March 27, 2019

Submitted electronically via www.regulations.gov

Honorable Alex Azar
Secretary
Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Seema Verma
Administrator
Centers for Medicare & Medicaid Services
P.O. Box 8013
Baltimore, MD 21244-1850

Preston Rutledge
Assistant Secretary
Employee Benefits Security Administration
Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Victoria Judson
Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes)
Internal Revenue Service
Department of the Treasury
1111 Constitution Avenue, NW
Washington, DC 20224

Re: CMS-9923-NC: Request for Information Regarding Grandfathered Group Health Plans and Grandfathered Group Health Insurance Coverage
84 Fed. Reg. 5969 (Feb. 25, 2019)

Dear Secretary Azar, Administrator Verma, Assistant Secretary Rutledge, and Associate Chief Counsel Judson:

The 19 undersigned organizations represent millions of patients and consumers facing serious, acute and chronic health conditions across the country, including individuals who rely on the patient protections provided under the Affordable Care Act (ACA). Together and separately, our non-profit, non-partisan organizations are dedicated to working with the Administration, members of Congress and state governments on a bipartisan basis to protect the health and wellbeing of the patients and consumers we represent. Our organizations write in response to the Request for Information (RFI) concerning grandfathered group health plans.

In March of 2017, our organizations agreed upon three principles[1] to guide any work to reform and improve the nation's healthcare system. These principles state that: (1) healthcare must be adequate, meaning healthcare coverage should cover treatments patients need, including all the services in the essential health benefit (EHB) package; (2) healthcare should be affordable, enabling patients to access the treatments they need to live healthy and productive lives; and (3) healthcare should be accessible, meaning that coverage should be easy to understand and not pose a barrier to care. Enrollment should be easy to understand, and benefits should be clearly defined. Any effort to relax the 2015 definition of grandfathered plans would be unacceptable for our patients, as it would not meet the standards set forth in our agreed upon principles.

[1] Consensus Healthcare Reform Principles. Available at: https://www.lung.org/assets/documents/advocacy-archive/consensus-healthcare-reform.pdf.

Our organizations recognize and respect the commitment that Congress made when enacting the ACA to allow people to keep their existing plans. In drafting the ACA, Congress included section 1251, which, among other things, allowed grandfathered plans to continue provided they did not deviate too far from the design that was in place at the time the ACA was passed. Since 2010, the number of grandfathered plans has slowly decreased over time. According to one estimate, the percentage of workers enrolled in a grandfathered plan has gone from 56 percent in 2011 to approximately 17 percent in 2017.[2]

At the same time, we note that grandfathered group health plans can provide fewer consumer protections than ACA-compliant plans. Grandfathered plans are not required to cover preventive services without cost-sharing, including co-pays, co-insurance and deductibles, as ACA-compliant plans are required to do. They also may not include services like cancer screenings, preventive treatments for cardiovascular disease, screenings for pregnant women, tobacco cessation, or coverage for patients who are eligible to participate in clinical trials. Preventive services save both money and lives and are an important component of healthcare coverage for our patients. Access to clinical trials is also critically important. Individuals with challenging forms of cancer or other life-threatening illnesses typically choose to participate in clinical trials when they conclude (in consultation with their physicians) that the trial provides the best odds of a successful clinical outcome when compared to other existing therapies. Further, ensuring coverage for those seeking to participate in a clinical trial recognizes that there is a greater public good to encouraging increased patient participation in clinical research. Through enhancing our understanding of serious and life-threatening conditions – and of the risks and benefits of promising new therapies – we improve treatment, diagnosis, and prevention options not just for participating patients but for all of us through the advancement of medical knowledge.

While the RFI seeks information on grandfathered group health plans, we note that these plans are also concerning in the individual and small group market as they are not required to provide coverage for essential health benefits. Prior to the creation of the ten EHB categories, patients and consumers frequently found themselves enrolled in plans that failed to provide coverage for the care they routinely relied upon to maintain their health or treat illnesses. Patients with serious illnesses would discover they were not covered for new and innovative treatments, some individuals could not get coverage for emergency room services, and patients with chronic illnesses were often denied coverage for life-improving, sometimes even life-saving, medication. Many of these individuals did not realize at the time of their enrollment that they had selected a plan that did not meet their health care needs, let alone provide adequate coverage for a new diagnosis.

As the Departments gather additional information regarding grandfathered group health plans with an eye toward future regulatory action, we urge there to be no change to existing regulations that could allow an employer who currently offers grandfathered plans to make significant changes to the plan design and still qualify for grandfathered status. Any changes should encourage employers who currently offer grandfathered plans to improve the quality of their plan offerings while encouraging them to come into full compliance with ACA standards.

While the number of grandfathered health plans are generally in decline, we are particularly concerned about the continued role of grandfathered health plans in employer sponsored coverage. Under the current rules, new employees and their beneficiaries may enroll in grandfathered plans without the plan losing grandfathered status. This means that health care consumers who have benefited from the

[2] Kaiser Family Foundation. 2018 Employer Health Benefits Survey. Section 13: Grandfathered Health Plans. Oct. 3, 2018. Available at https://www.kff.org/report-section/2018-employer-health-benefits-survey-section-13-grandfathered-health-plans/#figure133.

protections of the ACA in a previous job may start a new job only to find themselves enrolled in a grandfathered plan that does not cover essential health benefits and requires significant cost sharing for preventive services. The Departments should consider requiring employers with grandfathered plans to disclose that their insurance coverage is not compliant with federal consumer protections when they advertise for a position that would qualify for insurance benefits, during the interview process for such a position, and when making an oral or written offer of employment to a candidate. Without such disclosure, consumers with serious health conditions will not have the information they require to determine whether a new employer has coverage that will allow access to necessary care.

Extending grandfathered group health plans could seriously harm the populations we serve. We therefore urge the Departments, to the extent they contemplate further regulatory action, to ensure that current regulations are not weakened in any way that would further degrade patient protections in the group health insurance market. Any future changes to the rules impacting health plans with grandfathered plans should encourage those plans to come into compliance with the ACA. Thank you for the opportunity to submit comments on this Request for Information. If you have any questions, please contact Katie Berge, Federal Government Relations Manager at the American Heart Association at katie.berge@heart.org or at (202) 785-7909.

Sincerely,

American Cancer Society Cancer Action Network
American Heart Association
American Liver Foundation
American Lung Association
Arthritis Foundation
Chronic Disease Coalition
Cystic Fibrosis Foundation
Epilepsy Foundation
Global Healthy Living Foundation
Hemophilia Federation of America
Leukemia & Lymphoma Society
March of Dimes
National Association on Mental Illness
National Kidney Foundation
National Multiple Sclerosis Society
National Organization for Rare Disorders
National Patient Advocate Foundation
National Psoriasis Foundation
Susan G. Komen