



CONSORTIUM FOR CITIZENS
WITH DISABILITIES

December 21, 2012

Marilyn Tavenner
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-9972-P
P.O. Box 8012
Baltimore, MD 21244-1850

RE: Proposed Regulation on the Patient Protection and Affordable Care Act; Health Insurance Market Rules; Rate Review

RIN 0938-AR40

File Code CMS-9972-P

Dear Acting Administrator Tavenner,

The undersigned members of the Consortium for Citizens with Disabilities (CCD) Health Task Force appreciate the opportunity to comment on the Proposed Rule on the Patient Protection and Affordable Care Act; Health Insurance Market Rules; Rate Review, published in the Federal Register on November 26, 2012.

CCD is a coalition of approximately 100 national disability-related organizations working together to advocate for national public policy that ensures the self-determination, independence, employment, integration and inclusion of children and adults with disabilities in all aspects of society. The CCD Health Task Force focuses on health policy from a disability perspective.

The Affordable Care Act was passed with the goal of providing access to affordable health care for all Americans, including Americans with disabilities and chronic conditions. *The new private health insurance market rules that prohibit discrimination based on health status are among the most important public policy developments impacting people with disabilities and chronic conditions since the Americans with Disabilities Act of 1990. The Affordable Care Act truly reformulates the private insurance market and eliminates incentives to discriminate against individuals and small groups based on health status, claims experience, and disability status.*

Because of this, the CCD strongly supports this proposed rule and urges CMS to publish a final rule as expeditiously as possible. Once final and fully implemented, CMS should work closely with states to fully enforce the market reforms at the heart of the Affordable Care Act.

A truly nondiscriminatory health insurance market can only be achieved by broadening the insurance pool and covering as many Americans as possible. However, in a private market with such dramatic changes in the rules of participation, there are bound to be inequities and distortions until such a market fully matures. Private health plans that operate in good faith must be able to limit their exposure in instances where disproportionate costs are incurred by unexpected swings in the mix of enrollees in any given plan, or these plans will simply not survive.

From a consumer perspective, such unexpected swings in enrollee mix, often referred to as “adverse selection,” coupled with lack of transparency and the high cost of health insurance are the key features that lead to health plans continuing to find ways to discriminate based on health status. Without mechanisms to moderate the effects of adverse selection, and to make coverage more available, affordable, and accountable, people with disabilities, chronic conditions and high health care costs will continue to be on the receiving end of discriminatory practices in the insurance market in 2014 and beyond, and will have limited access to health care coverage. For this reason, CCD also supports CMS’ previously-issued regulations on risk adjustment, risk corridors and reinsurance.

The key non-discrimination protections of the Affordable Care Act, however, are the provisions at issue in this proposed rule. CCD applauds CMS for issuing this proposed rule and for seeking ways to mitigate adverse selection and stabilize premiums. Among other things, these provisions are designed to remove financial disincentives for private health plans to cover people with disabilities and chronic conditions starting in 2014. The newly proposed rules include health insurance market reforms that would prohibit private health plans from discriminating against individuals because of a pre-existing or chronic condition, beginning in 2014.

Under the proposed rule, health plans would be allowed to vary premiums based only on age, tobacco use, family size, and geography, and only within a certain range for each factor. Health plans could not take health status and claims experience into account when setting premiums. This is a major change from the current private insurance system. Coupled with this protection are the dual protections of the guarantee of availability and renewability of coverage regardless of disability or health status. Health plans functioning in the exchange cannot turn anyone away. Over the long term, these provisions will guard against adverse selection in the individual and small group markets as insurance reforms are fully implemented.

Below we address more specific aspects of the proposed rule but our overall message is unwavering and well established. CMS should move forward with issuance of a final rule on these insurance market reforms that implement the strongest protections possible for enrollees with disabilities, chronic conditions, and individuals with high health care costs to ensure that the prohibition against discrimination based on health status in the private insurance market is fully and effectively implemented in 2014 and beyond.

CCD’s Specific Comments:

1. *Fair Health Insurance Premiums*

CCD strongly supports implementation of the following provisions of the Proposed Rule 45 CFR 147.102, which would require health plans to limit any variation in premiums only to age, tobacco use, family size, and geography. These are among the most important provisions in the entire Affordable Care Act in that they put an end to medical underwriting

and will dramatically improve meaningful access to health insurance for people with disabilities and chronic conditions.

Moreover, we request that CMS establish a standardized rating methodology for all plans which would enhance transparency and accuracy of the risk adjustment methodology. We believe that providing states the ability to use their own age curves, age bands, and family rating methods would provide an avenue for adverse selection. Thus, we recommend that CMS establish a federally-set rating methodology. This approach would create a uniform methodology across states that would protect all beneficiaries from unequal practices in different areas of the country depending on the State in which the beneficiary resides.

2. Guaranteed Availability and Renewability of Coverage

CCD strongly supports implementation of Proposed Rule 45 CFR 147.104, which prohibits health plans from denying coverage to people because of a pre-existing condition or any other factor such as prior medical claims, genetic predisposition, or any factor related to one's health status. In particular, we support that health plans offering coverage in the group market maintain a year-round open enrollment period for employers. We also support that issuers offering individual coverage would offer plans during open enrollment periods consistent with those required by the Exchanges. We agree that having this consistency in the open enrollment period results in less of an adverse selection risk, and is not overly burdensome on issuers.

Additionally, we support applying a consistent minimum marketing standard to the entire marketplace which would prohibit health plans from setting agent commissions so low that they are discouraged from marketing to certain individuals and small groups. The proposed rule leaves it upon States to actively monitor and regulate marketing practices by health plans. The primary responsibility for this type of monitoring is appropriately at the state level, but the federal government plays an important role as well. We request that CMS set out standards to monitor State enforcement activities to ensure that the marketing activities of health plans are being regulated, and step in to promptly stop any misleading or deceptive marketing practices where states fail to properly enforce these activities. Lax enforcement of marketing activities is one of the primary ways that adverse risk selection will continue in the newly reformed health insurance marketplace.

We applaud CMS in implementing Proposed Rule 45 CFR 147.106 guaranteeing renewability of health insurance coverage. Coupled with guaranteed issue and effective premium rating protections, these renewability requirements will ensure that people who play by the rules and timely pay their insurance premiums will have the security of knowing they can maintain their health insurance indefinitely, regardless of accidents, injuries, surgeries, disabilities or chronic conditions.

In response to CMS's solicitation, we strongly support revision to this rule to include that a health plan must renew coverage to those enrollees who have been terminated from coverage by an Exchange Qualified Health Plan, where the enrollee's coverage has been terminated for events such as a Qualified Health Plan's loss of certification.

3. Single Risk Pools

CCD supports Proposed Rule 45 CFR 156.80 requiring health plans, inside and outside of the Exchange, to be required to have a single risk pool for individuals and a single risk pool

for small group market coverage, on a state-by-state basis. Requiring a single risk pool could reduce insurers' ability to "cherry pick" healthier enrollees, since insurers operating in both the exchanges and the outside markets will not be able to charge lower prices in the external markets to attract healthier people. This may result in the short term in price increases for some young and healthy individuals and small groups currently being medically underwritten. For this reason, CMS should consider a phase-in of this aspect of the rule to lessen the impact on these individuals.

4. *Rate Review*

Finally, CCD agrees with CMS's approach in changing the rate review program. While review programs have been in effect in many states, rate hikes often faced little or no scrutiny. We believe that the proposed changes provide much greater scrutiny and transparency, and help to protect consumers from unjustified premium increases.

We thank you for the opportunity to comment on this important proposed rule and encourage you to contact us to further discuss any of these issues.

For more information, please do not hesitate to contact any of the co-chairs below.

Sincerely,

Mary Andrus
Easter Seals
mandrus@easterseals.com

Tim Nanof
American Occupational
Therapy Association
tnanof@aota.org

Angela Ostrom
Epilepsy Foundation
aostrom@efa.org

Lisa Ekman
Health & Disability Advocates
lekman@hdadvocates.org

Julie Ward
The Arc of the US
ward@thearc.org

Peter Thomas
Brain Injury Association of America
peter.thomas@ppsv.com

On Behalf of,

ACCSES

American Association on Health and Disability

American Occupational Therapy Association

American Therapeutic Recreation Association

Association of University Centers on Disabilities

Brain Injury Association of America

Easter Seals

Epilepsy Foundation

National Association of Councils on Developmental Disabilities

National Association of State Head Injury Administrators

National Disability Rights Network

National Multiple Sclerosis Society

The Arc of the United States

United Cerebral Palsy