February 25, 2021

The Honorable Xavier Becerra  
Secretary-designate  
U.S. Department of Health and Human Services  
200 Independence Ave, S.W.  
Washington, D.C. 20201

Dear Secretary-designee Becerra:

The following organizations are writing to express our opposition to a proposal announced on the Trump Administration’s final day in office through the Centers for Medicare and Medicaid Services (CMS) that would undermine key patient protections in Medicare's prescription drug program. Namely, on January 19, 2021, the Center for Medicare and Medicaid Innovation (CMMI) announced the opportunity for new “formulary flexibilities” for Medicare Part D plans that participate in its Part D Payment Modernization (PDM) Model. Under the proposal, participating plans can choose to limit the drugs they cover, including denying patient access to medications used to manage complex conditions such as cancer, mental illness, HIV/AIDS, epilepsy, Parkinson’s, and organ transplantation.

On behalf of the patients who we serve in our various communities, we call upon the Biden Administration to exercise its authority to immediately eliminate this policy proposal, which would undermine the protected classes policy, either via the so-called midnight rule moratorium, or the authority provided within the model to change its criteria or eliminate it entirely at any time. The protected classes policy has been a cornerstone of Part D’s success: helping to ensure that Part D formularies serve the needs of all Medicare beneficiaries, including the most vulnerable patients with the greatest need for drug coverage. This has made Part D an integral part of Medicare by making plans compete based on quality and efficiency instead of seeking to reduce costs by driving away people with serious illnesses.

Our groups represent a broad, diverse coalition of health care stakeholders, patient advocates, and health care professionals committed to maintaining access to critically important medications under Medicare Part D — especially the categories and classes of drugs identified for unique patient protections in section 1860D-4(b)(3)(G)(iv) (the protected classes). These medications are vital, and often are not interchangeable, to the treatment of certain complex chronic conditions. For years, our organizations have collaborated to combat efforts to undermine consumer access to appropriate treatment by increasing policymaker awareness of the vulnerability of patients with these conditions and the potential impact of delayed or denied care.
The Trump Administration’s formulary flexibility proposal is contrary to bipartisan congressional consensus, as expressed numerous times in recent years, and undermines long-standing and congressionally directed protections that guarantee access to life-saving drugs for patients with the most severe health conditions. Indeed, Congress has repeatedly expressed strong bipartisan support for the protected classes policy and has chosen to strengthen, rather than weaken it, over time. In a Senate colloquy just before the enactment of the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA), Senators repeatedly emphasized the role of protections, including the protected classes, available to beneficiaries who need “exactly the right medicine for them.”

Congress reaffirmed the importance of the original protected classes in Section 3307 the Affordable Care Act (ACA), which codified in law the six protected classes and categories by name, and expanded coverage to include “all” drugs within these six classes. Additionally, every Member of the Senate Finance Committee opposed CMS’ 2014 proposed rescission of protected-class protections, echoed in a separate letter from 50 Members of the House Energy and Commerce and the Ways and Means Committees. More recently, in 2019, the Trump Administration attempted to roll back these important patient protections and were again rebuffed with significant opposition from Congress. Indeed, Secretary Azar was repeatedly challenged about the merits of this proposal both through several congressional letters as well as during his appearances before Congress. Ultimately, the policy suggesting changes to the six protected classes was withdrawn.

In addition to its obviously deleterious impact on patients’ health, we think it is self-evident that the Trump administration’s most recent proposal is short-sighted with respect to the effect on costs. Any potential savings CMS might realize from allowing plans to severely restrict access to drugs in the protected classes would be countered by increases in costs in other areas of Medicare and lead to undesirable patient outcomes. As The Pew Charitable Trusts concluded in a recent report, “Lack of adequate access to medications can in some circumstances increase costs to other Medicare programs through increased hospitalizations from complications or increased physician visits to manage medications.” Further, a study performed by researchers at Northwestern University and the University of Texas found that in covering drugs less generously, Part D plans end up costing traditional Medicare $475 million per year. Finally, it is clear that the Trump administration’s most recent proposal was issued in a rush and without any meaningful patient or stakeholder input. Accordingly, we implore you to reverse this policy immediately.

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1 149 Cong. Rec. S5887-88.
3 Amanda Starc, Kellogg School of Management, Northwestern University, and NBER Robert J. Town, University of Texas - Austin and NBER (2016). Externalities and Benefit Design in Health Insurance
Please do not hesitate to contact Chuck Ingoglia, President and CEO of the National Council for Behavioral Health, who serves as executive director of the Partnership for Part D Access, and is this letter’s lead signatory, if you have any questions regarding these comments or attachments or if he can provide additional information.

Signed on behalf of the following organizations,

cc: Elizabeth Richter, Acting Administrator, Centers for Medicare and Medicaid Services

The National Council for Behavioral Health  
ACCSES - The Voice of Disability Service Providers  
ADAP Advocacy Association  
AIDS Alabama  
AIDS Alliance for Women, Infants, Children, Youth & Families  
AIDS Foundation Chicago  
AIDS United  
Alliance for Aging Research  
American Academy of Family Physicians  
American Academy of Neurology  
American Association for Psychoanalysis in Clinical Social Work  
American Association on Health and Disability  
American Autoimmune Related Diseases Association  
American Brain Coalition  
American Cancer Society Cancer Action Network, Inc  
American Kidney Fund  
American Society of Consultant Pharmacists  
American Society of Transplant Surgeons  
Association for Ambulatory Behavioral Healthcare  
Brain Injury Association of America  
Cancer Support Community  
CancerCare  
Charlie Foundation  
Child Neurology Foundation  
Chronic Care Policy Alliance  
College of Psychiatric and Neurologic Pharmacists  
Community Access National Network  
Danny Did Foundation  
Depression and Bipolar Support Alliance  
Dravet Syndrome Foundation  
Epilepsy Foundation  
Epilepsy Foundation Alabama  
Epilepsy Foundation Alaska  
Epilepsy Foundation Arizona  
Epilepsy Foundation Arkansas  
Epilepsy Foundation Central & South Texas  
Epilepsy Foundation of Colorado  
Epilepsy Foundation of Delaware  
Epilepsy Foundation of East Tennessee  
Epilepsy Foundation Florida  
Epilepsy Foundation of Greater Chicago  
Epilepsy Foundation of Greater Southern Illinois  
Epilepsy Foundation of Hawaii  
Epilepsy Foundation Indiana  
Epilepsy Foundation Iowa  
Epilepsy Foundation of Long Island  
Epilepsy Foundation Louisiana  
Epilepsy Foundation Maryland  
Epilepsy Foundation Metro D.C.  
Epilepsy Foundation of Michigan  
Epilepsy Foundation Mississippi  
Epilepsy Foundation of Minnesota  
Epilepsy Foundation Montana  
Epilepsy Foundation Nebraska  
Epilepsy Foundation Nevada  
Epilepsy Foundation New England  
Epilepsy Foundation New Jersey  
Epilepsy Foundation New Mexico  
Epilepsy Foundation North Carolina  
Epilepsy Foundation North Dakota  
Epilepsy Foundation of Northeastern New York  
Epilepsy Foundation Ohio  
Epilepsy Foundation Oklahoma  
Epilepsy Foundation Orange County and Riverside  
Epilepsy Foundation Oregon  
Epilepsy Foundation of San Diego County  
Epilepsy Foundation South Carolina  
Epilepsy Foundation South Dakota  
Epilepsy Foundation Texas - Houston/Dallas-Fort Worth/West Texas  
Epilepsy Foundation Utah  
Epilepsy Foundation of Vermont  
Epilepsy Foundation of Virginia  
Epilepsy Foundation Washington  
Epilepsy Foundation West Virginia  
Epilepsy Foundation Wyoming  
Epilepsy Leadership Council  
Families for Depression Awareness  
Georgia AIDS Coalition  
Global Liver Institute  
Health Hats  
Hepatitis C Mentor & Support Group, Inc.  
HIV+Hepatitis Policy Institute  
Hope for the Day  
Hope for ULD  
Illinois Psychiatric Society
International Foundation for Autoimmune & Autoinflammatory Arthritis
International OCD Foundation
International Society for Psychiatric Mental Health Nurse
Iowa Association of Community Providers
Iowa Behavioral Health Association
Lakeshore Foundation
Legal Action Center
Lennon-Gastaut Syndrome (LGS) Foundation
Leukemia & Lymphoma Society
Lupus Foundation of America
Medical Oncology Association of Southern California
Medicare Rights Center
Mental Health America
Mental Health America of California
Mental Health America of Illinois
Mental Health America of Ohio
Mental Health Association in Michigan
Mental Health Association in NYS, Inc.
Mental Health Summit
Michael J. Fox Foundation for Parkinson's Research
National Alliance of State & Territorial AIDS Directors
National Alliance on Mental Illness
National Alliance on Mental Illness - NYS
National Alliance on Mental Illness Chicago
National Alliance on Mental Illness Illinois
National Alliance on Mental Illness Mass
National Alliance on Mental Illness Metro Suburban
National Alliance on Mental Illness of NYC
National Association for Rural Mental Health
National Association of Behavioral Health and Developmental Disability Directors
National Association of Nutrition and Aging Services Programs
National Association of Social Workers
National Kidney Foundation
National Register of Health Service Psychologists
New Jersey Association of Mental Health and Addiction Agencies
Oncology State Societies at ACCC
Phelan-McDermid Syndrome Foundation
Psychiatric Physicians Alliance of California
Ring14 USA
Schizophrenia and Related Disorders Alliance of America
STXBP1 Foundation
The AIDS Institute
The Coelho Center for Disability Law, Policy & Innovation
The Kennedy Forum
The Multiple Sclerosis Foundation
Tourette Association of America
Transplant Recipients International Organization (TRIO)
TRIO - Oklahoma
TRIO - Manhattan Chapter
Transplant Support Organization
Tuberous Sclerosis Alliance
Whitman-Walker Institute
Wishes for Elliott/DEE-P Connections