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July 28, 2014

The Honorable Sylvia Burwell
Secretary
Department of Health and Human Services
P.O. Box 8010
Baltimore, MD 21244-8010

Re: CMS-9941-P - Proposed Rule on Annual Eligibility Redeterminations for Exchange Participation and Insurance Affordability Programs

Dear Secretary Burwell:

The National Health Council (NHC) appreciates the opportunity to submit comments on the Proposed Rule on Annual Eligibility Redeterminations for Exchange Participation and Insurance Affordability Programs. We are submitting this letter to ensure that patients maintain appropriate coverage in the upcoming plan year.

The NHC is the only organization that brings together all segments of the health community to provide a united voice for the more than 133 million people living with chronic diseases and disabilities and their family caregivers. Made up of more than 100 national health-related organizations and businesses, its core membership includes the nation's leading patient advocacy groups, which control its governance. Other members include professional societies and membership associations, nonprofit organizations with an interest in health, and major pharmaceutical, medical device, biotechnology, and insurance companies.

We applaud the Department of Health and Human Services (HHS) for working to improve patient protections for those who are served through the exchange market. However, we believe that it is important to increase protections for vulnerable patient populations, particularly those living with chronic diseases and disabilities. We strongly recommend HHS adopt the changes outlined below when it publishes the final rule in the coming weeks.

In particular, we believe it is vital that HHS ensure that transparency is paramount when working with exchange enrollees during the redetermination and eligibility process. It is critical that patients have a clear understanding of any and all changes affecting their health coverage, and that these changes are stated in a clear, concise, and transparent manner. People with chronic conditions, as potentially high users of health care services, are the patient

population most at risk of adverse outcomes resulting from poor enrollment choices. A clear understanding of coverage changes and options helps to ensure that patients make good choices about their insurance. Furthermore, the success of the exchanges is dependent upon people being enrolled — and staying enrolled — in plans that meet their health needs while remaining within affordable limits. Below we outline several key provisions and changes to the proposed rule that will help to ensure that patients retain the right health coverage and ensure that the eligibility redetermination process is streamlined and transparent.

Recommendation: For individuals subject to enrollment in a new plan or product in 2015 due to their 2014 plan or product being unavailable, assignment to a plan with similar premium and metal level should take priority over assignment to a plan under the same carrier.

As stated in the proposed rule, HHS would follow a systematic outline for re-enrolling patients in a range of issuers' plans and products if the patient's 2014 plan is no longer available in 2015. Notably, the proposed rule prioritizes enrollment of patients into their plan's same issuer's book of business rather than prioritizing the protection of enrollees' access to affordable and similar coverage. It is clear that enrollees are price sensitive; in a recent survey of enrollees, the premium (not carrier) was a driving factor influencing their choice of marketplace plan.¹ Additionally, 65 percent of silver plan enrollees selected one of the two lowest-cost silver options in the federally facilitated marketplace states.² Therefore, given that the majority of enrollees select low premium plans due to affordability concerns, it is important that HHS provide enrollees with initial assignments to plans in the same metal level with the most similar premium if the enrollee's 2014 plan is no longer available. The NHC believes that using a system of assigning patients to plans in the same metal tier and with the most similar premium will better inform the enrollee of his or her affordability options for 2015, while also granting the enrollee the option of signing back on to HealthCare.gov to re-enroll in a plan that is under the same issuer if they so chose.

Furthermore, the NHC believes there are serious flaws with the proposed systematic outline for automatic re-enrollment, particularly since one of the options outlined in the proposed rule would result in consumers being enrolled in a plan that is outside of the exchange. In the 2014 plan year 85% of enrollees were enrolled in subsidized coverage.³ If they were enrolled in a plan outside of the exchange, they would no longer be eligible for these sources of subsidized enrollment, which enable consumers to retain affordable health care coverage. A recent study found that for federal exchange enrollees, the loss of a premium subsidy would result in nearly 5 million enrollees experiencing an average premium increase of 76%.⁴ Moving to off-exchange coverage would result in the loss of financial assistance. This would be a very serious problem for lower income patients dependent on subsidies to access coverage of health care services and lifesaving therapies. Therefore, it is vital that HHS work to ensure that patients retain exchange coverage,

¹ Enroll America. "Voices from the Newly Enrolled and Still Uninsured: A Survey about the Affordable Care Act's First Open Enrollment Period." July 2014 accessed via: <http://www.enrollamerica.org/resources/public-education/voices-from-the-newly-enrolled-and-still-uninsured/>

² ASPE Issue Brief, "Premium Affordability, Competition, and Choice in the Health Insurance Marketplace, 2014," June 18, 2014 accessed via <http://aspe.hhs.gov/health/reports/2014/Premiums/2014MktPlacePremBrf.pdf>

³ ASPE Issue Brief: "Health Insurance Marketplace: Summary Enrollment Report For The Initial Annual Enrollment Period," May 1, 2014 accessed via: http://aspe.hhs.gov/health/reports/2014/MarketPlaceEnrollment/Apr2014/ib_2014apr_enrollment.pdf

⁴ Avalere Health, "Upcoming Federal Court Decision Could Mean Premium Increases for Nearly 5 Million Americans," July 17, 2014 accessed via: <http://www.avalerehealth.net/expertise/managed-care/insights/upcoming-federal-court-decision-could-mean-premium-increases-for-nearly-5-m>

and that their 2015 coverage resembles their coverage from 2014 in terms of premium price and metal tier.

To prevent this issue from occurring and to ensure that patients are retained in the most similar coverage for plan year 2015, the NHC recommends implementing a system in which the patient is enrolled into a plan with a similar premium and metal tier, rather than prioritizing to ensure the patient is enrolled in the same issuer's plans or products. In the NHC's proposed system, if the 2014 plan for an individual or family increases by more than 10 percent or is no longer available in 2015, HHS would automatically enroll them into a plan with the premium amount most similar and in the same metal tier as their 2014 plan. This will help to ensure that exchange plan enrollees retain coverage most suitable for their health and budget needs.

Recommendation: The federal government should streamline the redetermination and notification processes for individuals and families with limited income who are eligible for assistance with premiums and/or cost sharing in the exchange.

The NHC suggests streamlining the process for annual redetermination of eligibility for the advanced premium tax credits (APTC) and cost-sharing reduction (CSR) plan levels. For patients who have opted to allow the Internal Revenue Service (IRS) to review their tax information, the NHC argues that the most efficient and effective means to redetermine eligibility is to automatically reassign the new APTC and CSR amounts when the agency assesses the individual's or family's tax documents.

Streamlining this process will help patients by allowing some to avoid returning to HealthCare.gov in the fall, when the system may already be overloaded with a flood of new enrollees for the 2015 plan year. Given the technical difficulties encountered with the website last year, it is important to streamline this step to help patients learn of their new eligibility redetermination amounts without having to re-apply for assistance through HealthCare.gov. Individuals and families who have already authorized the exchange to redetermine their eligibility for this assistance are not expecting (and should not expect) to have to take the time to actively apply for assistance again for the 2015 plan year. A notice indicating that enrollees must apply for assistance is not sufficient to ensure these subsidy-eligible enrollees are accessing the appropriate level of assistance for their income.

Additionally, in the proposed rule and guidances HHS stated that they would issue a number of notifications to patients regarding their redetermination and eligibility status. The NHC lauds HHS' effort to ensure that patients are well-informed heading into the 2015 plan year. The NHC believes it is critical that the agency work with issuers to ensure that the notifications are transparent, and easy to comprehend for those with lower health literacy levels. A transparent notification process will help consumers easily comprehend any coverage changes or issues early in the re-enrollment process, so they can plan appropriately to ensure that they retain the right health coverage for their specific needs.

One way in which the NHC believes that HHS could better inform patients through the notification process is to provide them with their 2014 enrollment information. For example, the notification would include 2014 enrollment information such as income level and household size that was used to determine their plan and financial assistance eligibility levels. Providing this

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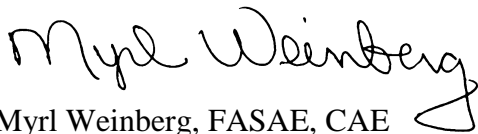
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information better informs patients on the data backing their 2014 plan selection, which will allow patients to know if they would be better off addressing potential changes in their life situations to avoid being re-enrolled in a plan that no longer suits their needs. Providing the patients with their 2014 enrollment information in the notifications will enable them to be more informed consumers and determine if they would be better off signing back on to HealthCare.gov to select a new plan or change their enrollment information.

As the united voice for people with chronic diseases and disabilities, the NHC believes that broad patient protections in the redetermination and eligibility processes are critical to the success of qualified health plans and exchanges. As HHS finalizes the annual redeterminations for exchange participation and insurance affordability programs guidance, the NHC strongly encourages the agency to include in its final regulations and accompanying guidance the recommendations above, as well as patient protections supported in our previous communications with the agency.

Please do not hesitate to contact Eric Gascho, our Assistant Vice President of Government Affairs, if you or your staff would like to discuss these issues in greater detail. He is reachable by phone at 202-973-0545 or via e-mail at egascho@nhcouncil.org. You may also reach me on my direct, private line at 202-973-0546 or via e-mail at mweinberg@nhcouncil.org.

Sincerely,

A handwritten signature in black ink that reads "Myrl Weinberg". The signature is written in a cursive style with a large, stylized initial "M".

Myrl Weinberg, FASAE, CAE
Chief Executive Officer