HIV Health Care Access Working Group

June 10, 2014

Centers for Medicare & Medicaid Services
U.S. Department of Health and Human Services
7500 Security Blvd.
Baltimore, MD 21244

Attn: CMS-9942-NC

Re: Provider Non-discrimination Request for Information

To Whom It May Concern:

We are writing on behalf of the HIV Health Care Access Working Group (HHCAWG) in response to the provider non-discrimination request for information released by the Department of Health and Human Services’ (HHS) Centers for Medicare and Medicaid Services (CMS), Department of Labor’s (DOL) Employee Benefits Security Administration (EBSA), and the Department of the Treasury’s Internal Revenue Service (IRS). We appreciate the opportunity to comment on the Patient Protection and Affordable Care Act’s (ACA) provider non-discrimination provision as we share the concerns raised by the Senate Committee on Appropriations that prompted this inquiry.

The hallmark of the ACA is its commitment to ending the discriminatory practices that historically presented a significant barrier to health insurance coverage for people with HIV/AIDS and others with serious and chronic conditions. Some health plans have excluded HIV medical providers and pharmacies from their networks as one mechanism to limit coverage or discourage people with HIV from enrolling. We are concerned that these practices are continuing in the federal and state run marketplaces and may be leaving people with HIV without access to the expert HIV care and treatment proven important to successful management of HIV.

We agree with the Senate Committee on Appropriations that the inclusion of section 2706(a) of the Public Health Service Act (PHS) was intended to end provider discriminatory practices that limited access to the full range of providers in a state. The interpretation of section 2706(a) of the PHS in the April 2013 Frequently Asked Questions (FAQ) that signals plans can adjust reimbursement rates for “market standards and considerations” appears contrary to the intent of the 2706(a) as it could allow this form of discrimination to continue.

For the ACA to live up to its promise of addressing discrimination in the health insurance market -- strong provider network standards and consistent enforcement of the standards are necessary for individual and group health plans in and outside of the marketplaces. Failure to do so – will encourage health plans to maintain narrower provider networks to avoid disproportionately attracting enrollees with HIV and others in need of specialized care.

To set the appropriate standard -- we urge HHS, DOL, EBSA and the IRS to consider the recommendations below.
Reinforce the Essential Community Provider Standard as Working in Tandem with the Provider Non-Discrimination Protection of Section 2706(a) to Improve Access to the Range of Healthcare Providers, including HIV Providers.

Ryan White providers are one of the provider types designated as Essential Community Providers (ECPs) because of the role they play caring and providing medications for medically underserved and low income people with HIV/AIDS in the U.S. The ACA recognized the critical role of Ryan White providers and other ECPs by requiring qualified health plans (QHPs) to include in their networks “essential community providers, where available, that serve predominantly low income, medically underserved individuals.” The Center for Consumer Information and Insurance Oversight (CCIIO) has developed standards to implement the ECP requirement that in 2015 will require QHPs to contract with a minimum of 30% of the ECPs in their service area. In addition, plans are expected to offer ECPs contracts “in good faith” and with “terms that a willing, similarly situated, non-ECP provider would accept or has accepted” to at least one of each ECP type in each county in the service area. These standards are an important start to meeting the intent of section 2706(a) to ensure access to the full range of providers in the state, including HIV providers and pharmacies with experience working with lower income and more complex patients with HIV. Based on the early experience of HIV providers with the ACA, stronger ECP and non-discrimination standards are needed to address issues, such as:

1) the exclusion of large academic health centers that have historically served as critical safety-net providers of HIV care;
2) HIV providers being offered below market rates as compared to both private and Medicaid reimbursement rates;
3) the absence of any Ryan White providers from some plan networks; and
4) the exclusion of Ryan White pharmacies that provide onsite and co-located access to medications and other specialty services.

We urge close monitoring of contracting with Ryan White providers in 2015 and of provider access issues for people with HIV in 2014 and 2015, in conjunction with the Health Resources and Services Administration’s HIV/AIDS Bureau, to inform the 2016 ECP standard.

Remove Language Allowing Plans to Adjust Reimbursement Rates for “Market Standards and Other Considerations.”

We strongly recommend removal of the language allowing rates to be adjusted for “market standards and other considerations” in the FAQ and in any future rule-making to reflect the intent of ACA statutory language. As noted by the Senate Appropriations’ Committee, the provider non-discrimination provision, and we would add the ECP provision, were included to ensure that patients can access covered services from the full range of provider types in their state, including HIV providers. Section 2706(a) language in the ACA specifically noted reimbursement rates adjusted for quality and

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1 Entities eligible for the federal 340B drug discount program, such as Federally Qualified Health Centers; Ryan White HIV/AIDS Program Providers; Title X family planning clinics; Indian Health Service providers; certain hospitals including children’s hospitals, public hospitals and free-standing cancer hospitals, and other nonprofit health care organizations that meet program criteria.
performance measures would not be considered discrimination and did not include any language to suggest adjustments for other factors should not be considered discrimination. The addition of the April 2013 FAQ in some ways negates section 2706(a) by giving some plans the justification to discriminate against certain providers by offering them lower reimbursement rates for reasons that they can define as “market standards and considerations.”

Protections against provider discrimination are even more important now that plans are barred from excluding people with HIV and others from coverage, and many plans are relying on other techniques to control costs. This has been evident in the narrow provider networks offered by many of the 2014 QHPs. Based on our early experience with the ACA, a strong and uniform provider non-discrimination standard and strong ECP standards that do not deviate from the ACA statute are urgently needed.

Thank you for examining this important issue. We welcome the opportunity to work with you to ensure that the health insurance coverage now available to many people with HIV for the first time provides access to the expert HIV care and services that they need to stay healthy.

Please contact the HIV Health Care Access Working Group co-chairs, Andrea Weddle with the HIV Medicine Association (aweddle@hivma.org), Robert Greenwald with the Treatment Access Expansion Project (rgreenwa@law.harvard.edu) or Amy Killelea with the National Alliance of State & Territorial AIDS Directors (akillelea@nastad.org) if we can be of further assistance.

Submitted on behalf of the HIV Medicare and Medicaid Steering Committee,