



July 12, 2017

Submitted via the Federal eRulemaking Portal

Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-9928
P.O. Box 8016,
Baltimore, MD 21244-8016

Re: 0938-ZB39 Reducing Regulatory Burdens Imposed by the Patient Protection and Affordable Care Act & Improving Healthcare Choices to Empower Patients

To Whom It May Concern:

On behalf of **Protect Our Care Coalition Illinois**, we appreciate the opportunity to provide comments to the Centers for Medicare and Medicaid Services (CMS) on its Request for Information (RFI) regarding regulatory reforms and improving patient access and care.

We are a membership coalition of healthcare advocates, providers, and consumers joining efforts to promote and preserve access to high quality affordable healthcare for Illinois residents and families. We come together here to strongly urge CMS to maintain its commitment to protecting vulnerable populations through robust Essential Health Benefits, network adequacy, and non-discrimination standards. To provide meaningful access to care and to promote maximum enrollment and competition, we respectfully request that CMS carefully consider our recommendation and comments detailed below.

- 1. Empowering patients and promoting consumer choice. What activities would best inform consumers and help them choose a plan that best meets their needs? Which regulations currently reduce consumer choices of how to finance their health care and health insurance needs? Choice includes the freedom to choose how to finance one's healthcare, which insurer to use, and which provider to use.**

To increase consumer choice and support informed decision-making when choosing a plan, it is important to support consumer friendly standardized benefit options to reduce consumer confusion and facilitate access to plans that meet care, treatment, and affordability needs. It is also vital that the regulations mandate transparency of plan information – including ensuring plans provide up-to-date and accurate formularies and detailed accurate and current information on provider networks to both prospective and current enrollees – as these are critical to ensure that consumers have the information they need to choose the best plan.

We also recommend that CMS continue to invest in consumer outreach and education activities. Enrollment advertising and assistance has also been critical to ensure that consumers understand their options and choose the plan that is right for them. We support continued investment in the Patient Navigator and Certified Application Counselor programs, including adequate grant funds to support direct consumer engagement efforts and continued training to build an effective and efficient assister workforce. Agents and brokers are also playing an increasingly important role in consumer education and enrollment activities, including their work with low-income vulnerable populations. Since these populations have not traditionally worked with agents and brokers, we urge CMS to direct training and education in low-income programs to agents and brokers operating in the individual market and encourage and support them to work with these populations. In the Proposed 2018 Notice of Benefit and Payment Parameters, the Secretary solicited comments on how to use remaining funds in the Pre-Existing Condition Insurance Plan (PCIP) to transition PCIP clients to exchange plans. In the Final Notice of Benefit and Payment Parameters, the Secretary indicated that it would take no action at this time on the proposal. We encourage the Secretary to use remaining PCIP funds to support consumer outreach and education activities that will facilitate greater enrollment, such as Consumer Assistance Programs, particularly if the Secretary finalizes the shortened open enrollment period.

2. Stabilizing the individual, small group, and non-traditional health insurance markets. What changes would bring stability to the risk pool, promote continuous coverage, increase the number of younger and healthier consumers purchasing plans, reduce uncertainty and volatility, and encourage uninsured individuals to buy coverage?

We believe the following should be considered in efforts to stabilize risk pools and attract younger, healthy consumers to sign up for coverage:

- **Work with Congress to eliminate the uncertainty that the current debate over the Affordable Care Act (ACA) repeal is having on the market.** We support federal and state efforts to allay uncertainty among both issuers and consumers and to increase robust competition in the Marketplaces for the 2018 plan year. The current debate in Congress over repealing the ACA is creating uncertainty and instability and we believe that Congress and the Administration should, instead, work together on policy solutions that increase coverage, reduce cost, and improve individual and population health. However, we believe that curbing vital consumer protections with regard to affordability and access is not the way to address stability and that many of the changes to individual market regulations included in the Market Stabilization Rule will in fact serve to limit enrollment and competition in the individual market, and thereby harm consumers who depend on the Marketplace for coverage.
- **Ensure continued commitment to provide cost-sharing reduction payments to issuers.** Uncertainty about the Administration's commitment to this critical affordability program makes it very difficult for issuers to set rates for the upcoming plan year and is impacting decisions by

some issuers not to continue selling products in the Marketplace. A strong commitment from CMS to continue these payments is critical to bringing stability to the individual market.

- **Protect Essential Health Benefits requirements that will meet the needs of enrollees.** We believe that the Essential Health Benefits requirements that require coverage for critical services – including prescription drug coverage, mental health and substance use disorder services, and preventive services without cost sharing – will help to attract a mix of healthy and sick enrollees. Because health status is not static, it is important to require plans to cover the range of services that individuals may need over the course of their lives.
- **Limit the availability of limited benefit and short-term coverage plans.** We do not support changes that would increase the availability of plans that offer limited coverage (either with or without federal subsidies). Prior to the ACA, these types of plans were ubiquitous and marketed unfairly as comprehensive coverage; instead, they provided consumers with little protection when they tried to actually use their coverage. Consumers were often left after unexpected illnesses with significant out of pocket costs and limited access to treatment. Moreover, we believe the continued existence of these plans will siphon off young, relatively healthy consumers from the Marketplaces causing further rising premiums for people in the Marketplace insurance pools and more insurers leaving the Marketplaces.
- **Invest in consumer education, outreach, and enrollment instead of penalizing sick people.** We believe that continuous coverage requirements are antithetical to the guaranteed issue consumer protections of the ACA. Imposing waiting periods before effectuating enrollment, pre-existing condition exclusions, and penalties for people who experience a gap in insurance coverage will harm consumers, particularly those who may be living with disabilities or with serious chronic conditions who are more likely to experience changes in employment and life circumstances throughout the year. Additionally, we note that individuals who need care but are denied coverage due to such rules are more likely to forgo early treatment and prevention and risk becoming sick and possibly disabled and requiring more expensive uncompensated care.
- **Extend open enrollment.** Given all the potential changes that consumers have to digest in the coming enrollment period, the decision to shorten open enrollment could also destabilize the risk pool. One of the justifications for shortening the open enrollment period was to limit adverse selection and leave insurers with a healthier pool. But people who are sick or have chronic conditions are likely to be the most diligent about signing up for insurance. Thus, the policy change could just as easily lead to a sicker pool, at least in the short term, if young, healthy people end up missing the new deadline for signing up.
- **Enforce the Individual Shared Responsibility Payment (ISRP).** The ACA requirement to maintain Minimum Essential Coverage (MEC) or pay a tax penalty is designed to ensure that healthier consumers participate in the Marketplace. Enforcing the ISRP will stabilize the risk pool by ensuring that consumers participate regardless of health status.

3. Enhancing affordability. What steps can HHS take to enhance the affordability of coverage for individual consumers and small businesses?

Cost is often a barrier to enrollment, we believe that commitment to out-of-pocket maximums, standardized plans with limited deductibles and co-insurance, and strong actuarial value standards are all essential in providing plans that will meet the prevention, care, and treatment needs of consumers.

To address affordability, policies should offer standardized benefits plans that use cost sharing instead of co-insurance to improve access to affordable medications. Co-insurance often conceals the real out of pocket cost from enrollees and prospective enrollees and can lead to prohibitively high prescription fills for medications. Plan designs that use co-payments instead of co-insurance, cap the amount of co-payments a consumer will pay for prescription drug fill, utilize low deductibles, and divide cost sharing out over a 12-month period should be encouraged. Policies should also focus on both premiums and out-of-pocket costs when addressing affordability.

We strongly urge CMS to enforce non-discrimination requirements that prohibit discriminatory plan designs. We continue to see plans that utilize tier structures to adversely impact people with high costs conditions. These types of plan designs serve to price people living with particular conditions out of the plan. Despite federal regulations and guidance prohibiting plan designs that discourage enrollment for people living with chronic illness. CMS should continue to monitor compliance with non-discrimination requirements – including the benefit design protections included in section 1557 of the ACA and federal regulations implementing the Essential Health Benefits requirements. In addition, we urge CMS to work directly with plans to correct plan designs that discriminate against people living with chronic illness.

4. Affirming the traditional regulatory authority of the States in regulating the business of health insurance. Which HHS regulations or policies have impeded or unnecessarily interfered with States' primary role in regulating the health insurance markets they know best.

We understand the traditional regulatory authority of States in regulating insurance and believe there should be a strong federal and state partnership to ensure that consumers are protected. We urge CMS to work with states to ensure that there is adequate monitoring and oversight to enforce essential non-discrimination and access protections.

In particular, **states that have plan management authority and are conducting formulary and non-discrimination reviews, CMS should require states to demonstrate that they are using the federal templates or equivalent tools to monitor compliance with federal rules.**

Similarly, CMS should work with states to ensure adequate monitoring and enforcement of network adequacy requirements. Given the increased reliance on state network adequacy review (including reliance on accreditation standards) for the 2018 plan year, we urge CMS to work with state departments of insurance to ensure that review processes are robust enough to ensure plan compliance with important network adequacy requirements.

CMS should to work closely with state regulators conducting these types of reviews to ensure compliance and may want to consider providing additional support or resources to ensure that states have the capacity to enforce important consumer protections.

Thank you, again, for the opportunity to comment on this RFI. We urge CMS to continue its commitment implementing the ACA in ways that ensure that people living chronic and complex conditions have access to quality, affordable health care coverage. Please contact Alaina Kennedy with the AIDS Foundation of Chicago at akennedy@aidschicago.org.

Respectfully submitted by,

Protect Our Care Illinois