



## CONSORTIUM FOR CITIZENS WITH DISABILITIES

August 1, 2014

Transmitted via e-mail

We, the co-chairs of the Consortium for Citizens with Disabilities Health Task Force, appreciate the opportunity to comment on out-of-pocket protections and reference pricing, as requested in the FAQs About Affordable Care Act Implementation (Part XIX) issued on May 2 by the Departments of Labor, Health and Human Services, and Treasury.<sup>1</sup>

The Consortium for Citizens with Disabilities (CCD) is a coalition of more than 100 national consumer, advocacy, provider, and professional organizations advocating on behalf of people of all ages with physical and mental disabilities and their families.

In question 4, the departments address reference pricing in large-group market coverage or self-insured group health plans. The CCD Health Task Force shares the Department's concerns that a reference pricing cost-structure may be a way around the otherwise prohibited limitations on coverage including out-of-pocket limits and network adequacy. We recommend that cost-sharing rules and other beneficiary protections, including limitations on out-of-pocket payments, should apply to reference pricing structures.

### *Reference Pricing is Cost Sharing*

Reference pricing has been described as attempt to improve upon existing cost-sharing mechanisms. However, it is still a form of cost-sharing and the beneficiary protections that apply to co-pays, co-insurance, deductibles, and other more traditional forms of cost-sharing should still apply to reference pricing structures.

### *Beneficiaries Lack Sufficient Information*

Reference pricing is based on encouraging beneficiaries to seek lower-cost providers, but the rampant and well-documented information problems that pervade the health care system prohibit this kind of comparison-shopping.

Doctors and hospitals often do not know prices, consumers cannot find prices if they ask, prices vary dependent on payment source, and beneficiaries lack sufficient medical knowledge to compare quality of providers or facilities. Most likely, patients will only learn of the differences and their subsequent cost-sharing obligations after a procedure for which they are billed for the remainder of the price. This lack of sufficient information for beneficiaries will mean that in practice, reference pricing will operate like other cost-sharing schemes.

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<sup>1</sup> <http://www.dol.gov/ebsa/pdf/faq-aca19.pdf>

*It is Unclear How Reference Pricing Will Be Applied*

According to the literature, reference pricing is used most effectively on procedures with high variability on cost but low variability in quality. However, it is unclear how plans make that determination and what evidence or data they use to decide. We are concerned that reference pricing will be applied to procedures that also vary in quality, putting beneficiaries at risk.

*Reference Prices Limit Networks*

Reference pricing is sometimes used to limit networks of providers and avert cost-sharing rules by only considering those who accept the reference price to be in-network. People with disabilities often have long-standing relationships with providers or need to seek care from providers who specialize in very particular services. We support broad-based networks to preserve existing provider relationships and protect beneficiaries who need specialized services. Considering “in-network” only those providers that accept the reference price will further limit provider networks and exclude providers who provide specialized services.

The Departments requested comment specifically on those plans that only consider providers accepting the reference price as in-network providers. We believe that this practice will shift costs to consumers and create limited networks. We recommend that beneficiary cost-sharing protections apply when beneficiaries seek care at an otherwise-in-network provider, even if that provider does not accept the reference price. Beneficiaries can reasonably be expected to know which providers are in-network or not, they cannot be reasonably expected to know the prices charged by all providers. The Departments should not allow health plans to avoid out-of-pocket limit beneficiary protections by determining that providers not accepting the reference price are not in the provider’s network.

Due to the serious information problems facing consumers, unclear application of the reference price, and potential to avoid ACA out-of-pocket limits, we recommend that the Departments consider reference pricing to be cost-sharing and subject to the same limits and copays, coinsurance, and deductibles. We appreciate this opportunity to comment on this important beneficiary protection. If you have questions about our comments please contact Julie Ward, The Arc, ([ward@thearc.org](mailto:ward@thearc.org)).

Sincerely,

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