

April 8, 2013

The Honorable Kathleen Sebelius
Secretary of Health and Human Services
200 Independence Ave. SW
Washington, D.C. 20201

The Honorable Jack Lew
Secretary of the Treasury
1500 Pennsylvania Ave. NW
Washington, DC 20220

Deputy Secretary Seth D. Harris
Acting Secretary of Labor
200 Constitution Ave. NW
Washington, DC 20210

Dear Secretaries Sebelius and Lew, and Acting Secretary Harris:

We are writing as consumer and public health organizations representing millions of American consumers about the Frequently Asked Questions (FAQs) that were issued by the departments on February 20, 2013. We are specifically concerned with Q2 regarding compliance with the annual limitation on out-of-pocket maximums under the Public Health Services Act section 2707(b) in section 1302(c)(1) of the Affordable Care Act (ACA).

The out-of-pocket limits established in the ACA are extraordinarily important in making health care affordable to millions of Americans. Underinsurance – caused by high out-of-pocket limits and exceptions to those limits – is a serious and growing problem that impedes access to adequate treatment and care for serious medical conditions. In contrast, the out-of-pocket limits established by the ACA provide vital protection to consumers against the risk of financial ruin if they are faced with a serious medical condition. The out-of-pocket limits, in combination with several other provisions of the law including prohibitions on annual and lifetime limits, are hugely important in standing behind the commitment to offer Americans access to meaningful coverage that will not jeopardize their financial well-being if they develop a costly medical condition.

The policy stated in the FAQ would allow plans with two or more administrators to maintain separate and independent limits, based on their current practice, for one year starting in 2014 under certain conditions. Next year, the out-of-pocket limit for individuals with private coverage will be approximately \$6,250, but under this policy a patient with a serious condition such as cancer, heart disease or other serious medical conditions could easily face actual out-of-pocket costs of approximately \$12,500 or more reflecting separate limits for major medical and prescription drug expenditures (and a dental plan can also have a separate limit). Moreover, the departments have stated that if a prescription drug plan does not currently have a limit, then it will not have to have one in 2014, which means patients who require expensive drugs could continue to have enormous financial exposure despite the clear intent of the law to limit a patient's total out-of-pocket exposure.

We know that many employer-sponsored health plans with multiple administrators, such as those with health spending accounts (HSAs), already have the capability in place to

coordinate plan limits. Clearly, the technology and systems capability already exist to coordinate information about a patient's expenditures among multiple administrators.

Similarly, enrollees with coverage from more than one medical plan successfully have those benefits "coordinated" through the plan's coordination of benefits provisions.

The most disturbing aspect of the policy imbedded in the FAQ is that it places the burden of the problem entirely on the patient. If some plans are not capable of achieving this level of integration for 2014, then the departments can and should take steps to mitigate the burden on patients. For example, if a plan has different administrators for major medical and prescription drug benefits and the two systems cannot interact, then the administration could – and should – have determined that the out-of-pocket limits for each administrator would be a portion of the 2014 total limit. The limit could be divided in half for two plans or, alternatively, apportioned according to the actuarial value provided by each administrator.

Although this approach is imperfect, it is far more equitable and compliant with the intent of the ACA than is the policy expressed in the February 20th FAQ.

We strongly urge you to review and revise the policy expressed in FAQ Q2 to be consistent with the clear intent of the ACA. It is imperative that important consumer protections such as out-of-pocket limits are in place in 2014 as we move to make health care more affordable and to strengthen consumer awareness and support of this vital piece of legislation.

Thank you for your consideration of this matter. For further information, please contact Stephen Finan, Senior Director of Policy at the American Cancer Society Cancer Action Network (SFinan@cancer.org).

Sincerely,

American Cancer Society Cancer Action Network

AARP

AFSCME

American Diabetes Association

American Heart Association

Community Catalyst

Consumers Union

Georgetown University, Center for Children and Families

National Multiple Sclerosis Society

National Partnership for Women and Families