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February 22, 2011

Mr. Steve Larsen

Office of Consumer Information and Insurance Oversight

Department of Health and Human Services

Attention: OCCIO-9999-P

Hubert H Humphrey Building, Room 445

200 Independence Avenue, SW

Washington, DC 20201

RE: OCIO-9999-P: Docket No. HHS-OS-2010-002: Rate Increase Disclosure and Review

Dear Mr. Larsen:

The National Patient Advocate Foundation (“NPAF”) thanks you for the opportunity to submit comments on the Department of Health and Human Services’ Notice of Proposed Rulemaking (NPRM) which informs the public of proposed regulations to establish a process for the annual review of “unreasonable increases in premiums for health insurance coverage” as identified in section 274 of the Public Health Service Act. These regulations are important ones as they further the Department’s ability to realize the goal set out in section 2794 of the Patient Protection and Affordable Care Act (ACA) which is to assist consumers in getting “better value for their health care dollars.”

NPAF is a non-profit organization dedicated to improving access to healthcare services through both federal and state policy reform. Its mission is to be the voice for patients who have sought care after a diagnosis of a chronic, debilitating or life-threatening illness. The advocacy activities of NPAF are informed and influenced by the experience of patients who receive direct, sustained case management services from our companion organization, Patient Advocate Foundation (PAF). In fiscal year 2009 (July 1, 2009 – June 30, 2010), PAF resolved 64,188 patient cases and received more than four million additional inquiries from patients nationally. Case management services include advocating for patients to assure their premium payments result in health insurance coverage as identified in their Explanation of Benefits. In short, PAF caseworkers work daily to assist consumers in getting value for their health care dollars.

NPAF understands the regulations will not prevent excessive increases that might be permitted under state law. It is, however, pleased that the regulations strive to provide the transparency that is necessary for consumers to determine value when making health care purchasing decisions. Moreover, making available to the public sufficiently informative requirements for insurer submission of rate increase justifications further empowers the consumer when determining the value of an insurance product.

NPAF concurs with the Department's decision to review rate increases as opposed to premium increases as identified in the ACA. Review of premium increases will likely result in a waste of Department resources as premium increases are subject to a number of variables outside of the Department's, or more importantly, the consumer's control. A focus on premium increases misses a crucial opportunity to educate consumers on the importance of focusing on rate increases and not mere premium increases when determining a health insurance product's value. While NPAF concurs with the decision to focus on rates, this focus will frustrate the Department's ability to realize the aforementioned ACA goal to assist consumers in getting better value for their health care dollars if resources are not expended to educate the consumer on not only the importance of focusing on rates, but the importance of the nexus between rate increases and premium increases. In other words, the Department's fundamental decision to focus on rates and not premiums must likewise include consumer transparency and that transparency must be pedagogical in nature.

The Department's decision to review those rate increases filed on or after July 1, 2011, or effective on or after July 1, 2011 in a state that does not require a rate increase to be filed if the average weighted increase in the rate filing, alone or in combination with prior increase in the preceding 12 month period which are 10%, can be potentially beneficial as well as potentially detrimental to the health consumer. First, aside from the rate-setting suggestion described later, setting a pre-determined rate of 10% is a reasonable starting percentage given the range of percentage increases revealed by a breadth of national medical cost inflation measures and the need to better understand rate increases in the individual market. The Department's decision to establish state-specific thresholds for each future calendar year is not only reasonable, but commendable. The variability in national medical cost inflation measures pales in comparison to inter-state variability. Finally, the 10% threshold imposes a reasonable regulatory burden on the industry, which has a direct impact on consumers as they ultimately are responsible for paying for unreasonable regulatory burdens.

The greatest challenge with the 10% threshold is that it assumes consistency throughout the states in reasonable market share competitiveness and does not address the unique challenges faced by consumers in less competitive markets. States that have less competitive insurance markets where one or a few carriers possess a large market share results in lack of consumer choice. Therefore, while a 10% threshold might be reasonable in a state where consumers have the option of choosing a number of insurance products based on the outcome of the reasonableness of the review, it may not be reasonable to assume consumers can quickly find valuable health insurance products in less competitive markets. Because consumer choice is an important assumption underlying the ACA goal of improving consumer value for the healthcare dollar, might the Department consider setting a slightly lower rate review threshold for states that have less competitive insurance markets? While NPAF recognizes the Department's decision to establish state-specific thresholds for each future calendar year, a slightly lower standard might influence health insurers with considerable market shares to pay greater attention to rate increases now. This outcome is necessary because in those markets a rate increase will have a greater impact on the consumer. One conclusion of the Kaiser Family Foundation's study¹ referenced in the NPRM was that *active rate review lowers premium requests filed by insurers*. Setting a slightly lower rate for states with less competitive markets may level the consumer playing field by helping to alleviate consumer inability in those markets to easily secure an affordable marketplace remedy.

NPAF encourages the Department to consider state variability as well as state roles in health insurance rate disclosure and review. As noted above, the Department's decision to establish state-specific thresholds for each future calendar year is not only reasonable, but commendable. While the premium review grant funding that has been and will continue to be awarded to improve state capacity to conduct an adequate review will improve the quality of reviews in the future, there are a few practices that states are employing now in their rate review efforts that may preclude the ability of these regulations as drafted to help consumers in getting value for their healthcare dollar. These practices should be considered when determining whether a state has an effective rate review program.

¹ Kaiser Family Foundation, "Rate Review: Spotlight on State Efforts to Make Health Insurance More Affordable," December 2010, available at <http://www.kff.org/healthreform/upload/8122.pdf>.

Transparency for Consumers: NPAF is appropriately focused on assuring the voice of the patient in healthcare policy development. This focus does not mean it is unaware that federal policymakers have to carefully weigh competing interests in the regulation promulgation process. NPAF requests that when competing interests challenge the ability of federal health policymakers to make all information transparent, that they consider differing ranges of consumer transparency. Therefore, while NPAF recognizes that while not all state rate review information can be made public because of challenges such as intellectual property challenges, it encourages the Department to consider an effective rate review program to include at least a modicum of consumer transparency, such as a general review of factors considered, the applicant's prior history of rate increase requests and decisions, links to accrediting body review determinations and other informative information. Also, excessive or frequent rate increases should be subject to a public rate hearing.

State Deeming Authority: Because of a lack of resources, some states have deemed rate approval requests if not acted on within 30 to 60 days. This allows unreasonable increases to be approved without any review. This practice is unfair to both consumers and to the insurers who have undergone a protracted review for reasonable increases. The four criteria of an effective rate review program listed under section 154.301 appear to implicitly disallow such a practice. However, because a state can meet the criteria for the majority of its review, the regulations need to make explicit that which appears to be implicit - an effective rate review program cannot allow for states to deem reviewed rate increases that exceed the threshold as reasonable under any circumstances.

Excessive Consumer Complaints: NPAF recognizes that the use of quantifiable, objective criteria in review processes often results in a fair outcome. It is generally pleased to note the majority of criteria in the state effective rate review program determination process are objective. However, subjective information is likewise important. States often collect consumer complaint information and that information should be considered in the rate review deliberation process. While these data may not always be quantifiable, they are nevertheless often informative of quality. Therefore, NPAF suggests consumer complaint information be considered in the rate review process. State health insurance ombudsmen and consumer advocacy groups like PAF have information which will likely prove informative in any state decision.

Role of Insurance Exchanges: The ACA also provides state insurance exchanges with authority to regulate premium increases. While the focus on insurance increases is commendable, consumers need to know how the intersection of these laws will be played out. If in fact exchanges will be limited to mere premium increase review, an effective state rate review program must inform consumers of the scope of authority for each entity and where to find what type of information regarding insurance rate or premium increases.

In summary, NPAF once again thanks the Department for an opportunity to comment on the health insurance rate increase disclosure and review regulations. While the regulations consider a number of very important factors in this process, their ability to assure consumer input can be improved upon. NPAF is confident that its ability to comment on these regulations will benefit health consumers throughout this great nation. Feel free to contact me directly at 202.347.8009 if you have any questions.

Sincerely,



Nancy Davenport-Ennis
Chief Executive Officer and President



Rene Cabral-Daniels
Chief of Staff