



FOR IMMEDIATE RELEASE

December 13, 2016

CONTACT

Kristy Lukaszewski
202.789.6931 Ext 101
Klukaszewski@dialysispatients.org

Dialysis Patients Outraged by CMS Move Giving Insurers Illegal Veto Power Over Access to Private Coverage

Dialysis Patient Citizens says CMS rule tacitly allows insurers to discriminate based on patients' health condition

Washington, D.C. – Advocates for dialysis patients are outraged by an interim final rule issued late yesterday by the Centers for Medicare and Medicaid Services (CMS) that could force patients off their current health plans and jeopardize their access to care.

The rule, which CMS wrote with the stated purpose of ensuring that dialysis patients receive accurate information about their health coverage options, instead empowers insurers to prevent those patients from receiving charitable premium assistance that makes their health insurance affordable.

“The administration is giving insurers the authority to discriminate against people based on their health status in ways that could force patients with complex medical needs off the coverage that gives them access to lifesaving care,” said Hrant Jamgochian, chief executive of Dialysis Patient Citizens, which represents nearly 30,000 dialysis and pre-dialysis patients nationwide. “With this rule, CMS is telling dialysis patients that the patient protections afforded to everyone else do not apply to them.”

The rule issued yesterday applies only to patients with kidney failure, also called end-stage renal disease (ESRD), who receive charitable assistance from third parties to pay the premiums of plans they bought in the exchanges created under the Affordable Care Act. The rule requires dialysis providers “to ensure that issuers are informed of and have agreed to accept the third party payments” and states that “If an issuer does not agree to accept the payments for the duration of the plan year, the [dialysis] facility shall not make payments of premiums and shall take reasonable steps to ensure that such payments are not made by any third parties to which the facility contributes.”

Under the rule, insurers can choose to reject financial assistance to patients that helps to offset the cost of premiums, forcing patients to pay the premiums entirely out of their own pocket or drop their coverage altogether. The rule singles out ESRD patients, who are eligible for Medicare at any age but who can benefit from services offered in the individual insurance market that Medicare does not cover.

“CMS is now in the game of picking winners and losers – you can receive help paying your premiums if you have HIV/AIDS, but not if you are in renal failure,” said Mike Guffey, a DPC board member and ESRD patient. Guffey kept his private insurance coverage when he was first diagnosed with kidney failure, which helped to ensure he had lower out-of-pocket expenses and could pay for a transplant while he continued to work full-time. “This administration says it supports patient choice, but this rule takes choice away from patients like me with highly complex medical needs.”

DPC further criticized the timing of the rule, which was issued just days before the Dec. 15 deadline to enroll in marketplace coverage that will take effect Jan. 1.

“CMS had months to issue a proposed rule on this subject – instead it waited until just two days before the deadline for patients to ensure they will be covered in the new year,” Jamgochian said. “By issuing an interim final rule, CMS has also violated the Administrative Procedures Act by preventing patients from having any input before the rule takes effect.”

CMS issued a public request for information in August that questioned whether ESRD patients could receive third-party payments that help pay the premiums of insurance plans purchased on the exchanges created by the Affordable Care Act. DPC's comments to CMS described the distinct benefits that exchange plans can offer ESRD patients over Medicare, including the following:

- Dialysis patients often need care coordination services that are not covered in Medicare.
- Exchange plans include a cap on out-of-pocket expenses that does not apply in Medicare.
- Private plans may offer patients access to preferred doctors, specialists and health care facilities that do not participate in Medicare.
- In addition, ESRD patients under age 65 are prohibited in half the states from buying Medigap coverage, leaving them responsible for the 20 percent of health care costs not covered by Medicare.

DPC also expressed concerns that if patients lose their charitable assistance and are forced from private coverage into Medicare, insurers will have a disincentive to provide the full range of preventive and treatment services to patients before they made the switch.

"Insurers have a financial interest in restricting essential services to policyholders who they know are about to be thrown into Medicare," Jamgochian said. "This rule will encourage insurers to limit patients' choice of insurance plans and obstruct their access to critical care, such as a preemptive kidney transplant, surgery for a fistula to ensure safe dialysis, or even patient education about measures to help delay or avoid kidney failure."

In its comment letter to CMS, DPC cited the real-world experiences of ESRD patients who receive better coverage in exchange plans than they would in Medicare. The examples include

- a Texas patient whose exchange plan paid for diabetic supplies not covered by Medicare.
- an Illinois patient whose private coverage paid for nutritional supplements prescribed by his nephrologist that were not covered by Medicare.
- An Idaho patient whose private plan covers treatment for depression by a psychologist who does not participate in Medicare.

"We support effective efforts to prevent providers and insurers from improperly steering patients into particular insurance plans," added Guffey. "But those efforts should not infringe on patient choice. Patients pay into their private health insurance coverage for years expecting to get the care they need when they need it, not to be pushed out when they are diagnosed with a chronic health condition."

Dialysis Patient Citizens is America's largest patient-led organization representing dialysis patients, DPC's membership consists of more than 28,000 dialysis and pre-dialysis patients and their families.

###