.

Network Adequacy

We are concerned with any proposal that erodes critical network adequacy standards and that would jeopardize access to providers with the appropriate experience and expertise to treat people living with chronic and serious conditions. While we support efficient and non-duplicative monitoring and enforcement of insurance standards between state and federal regulators, we do not support using accreditation as a substitute for regulator enforcement. Because accreditation standards are not readily accessible, it will be impossible to determine adequate compliance with the ACA's network adequacy requirements with the only requirement being that plans have been accredited.

In states with robust network adequacy standards and review processes that are at least as protective as the ACA's federal standards and the National Association of Insurance Commissioners (NAIC) Managed Care Plan Network Adequacy Model Act (#74), we support deference to the state regulatory process. However, absent evidence of robust state monitoring and enforcement of network adequacy, HHS must step in to review plan justification of compliance with federal standards.

Essential Community Providers

We are concerned with the proposal to weaken standards for Essential Community Providers, who are critical to caring for low income and medically underserved individuals. Restricting access to appropriate specialty care can result in dangerous and costly treatment interruptions. HHS has proposed to reduce this standard because it will reduce the burden on insurers; however, this policy has not proven to be a significant burden on insurers and instead establishes important assurances for consumers.

Comment Period

While we appreciate the need to finalize this rule to allow insurers to develop plans for next year in a timely manner, we do not feel it is appropriate to do so at the expense of other stakeholders. Because the comment period was only 20 days, patients, providers, and other stakeholders did not have the

opportunity to meaningfully comment on the significant policy changes included in the proposed rule. We believe that a comment period of at least 30 days is necessary to meet the notice and comment requirements of the Administrative Procedures Act.

Thank you for your consideration of our comments. We urge you to continue the commitment to current law and move forward with policies that will strengthen the successes that have been achieved for individuals living with chronic and serious conditions and disabilities and the health care system in the preceding years. Please reach out if we can offer any assistance.

Sincerely,

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The AIDS Institute

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