Regulatory Education and Action for Patients

● *Seeking Common Ground*

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: Docket No. HHS-OS_2010-0029: Rate Increase Disclosure and Review (OCIIO-9999-P)

Dear Mr. Larsen:

Regulatory Education and Action for Patients (REAP) would like to thank you for the opportunity to respond to your request for comments on the "Rate Increase Disclosure and Review" Notice of Proposed Rulemaking (NPRM) published in the *Federal Register* on December 23, 2010.[1] REAP is an umbrella coalition composed of patient advocacy groups. The coalition's goals are to strengthen current relationships and build new relationships with government agencies that are responsible for implementing provisions of the Patient Protection and Affordable Care Act (ACA) and other reform-minded regulatory changes and to ensure that implementation of these provisions is patient-centric. REAP's mission is to communicate the patient perspective on issues to Federal and State regulatory bodies, Congress, health care insurers and others that regulate/develop/manage and/or impact health care delivery, coverage, cost and availability to the United States population.

Section 1003 of the ACA is entitled "Ensuring that Consumers Get Value for their Dollars." REAP applauds the value-based purchasing concept underlying this provision of the healthcare reform law. The seemingly ever-mounting cost of health insurance has become an oppressive and all-too-often unaffordable burden for employers, individuals and families across the country. REAP recognizes that the goal of universal health insurance coverage cannot be achieved unless a variety of complementary approaches, including enhanced wellness initiatives, improved access to preventive care, innovative changes to the health care delivery system, and value-based purchasing reforms to the insurance market, are implemented.

REAP endorses using transparency as one of many approaches designed to ensure that future increases in insurance premiums are necessary and actuarially reasonable. REAP believes, however, that the effectiveness of the review programs contemplated by the NPRM could be further enhanced by incorporating additional opportunities for consumer input into or requiring the dissemination of more consumer-focused information as part of the contemplated review processes to be undertaken by the States or, if the States are inadequately prepared, by the Department of Health and Human Services (HHS). REAP's comments focus largely on those aspects of the NPRM where members see

[1] 75 *Fed. Reg.* 81004 (Dec. 23, 2010).

opportunities for strengthening the consumer voice or refocusing transparency requirements in ways that better reflect consumer interests in both the development of the rate review process as well as the ongoing process of rate reviews.

REAP agrees with the decision to initiate a "rate increase" disclosure and review process rather than a "premium increase" review process. REAP understands that it is the underlying rates and methods used to set such rates that are the subject of the actuarial reviews that must be conducted by States and/or HHS to evaluate the reasonableness of insurance costs. REAP also understands that reasonable premium increases must reflect permitted differences in charges to various classes of insured individuals under applicable State laws and projected differences in healthcare service utilization in various parts of the country.

On the other hand, REAP also understands that it is premiums, not rates, that interest the patients for whom REAP advocates. Therefore, REAP urges HHS to ensure that required disclosures about rate increases are routinely accompanied by an analysis of the impact of the contemplated rate increases on premiums. REAP would like to see all required rate disclosures include not only a discussion of the expected percentage increase in premiums for various classes of policy holders but also concrete dollars-and-cents explanations of any premium hikes. Those disclosures also must be put in context by including a discussion of any changes in consumer cost-sharing through deductibles and co-payments/co-insurances that will accompany a premium change.

REAP supports the decision not to pre-judge whether a rate increase is "unreasonable", but rather to establish a process for assessing unreasonableness because doing so is inherently fairer. REAP likes the approach of setting a trigger for reviewing rate increases for reasonableness that is designed to balance the resources required for rate review with the likelihood that a rate increase will be found to be actuarially unsupportable. It is inconsistent with tax-payers' overall interests to spend more on regulatory oversight than is necessary to prevent significant consumer abuses by the insurance industry.

The 10% trigger also seems to be consistent with the balancing REAP supports to hold oversight expenditures to a defensible level. REAP is supportive of the 10% trigger selected for 2011 even though that trigger appears, at first blush, to exceed recent rates of healthcare cost increases as measured by the Medical Economic Index, the National Health Expenditure data assembled by the Centers for Medicare & Medicaid Services (CMS) and the S&P Healthcare Economic Index. REAP supports the selected trigger because it is reasonably commensurate with the 2009-2010 cost increase found by the S&P Index – the only index considered that takes into account both service costs and service utilization.

Given the recognized geographic variability in healthcare costs and service utilization,[2] REAP commends the decision to move to State-specific thresholds for 2012 rate increase reviews. That said, REAP asks that HHS develop and promulgate requirements for the setting of State review triggers that are evidence-based and consumer sensitive. An example of a State review trigger that is consumer sensitive is one that is written in a manner likely to be understood by the majority of health consumers, including those with low health literacy. State-specific triggers should take into account analyses of commercial insurance carrier experiences developed by State Insurance Commissions and of Medicaid costs developed by State Agencies and CMS. State-specific cost data drawn from analyses of Medicare claims data by CMS should be factored in as should data-based input solicited

[2] *See e.g.*, J.E. Wennberg and M.M. Cooper, eds., "The Dartmouth Atlas of Health Care in the United States" (Chicago: American Hospital Publishing, 1996).

from non-profit groups that provide services to consumers of all income levels fighting serious diseases or facing healthcare access issues throughout the State. Many non-profits also have data such as percentage of patients served that can now no longer afford their insurance due to a premium increase, which would be valuable to the reviews. Triggers also should reflect a realistic assessment of the resources available to each State Insurance Commission for conducting rate increase reviews.

Within reasonable limits, REAP encourages HHS to permit States the flexibility of prioritizing rate increase reviews by looking at those increases or increase proposals involving the highest percentage change first if the volume of review demands ever exceeds resources available to handle all required reviews simultaneously. For this reason, REAP agrees with the decision that HHS has made to rely on State definitions of the individual and small group insurance markets until a national standard becomes effective under ACA. REAP is also amenable to the decision not to impose rate increase disclosure and review requirements on plans serving the large group market given that most States do not, for a number of legitimate reasons, not the least of which is ERISA regulation, review rates for such plans. State flexibility, as well as capacity, should also be considered when HHS considers its own capacity to accommodate requests from States to assume these responsibilities.

The criteria set forth in the NPRM for evaluating the effectiveness of State rate review increases are, in our view, appropriate but incomplete. REAP would like to see consideration given to the adequacy of State Insurance Commission staffing and/or outsource arrangements for handling rate reviews when HHS evaluates the effectiveness of State review programs and without unreasonably burdening the system for information it may not be able to use in the review process. States need to be positioned to carry out rate reviews within reasonable timeframes. As a result, staffing must be considered in the context of the selected State-specific review trigger when HHS assesses the adequacy of State review programs. REAP also strongly urges HHS to take into account whether a State has included a process for soliciting public input, either through hearings or the submission of written comments, when it decides whether to entrust rate increase reviews to a State. By the same token, in those instances in which HHS must assume rate increase review and disclosure responsibilities, it too should provide for consumer input. Without this, the entity tasked with rate review will not be well positioned to assess the impact, if any, that specific rate increases likely will have on the willingness and/or ability of a significant proportion of State residents to remain insured.

REAP appreciates the importance of the grant funding provided under Section 1003 of ACA to support the development of State health insurance rate review capabilities. REAP encourages HHS to develop ways to structure grants so as to encourage States to enact any legislation necessary to require both the filing of rate increase proposals in advance and State Insurance Commission approval of each proposed increase before the increase is permitted to take effect. The *post hoc* review of rate increases is, in our view, unacceptable from a consumer protection perspective. Further, given the recognized concentration of the health insurance markets throughout the country,[3]

[3] *See e.g.*, GAO Report, "Private Health Insurance: 2008 Survey Results on Number and Market Share of Carriers in the Small Group Health Insurance Market" (Feb. 27, 2009), available at http://www.gao.gov/new.items/d09363r.pdf and Factcheck.org, "Retraction: Health Insurance Market Concentration" (September 16, 2009), available at http://www.factcheck.org/2009/09/retraction-health-insurance-market-concentration/.

REAP suspects that transparency alone will not always be sufficient to ensure that insurance carriers adequately rein in any proposed rate increase that proves to be unreasonable upon review.

To enhance the value of rate increase disclosure and review, REAP urges HHS to consider structuring ACA Section 1003 grants to encourage States to extend grants to patient advocacy groups and other non-profit organizations to implement consumer outreach programs focused on educating the public about how to participate effectively in the rate increase review process and, more importantly, about how to select value-based insurance with coverage appropriate to their individual circumstances. Such an approach to outreach and education would leverage the intellectual capital and relationships of the non-profit community and meet what will be an increasingly urgent need for informed, health-insurance-literate consumers when insurance exchanges become operational in 2014. REAP also would like to encourage HHS to ensure that the reporting requirements associated with grant funding require recipients to assess the benefits to consumers of any initiatives related to State rate review and disclosure process improvements undertaken. In the spirit of the transparency requirement at the heart of the Section 1003 rate increase disclosure and review process, REAP would hope that such reports would be made available for public review, if for no other reason than to inform other advocacy group education and outreach initiatives.

* * * * * * *

REAP thanks you for the opportunity to comment. We would be pleased to respond to any questions about our recommendations that may arise regarding rate increase disclosure and review processes at either the State or Federal levels. To the extent that our individual and unique experiences may be helpful to you as you develop other consumer protections relevant to the health insurance marketplace, please do not hesitate to contact us.

Respectfully submitted,

Alpha-1 Association
Alpha-1 Foundation
ALS Association
COPD Foundation
Friends of Cancer Research
The Leukemia & Lymphoma Society
Lymphoma Research Foundation
Marti Nelson Cancer Foundation
Men's Health Network
National Alliance on Mental Illness
National Osteoporosis Foundation
National Patient Advocate Foundation
Parkinson's Action Network
Susan G. Komen for the Cure
Susan G. Komen for the Cure Advocacy Alliance
ZERO – The Project to End Prostate Cancer