

February 25, 2014

U.S. House of Representatives
Committee on Energy & Commerce
Subcommittee on Health
Washington, DC 20515

Re: Subcommittee Hearing “Messing with Success: How CMS’ Attack on the Part D Program Will Increase Costs and Reduce Choices for Seniors” (February 26, 2014)

Dear Chairman Pitts and Ranking Member Pallone:

The undersigned organizations share a commitment to advancing the economic and health security of older adults, people with disabilities and their families. We strongly encourage members of this Committee to analyze each part of the proposed rule regarding Medicare Advantage (MA) and Part D plans that is the subject of this hearing—as opposed to endorsing or rejecting the proposed rule in its entirety.¹

The proposed rule contains significant improvements in consumer protections and plan oversight. While we are concerned about some individual provisions, such as the proposed change in Part D protected drug classes, we are strongly supportive of increased oversight of MA and Part D plans as well as expanded access to affordable pharmacies and cost-sharing for Medicare beneficiaries. We urge that the proposed provisions we support be made final.

The Proposed Rule Would Enhance Informed Beneficiary Decision-Making, Improve Access to Affordable Drugs, and Strengthen Plan Oversight.

We strongly support a number of provisions in the proposed rule, including:

Plan consolidation – CMS proposes to limit the number of Part D plans that can be offered by a plan sponsor to one basic and one enhanced plan per region. We strongly support this effort to improve consumers’ decision-making by encouraging more meaningful differences among plans. An abundance of similar plan choices has often led to inertia among overwhelmed beneficiaries as few enrollees change plans, even though many could save money and have improved access to needed drugs if they enrolled in a plan better suited their individual needs. We agree with CMS that the proposed plan consolidation will help prevent anti-competitive “gaming.” As noted by CMS, a more streamlined bid submission process will better serve beneficiaries, taxpayers, and plan sponsors themselves.

Drug price fairness, accuracy and affordability – A number of proposals combined will save both plan enrollees and the Medicare program money by more fairly calculating and reporting drug prices and will increase access to preferred pharmacies. First, the proposed standardization of reporting *negotiated drug prices* will ensure that reported prices accurately reflect the agreed-upon prices between network pharmacies and a PDP. This is necessary to ensure that PDPs cannot game the system and obtain higher Medicare reimbursements by failing to report network pharmacy concessions in the negotiated price. This proposal would both save Medicare dollars and improve beneficiaries’ ability to accurately gauge plan costs via the online Medicare Plan Finder. Second, CMS plans to codify requirements that preferred pharmacies, through *preferred cost-sharing*, actually save

¹ 79 Federal Register 1918 (January 10, 2014).

money for Medicare. Among other things, this would prevent plans from creating cost-sharing structures that drive consumers to mail order pharmacies costing Medicare more than non-preferred retail pharmacies. Third, proposed changes applying the *any willing pharmacy* standard to preferred networks will increase beneficiary access and reduce beneficiary costs. We also strongly endorse the requirement that pharmacies in a preferred network must consistently charge preferred cost sharing and consistently bill no more than the ceiling price for all prescriptions. Beneficiaries have the right to a system that is predictable and understandable.

Strengthened plan oversight – CMS proposes a number of measures to improve oversight of Medicare’s contracts with MA and Part D plans sponsors, including: requiring a minimum level of experience; increasing audit capacity; enhancing contract termination authority; and enforcing quantifiable plan quality improvement through the star rating metrics. These measures will help enforce consumer protections and enhance adequate stewardship of Medicare funds paid to private plans.

Other important consumer protections in the proposed rule include: increasing access to medication therapy management (MTM) through an expansion of eligibility criteria; improved beneficiary notices; and requirements that MA plans with prescription drug coverage take steps to appropriately deal with Part D denials of coverage for drugs that should be covered under Parts A or B. All combined, these proposals will significantly improve the functioning and efficiency of both the MA and Part D programs.

The Proposed Changes in Protected Drug Classes Will Limit Beneficiary Access to Essential Medicines.

While we support the provisions of the proposed rule that improve access to care and enhance oversight and accountability of plans, we are concerned with some of the provisions, in particular, the proposal to alter how the clinical classes of concern criteria for Part D drugs (“protected classes”) are defined. CMS proposes replacing current rules requiring Part D plans to cover substantially all available drugs in six designated protected classes with a two-step test to determine which categories of drugs are of sufficient clinical concern to merit continued protected status. Upon application of this test to the current protected classes of drugs, CMS concludes that antidepressants, immunosuppressants, and antipsychotics no longer meet the requirement for protected drug class status. If implemented, disruption to beneficiaries’ current medication therapy will cause considerable challenges for individuals with serious health conditions. We take issue with the requirements in the two-step test, in part, because the test would set too high a bar for when drug classes would receive protected status. In addition, we dispute CMS’ underlying assumptions about the efficacy of existing consumer protections in ensuring adequate access to needed medications. Without disposing of the rest of the proposed rule, we urge that this proposal be rejected and that the current protected class criteria remain in effect.

Program Improvements Needed Beyond Those in Proposed Rule.

While it is clear that the Part D program has provided prescription drug coverage to many Medicare beneficiaries who previously did not have access to such coverage, there is still much room to improve the Part D program. Instead of the efficiencies of the private market bringing costs below initial estimates, Part D cost savings are largely attributable to lower than expected enrollment and decreased per-capita prescription spending nationwide due to increased generic drug use, major drugs coming off patent, and fewer blockbuster drugs coming to market.

There are number of steps that should be taken to make the Part D program work better for the Medicare beneficiaries it serves, including improving the appeals system and notices, altering the specialty-tier framework, and further enhancing informed consumer decision-making. We welcome the opportunity to work with your Committee to achieve these goals.

Thank you for the opportunity to submit these comments for the record.

Sincerely,

Alliance for Retired Americans

American Federation of State, County and Municipal Employees (AFSCME)

California Health Advocates

Center for Medicare Advocacy, Inc.

Medicare Rights Center

National Committee to Preserve Social Security and Medicare

National Council on Aging

National Senior Citizens Law Center