

September 28, 2011

The Honorable Kathleen Sebelius
Secretary
Department of Health and Human Services
Hubert H. Humphrey Building
200 Independence Avenue, S.W.
Washington, DC 20201

Re: CMS-9989-P: Patient Protection and Affordable Care Act; Establishment of Exchanges and Qualified Health Plans

Dear Secretary Sebelius:

Dialysis Patient Citizens (DPC) appreciates the opportunity to provide comments to the Department of Health and Human Services (HHS) on the Patient Protection and Affordable Care Act; Establishment of Exchanges and Qualified Health Plans proposed rule (CMS-9989-P).

As America's largest dialysis patient organization, DPC represents more than 23,000 dialysis and pre-dialysis patients and their families. DPC's mission is to improve the quality of life of dialysis patients by engaging policy makers, providers and the public. Through patient education, empowerment and advocacy, we work to increase awareness about kidney disease and promote favorable public policy.

Each year in the United States, more than 100,000 Americans are diagnosed with end stage renal disease (ESRD), an irreversible condition which is fatal without a kidney transplant or lifesaving dialysis treatments. Currently, more than 485,000 Americans suffer from ESRD and 341,000 are on dialysis, a number that is expected to double over the next decade. This dramatic rise is attributable to the increased prevalence of diabetes and hypertension, two skyrocketing chronic diseases and the leading risk factors for ESRD.

After reviewing CMS-9989-P, DPC would like to highlight several key issues that were not addressed in this proposed rule and we encourage HHS to fully consider and incorporate the following proposals into the final version of the rule.

Coverage Parity Inside and Outside the Exchanges

DPC seeks to ensure CKD and ESRD patients have the same access to private insurance both inside and outside of the exchanges.

Under current law, known as Medicare Secondary Payer (MSP), Medicare pays secondary for individuals with group health coverage who develop ESRD - up to the first 30 months of Medicare entitlement,

following which Medicare becomes the primary payer. Unless it is clarified that MSP law applies to plans sold through the exchanges, the diagnosis of ESRD will result in Medicare paying primary for as many as 30 months sooner than it would if MSP applies. We want to ensure that individuals who develop kidney failure do not lose their private coverage and shift automatically to Medicare. From the patient's perspective, an abrupt shift in coverage could limit access to benefits and increase out-of-pocket expenses. By ensuring consistent application of MSP in the new exchanges, HHS can ensure parity between the mechanisms of coverage inside and outside of the exchanges.

In addition, by maintaining consistent policy for people with kidney failure inside and outside health insurance exchanges, the Medicare program will save an estimated \$4 to \$5 billion over ten years, making this sound fiscal policy, while increasing patient access to care.

Access to Premium Credits and Cost-Sharing Subsidies

Additionally, we urge HHS to ensure that economically-disadvantaged individuals who develop ESRD can qualify for premium credits and cost-sharing subsidies that help them afford health insurance through an exchange, even though they might be eligible to enroll in Medicare based upon their kidney failure. If an individual is eligible to enroll in Medicare, but has not filed an application for Medicare benefits, he/she is not "eligible for coverage" (and therefore not entitled to Medicare Part A benefits) and should be permitted to receive exchange subsidies. Ensuring access to these subsidies will make private coverage attainable for more Americans, further reducing the number that become reliant on Medicare for health coverage.

At this time, DPC would also like to take the opportunity to highlight several key patient protections that HHS should seriously consider as it develops further rules related to the new health insurance exchanges.

Essential Benefits

DPC is anxiously awaiting the future rule that will define "essential health benefits." In the mean time, we would like to stress the importance of including dialysis and kidney transplantation in the package, as both are absolutely essential to the survival of an ESRD patient.

When defining essential benefits for the health exchange plans, we find it difficult to imagine the exclusion of dialysis and transplantation. These life-preserving treatments allow hundreds of thousands of Americans to live high quality and fulfilling lives. Mandating dialysis as an essential benefit will ensure that ESRD patients are able to take advantage of new coverage opportunities the exchanges create.

Patient Protections

We also urge HHS to take steps to avoid the possibility of dialysis coverage limits in their benefit analysis. Individuals who have or develop ESRD should not be subject to benefit designs that limit their coverage to lifesaving therapy, such as dialysis. We would like to see protections included to ensure plans are unable to limit coverage to a defined number of treatments or a defined period of time. Such "de facto" annual/lifetime limits should be prohibited for all plans, whether inside exchanges or not.

Adequate choice of providers is also an important issue to consider for ESRD patients. Dialysis patients typically require treatments three times a week for approximately four hours each session. For such a time-intensive treatment, it is important that patients are in close proximity to the dialysis provider of their choice. DPC wants to ensure that the new health insurance exchanges include both adequate provider choice and reasonable drive time requirements for ESRD patients.

With more than 31 million Americans currently suffering from chronic kidney disease (CKD), it is critical for patients to have access to kidney treatments, especially dialysis and transplants, in the new health insurance exchanges. We thank you for the opportunity to share our feedback and welcome the chance to work with you on this important issue in the future.

Sincerely,

A handwritten signature in black ink, appearing to read "Hrant Jamgochian". The signature is fluid and cursive, with the first name "Hrant" and last name "Jamgochian" clearly distinguishable.

Hrant Jamgochian
Executive Director