April 16, 2013

The Honorable Seth Harris
Acting Secretary, United States Department of Labor
200 Constitution Ave. NW
Washington, DC 20210

Submitted electronically to: e.ohpsca-2707.ebsa@dol.gov

Dear Acting Secretary Harris:

The 105 undersigned organizations write on behalf of the more than 133 million Americans living with chronic diseases and disabilities and their family caregivers. We respectfully urge you to revise the exception to the coordinated annual limitation on out-of-pocket maximums for certain group health plans, as put forth in the February 2013 "Frequently Asked Questions (FAQs) about Affordable Care Act Implementation Part XII." Permitting certain plans to have a total annual out-of-pocket limit that is twice the amount of other plans is contrary to the Affordable Care Act (ACA) and can have an enormous negative impact on patients. In this letter, the undersigned organizations offer an alternative that respects the administrative challenges of coordinating multiple service providers while maintaining the intent of the ACA to limit out-of-pocket spending to a single annual limit.

The ACA introduced standards designed to protect patients from high out-of-pocket costs for the majority of health plans in the marketplace, beginning January 1, 2014. Section 1302(c)(1) of the ACA requires health plans to comply with established annual limitations on out-of-pocket spending, tied to the maximum cost sharing for health savings accounts (HSAs).[1] This annual limit on out-of-pocket spending applies to qualified health plans, non-grandfathered individual and small group policies, and non-grandfathered group health plans. This protection is vital for people with severe and chronic health conditions, whose out-of-pocket spending can total thousands of dollars each year.

The affordability of coverage is a significant concern to people with chronic diseases and disabilities. The limits on annual out-of-pocket spending do not include the monthly premiums for enrollment, which have risen dramatically in recent years. When premiums are taken together with the annual out-of-pocket maximum, patients with chronic conditions could be facing annual costs for health care at around $12,000.

The FAQ document referenced above suggests that certain group health plans will have a one-year grace period in 2014 that permits a total annual out-of-pocket maximum for a patient that is double the amount intended by the ACA. We understand that this grace period would apply only in 2014 for group health plans that utilize multiple service providers to help administer benefits. However, we argue that this allowance, even within the limits offered by the FAQ document, will disproportionately harm people with chronic diseases and disabilities.

[1] For 2013, maximum out-of-pocket costs for HSAs are $6,250 for individual coverage and $12,500 for family coverage, as provided by the Internal Revenue Service on April 27, 2012, in Revenue Procedure 2012-26.

We understand the administrative burden to collect and share data on a timely and accurate basis for those plans that utilize multiple service providers to administer covered benefits, such as having one company managing medical expenses and a separate company managing prescription drugs. However, permitting these plans to have a total annual out-of-pocket limit that is twice the amount of other plans subject to this requirement is contrary to the ACA. As written, this grace period will have an enormous negative impact on patients who are already bearing significant costs for health care.

For these reasons, we respectfully urge you to revise the proposed leniency and require plans with multiple service providers to maintain total annual out-of-pocket limits that do not exceed the dollar amounts set forth in section 1302(c)(1). Such plans must ensure that the sum of separate out-of-pocket limits must not be greater than the annual limit established by law, and separate limits should not be developed in a way that discriminates against patients with high costs within a particular benefit.

Further, the manner and method of introducing this grace period policy is also contrary to federal rulemaking policy. This one-year allowance for certain group health plans was not introduced or referenced in the proposed or final regulations on essential health benefits. Rather, it appeared in an FAQ document, with no opportunity for stakeholder input and no obligation to address commenters.

Finally, this unexpected interpretation of the statute and regulation highlights the importance of creating and enforcing a uniform appeals process not only for issues related to coverage but also for issues resulting from calculating out-of-pocket expenses. Patients with high-cost health needs are the most likely to need the protections of an annual out-of-pocket maximum and will be most concerned about how their medical expenses count towards this maximum. The ability to appeal such calculations is imperative; formal, uniform processes for these appeals across all plans would offer additional protections to all health plan enrollees, especially people living with chronic diseases and disabilities.

Thank you for taking immediate action to revise the proposed policy to create an exception to the coordinated annual limitation on out-of-pocket maximums for certain group health plans. We look forward to working with you to further develop and refine policies and processes to ensure patients receive necessary and affordable health care services and the best possible care.

Sincerely,

AIDS Action Baltimore
AIDS Community Research Initiative of America
AIDS Foundation of Chicago
The AIDS Institute
AIDS United
AIM at Melanoma
Alliance for Aging Research
Alliance for Patient Advocacy
Alpha-1 Association

Alpha-1 Foundation
Alzheimer's Association
American Academy of Neurology
American Academy of Physician Assistants
American Association of Diabetes Educators
American Association on Health and Disability
American Autoimmune Related Diseases Association
American Cancer Society
American Cancer Society Cancer Action Network
American Epilepsy Society
American Foundation for Suicide Prevention
American Heart Association/American Stroke Association
American Kidney Fund
Amputee Coalition
Arthritis Foundation
Association of Community Cancer Centers
Asthma and Allergy Foundation of America
Autoimmune Advocacy Alliance
Cancer Support Community
Caregiver Action Network
Center for Lawful Access and Abuse Deterrence
Colon Cancer Alliance
Community Access National Network
COPD Foundation
Crohn's & Colitis Foundation of America
Dab the AIDS Bear Project
Easter Seals
Epilepsy Foundation
Epilepsy Foundation of Indiana
Epilepsy Foundation of Kentuckiana
Epilepsy Foundation of Michigan
Epilepsy Foundation of Minnesota
Epilepsy Foundation of Missouri and Kansas
Epilepsy Foundation of Northeastern New York, Inc.
Epilepsy Foundation Northwest (Oregon, Washington, Alaska)
Epilepsy Foundation Texas – Houston/Dallas-Fort Worth/West Texas
FORCE: Facing Our Risk of Cancer Empowered
GIST Cancer Awareness Foundation
Global Healthy Living Foundation
HealthHIV
Hemophilia Federation of America
HIV Dental Alliance
Huntington's Disease Society of America
Hyacinth AIDS Foundation
Hydrocephalus Association
Immune Deficiency Foundation
International Myeloma Foundation
Legacy Community Health Services, Inc.

Leukemia & Lymphoma Society
Lifelong AIDS Alliance
LIVE**STRONG** Foundation
Lung Cancer Alliance
Lupus Foundation of America
Mental Health America
Minnesota AIDS Project
Minority Development& Empowerment Inc.
Myasthenia Gravis Foundation of America
National Alliance for Caregiving
National Alliance of State & Territorial AIDS Directors
National Alliance on Mental Illness
National Alopecia Areata Foundation
National Association of Epilepsy Centers
National Association of Nutrition and Aging Services Programs
National Council for Community Behavioral Healthcare
National Eczema Association
National Fibromyalgia & Chronic Pain Association
National Gaucher Foundation, Inc.
National Health Council
National Hemophilia Foundation
National Lung Cancer Partnership
National Marfan Foundation
National Multiple Sclerosis Society
National Organization for Rare Disorders
National Patient Advocate Foundation
National Psoriasis Foundation
National Stroke Association
Osteogenesis Imperfecta Foundation
Ovarian Cancer National Alliance
Pancreatic Cancer Action Network
Parkinson's Action Network
Patient Services Incorporated
PKD Foundation
Prevent Blindness America
Project Inform
Pulmonary Hypertension Association
Rare Disease Legislative Advocates
RetireSafe
San Francisco AIDS Foundation
Society for Women's Health Research
Spina Bifida Association
Susan G. Komen Advocacy Alliance
US Pain Foundation
Us TOO International Prostate Cancer Education and Support Network
Veterans Health Council
Vietnam Veterans of America
Women Against Prostate Cancer