

August 6, 2015

By Electronic Submission

Ms. Bridget Dooling
Deputy Branch Chief and Policy Analyst
Office of Information and Regulatory Affairs
Office of Management and Budget
725 17th Street, NW
Washington, D.C. 20503

RE: Follow up to the July 14 meeting on HHS/OCR Proposed Rule Under Review at OIRA Titled “Nondiscrimination Under the Patient Protection and Affordable Care Act” (RIN 0945-AA02)

Dear Ms. Dooling:

Thank you for meeting with our coalition on July 14 about the Department of Health and Human Services’ (HHS) Proposed Rule entitled *Nondiscrimination Under the Patient Protection and Affordable Care Act* (RIN 0945-AA02), which is currently under review by the Office of Management and Budget’s Office of Information and Regulatory Affairs (OIRA). We discussed in detail our recommendations as summarized below:

- Cost-sharing policies must be reasonable and transparent.
- Specific parameters for formulary tiering structures and for “specialty” drug categories are needed.
- Physicians, not plans, should define medical necessity.
- Parameters for medical management techniques are needed.
- Robust formularies are needed for medications in therapeutic classes where the available treatments are not interchangeable.
- Clear and consistent oversight and enforcement at the federal level is essential to meaningful nondiscrimination protections.
- Nondiscrimination standards under the ACA must focus on the discriminatory impact of practices, consistent with other civil rights laws.

At the end of the meeting, you invited us to follow up and share any additional information that highlights potentially discriminatory practices of some Marketplace plans. To that end, attached are two documents that describe the experience to date with Marketplace coverage of medications for patients with HIV/AIDS, mental illness, multiple sclerosis, kidney disease and other conditions. In particular, these Avalere analyses demonstrate the increasing frequency of Marketplace plans placing specialty drugs on the highest cost-sharing tier, charging co-insurance and implementing utilization management. Such plans are more likely than employer-based plans to use such practices.

Thank you for the opportunity to submit this information. We hope that the guidance meaningfully incorporates our recommendations. Please consider us a resource as you work to finalize the draft guidance—we are happy to answer your questions and provide any needed additional information.

Sincerely,

Epilepsy Foundation
Beatriz Duque Long, Senior Director Government Relations

National Alliance on Mental Illness
Andrew Sperling, Director of Legislative Advocacy

National Kidney Foundation
Tonya Saffer, Senior Health Policy Director

The AIDS Institute
Carl Schmid, Deputy Executive Director

Attachments

cc: Administrator Howard Shelanski