Sound Policy. Quality Care.

December 21, 2012

Marilyn Tavenner, Acting Administrator
Centers for Medicare and Medicaid Services
Department of Health and Human Services
Attention: CMS-9980-P
P.O. Box 8010
Baltimore, MD 21244-8010

Re: Patient Protection and Affordable Care Act; Standards Related to Essential Health Benefits, Actuarial Value, and Accreditation (CMS-9980-P)

Dear Administrator Tavenner:

The undersigned members of the Alliance of Specialty Medicine (Alliance) are writing to share our comments on a proposed rule outlining Exchange and issuer standards related to coverage of essential health benefits (EHB). The Alliance is a coalition of 12 national medical specialty societies representing more than 200,000 physicians and surgeons. We are dedicated to the development of sound federal health care policy that fosters patient access to the highest quality specialty care. Below are some specific comments about the key provisions in proposed rule that have a significant impact on specialty medicine.

The Alliance would like to comment on three specific aspects of the Essential Health Benefits Proposed Rule: (1) our concerns and recommendations regarding prescription drug coverage; (2) problems we perceive with the special rule for network plans, especially as it affects specialty medicine; and (3) ensuring access to specialty care.

Prescription Drug Coverage

HHS proposed that plans may have limitations on prescription drug coverage that differ from the EHB-benchmark plan, but covered benefits must remain substantially equal to those covered by the EHB-benchmark plan. To comply with the requirement to cover EHBs, a plan would have to cover at least the greater of: (1) one drug in every category and class; or (2) the same number of drugs in each category and class as the EHB-benchmark plan.

The Alliance is pleased that this proposed rule is more generous than the initial proposal, which only required the coverage of at least one drug in each therapeutic class. While the proposed rule opens the possibility for States to choose plans that would require two or more drugs in each class, this is not adequate assurance of coverage for many patients, particularly for those with serious chronic health conditions. Allowing plans to limit medications to just one drug per class will not meet the needs of many of our patients and certainly does not meet the non-discriminatory protections outlined in the law. By allowing plans to cover an arbitrary number of drugs, there is no guarantee patients will get access to the medicines they need.

A robust formulary is necessary because not all patients respond to medicines in the same way. Physicians may need to change medications over the course of an illness. Patients may need access to more than one medication from the same class at the same time, and patients taking multiple medicines need alternatives to avoid harmful drug interactions. Patients need access to a full range of medicines.

The proposed rule falls short of the Medicare Part D requirement under which all drugs in certain classes must be covered. The Medicare Part D standard was designed to ensure that available plans do not discriminate against enrollees with significant health care needs. To ensure adequate coverage of needed therapies, **the Alliance requests that all plans, both in the private insurance market and the expanded Medicaid population, be required to have the same standards of Medicare Part D and the protected class policy.** This will cover the full range of medications that will meet the needs of all patients.

Special Rule for Network Plans

Under HHS's proposal, cost-sharing requirements for benefits from a provider outside of a plan's network do not count towards the annual limitation on cost-sharing or the annual limitation on deductibles. Therefore, an enrollee who utilizes many services could reach the annual limitation on cost-sharing, but still be required to pay a share of the costs if the enrollee chooses to purchase services outside of the plan's network that year.

The Alliance is very concerned about this lack of protection against out-of-pocket costs for patients who receive out-of-network care. In the development of health plans, it is imperative that patient cost-sharing be limited so that patients can afford access to life saving health care services. As providers of specialty care, the Alliance believes it is a critical problem that there is no limit to the amount an individual may need to pay for out-of-network providers.

This aspect of the EHB proposed rule essentially promotes a closed provider network. It is especially problematic for patients who need to seek specialty care providers who, by the nature of their specialty, often see patients from a variety of health plans in- or out-of-network. This proposed rule would impede a patient's access to specialty care and treatment. As representatives of a patient population with complex and specialized health care needs, the **Alliance urges you to consider the direct impacts of this coverage rule and re-evaluate the special rule for network plans to protect out-of-pocket expenses and promote patient access to quality care.**

Access to Specialty Care

The proposed rule does not address the need for patients to access quality health care nor does it set any standards of care for patients. Patients need access to a comprehensive range of health care services and providers to ensure quality care and positive health care outcomes. Many patients need access to specialist care, particularly those with chronic conditions. The final rule must allow for access to specialty care. There are tens of millions of Americans who are affected with serious chronic and/or rare diseases. For these patients, access to specialty physicians and other clinicians is essential for their diagnosis and treatment. Patients who do not have such access are at grave risk of having their condition reach crisis stages, increasing human suffering and requiring even more costly care, including hospitalization.

Conclusion

We appreciate your consideration of our comments. The Alliance thanks the Centers for Medicare and Medicaid Services (CMS) for your continued leadership in ensuring that more Americans will have access to specialty care. We realize that we are at a critical time in implementing the Affordable Care Act (ACA). Decisions that are made now will determine its success.

Sincerely,

American Academy of Facial Plastic & Reconstructive Surgery (AAFPRS)
American Association of Neurological Surgeons (AANS)
American Gastroenterological Association (AGA)
American Society of Cataract and Refractive Surgery (ASCRS)
American Society of Echocardiography (ASE)
American Society of Plastic Surgeons (ASPS)
American Urological Association (AUA)
Coalition of State Rheumatology Organizations (CSRO)
Congress of Neurological Surgeons (CNS)
North American Spine Society (NASS)
Society for Cardiovascular Angiography and Interventions (SCAI)
Society for Excellence in Eyecare (SEE)