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October 1, 2011

Dr. Donald M. Berwick  
Administrator  
Centers for Medicare & Medicaid Services  
Department of Health and Human Services  
Attention: CMS-9989-P,  
P.O. Box 8010,  
Baltimore, MD 21244-8010.

**RE: CMS-9989-P Patient Protection and Affordable Care Act; Establishment of Exchanges and Qualified Health Plans**

Dear Administrator Berwick,

The American Kidney Fund is our nation's leading charitable health organization serving people with and at risk for kidney disease through direct financial assistance, comprehensive education, and community service programs. We appreciate the opportunity to submit comments on the **Centers for Medicare and Medicaid Services (CMS) Proposed Rule: Patient Protection Act; Establishment of Exchanges and Qualified Health Plans.**

The American Kidney Fund supports the creation of health insurance exchanges mandated by the Affordable Care Act. We believe these plans will provide access to health insurance for patients who have been uninsured or underinsured in the past.

As you know, End Stage Renal Disease (ESRD) patients are among the most vulnerable and complex Medicare beneficiaries, often suffering from multiple chronic conditions. The American Kidney Fund is focused on ensuring that the unique needs of ESRD patients are not overlooked as major aspects of the Affordable Care Act are implemented. Accordingly, we have outlined four concerns we ask CMS to specifically address in its final rulemaking in order to prevent interpretations of the health insurance exchange regulation from adversely impacting dialysis patients' quality of life:

- 1. The Medicare Secondary Payer (MSP) law should be applied.**
- 2. Persons enrolled in health exchange plans and who are diagnosed with ESRD should be protected in the exchange by having the option to continue enrollment in the exchange and continue to receive premium credits and cost-sharing subsidies.**

- 3. Patients should have an adequate network and choice of providers who are in close proximity to where the patient lives.**
- 4. CMS should work with health care providers and patient advocacy groups to ensure that quality measures are clearly established so that patients experience optimum outcomes.**

### **Medicare Secondary Payer (MSP)**

In order to maintain equality of coverage inside and outside of the exchanges, CMS and CCIIO should ensure that the Medicare Secondary Payer (MSP) law is applied. Under MSP, patients will have an opportunity to keep the health plan of their choice for the statutory 30-month period before switching to Medicare as the primary payer of their health coverage. Dialysis patients who are able to retain employment related health insurance coverage depend on these plans because they help to minimize out-of-pocket costs and provide a wider variety of needed benefits. We encourage CMS to protect MSP for patients through a clear definition that maintains MSP for persons in Qualified Health Plans (QHP) because for some patients, particularly ESRD patients, these plans will be considered employer health plans. MSP benefits patients and is a cost savings for the Medicare program. AKF believes that failure to continue the current MSP policy would add unnecessary additional costs to Medicare. It appears to be counterproductive to not allow MSP to be carried over into the exchanges, given that Medicare is under such extreme fiscal pressure.

### **Premium credits and cost sharing subsidies**

The Affordable Care Act (ACA) puts in place many needed benefits for patients, particularly low-income patients. For example, it provides subsidies to patients who cannot afford the full cost of plans in the exchanges. However, the proposed rule does not allow premium credits and cost sharing subsidies for individuals eligible for minimum essential coverage, including Medicare. If not changed or corrected, this will have a disproportionately adverse impact on dialysis patients because 80% of them are covered by and are eligible for Medicare once they develop kidney failure. ESRD patients often have multiple co-morbidities and see multiple doctors for those conditions. Medicare does not cover the full cost of care for the many services these patients need and some rely on a secondary source of insurance coverage. Although they may qualify or be entitled to other minimum essential coverage plans, including Medicare, the American Kidney Fund believes that patients should have the option to decide and choose the best plan for their specific needs.

### **Adequate choice of providers**

Given the required frequency of dialysis, it also is important that patients have an adequate choice of providers who are in close proximity to where the patient lives. The proposed rule does not address access to dialysis providers. As the leading charitable provider of financial assistance to help patients with transportation costs to reach dialysis care, we have seen the hardship currently faced by some patients, particularly in rural areas, who must travel great distances to reach treatment. Having a dialysis treatment center nearby is of paramount importance to dialysis patients. It is our hope that exchanges will allow patients to choose from a

selection of health care providers and dialysis facilities that are within a reasonable geographic distance.

### **Protecting quality care**

The proposed rule does not address the clinical consequences of Exchange coverage on patients with ESRD. CMS proposes at 42 C.F.R. § 155.200(f) that an Exchange “must evaluate quality improvement strategies and oversee implementation of enrollee satisfaction surveys, assessments and ratings of health care quality and outcomes, information disclosures, and data reporting pursuant to” sections of the ACA. While CMS anticipates future rulemaking on these topics, the American Kidney Fund encourages CMS to consider the complex needs of dialysis patients in developing quality metrics for plans in the exchange.

### **Dialysis as an essential benefit**

Finally, we recognize that the issue of essential benefits within health exchanges is not addressed in the current regulation and will be taken up in regulations to be published later in the year. However, inclusion of dialysis and other services for people with ESRD are so crucial to the patients whom we serve, that we must take every opportunity to bring our concerns to your attention. It is critical that exchanges include dialysis as an essential benefit. Regular dialysis treatment makes it possible for people with kidney failure—also known as End Stage Renal Disease (ESRD)—to survive. Dialysis or transplantation is the only treatment for kidney failure. There are currently more than 547,000 people with kidney failure in the United States. About 382,000 are on dialysis, and another 165,000 are living with kidney transplants. The number of people with ESRD grows each year, and health exchanges should assure that life-sustaining dialysis is fully available to ESRD patients in accordance with the frequency directed by each patient’s physician; most patients have dialysis three times a week for several hours at a time.

The American Kidney Fund is committed to ensuring that dialysis patients have equal access to coverage options under the new Affordable Care Act. We want to ensure that exchange plans do not discriminate against patients with chronic health conditions. If this were to happen, many ESRD patients would have less comprehensive coverage than they had prior to the Affordable Care Act.

Thank you for your time and attention to this issue. We look forward to working with you to ensure that our patients who are receiving dialysis are protected as you design the regulatory framework of the health insurance exchanges.

Sincerely,



LaVarne A. Burton  
President and CEO