



THE **AIDS** INSTITUTE

**WRITTEN TESTIMONY OF
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TO THE SUBCOMMITTEE ON HEALTH
HOUSE COMMITTEE ON ENERGY AND COMMERCE
HEARING ON CMS' MEDICARE PART D PROPOSED REGULATION
FEBRUARY 26, 2014**

The AIDS Institute, a national public policy, research, advocacy, and education organization, is pleased to offer our views on the Centers for Medicare and Medicaid Services' (CMS) proposed Medicare Part D rule. Since we believe aspects of the proposed rule would erode a patient's ability to obtain the medications that their providers prescribe, we are urging CMS to scrap the proposal to change the "six protected classes". Frankly, just like many of you, we were rather surprised the Obama Administration would propose such a rule given its strong commitment to quality health care, including mental health, and to people living with HIV/AIDS and other illnesses and diseases.

For people with HIV and so many others, new drug therapies have saved millions of lives and prolonged millions more. The advent of antiretroviral medications in the late '90s turned HIV from a near certain death to a more manageable disease if patients have access to quality care and medications. We know that all medications are not the same and each person reacts differently to a particular medication. Doctors and patients together make careful decisions about which therapies are most appropriate on a case by case basis. Some individuals may

develop side-effects to a particular drug, while another person may need a certain therapy to avoid a harmful interaction with a drug being taken for another health condition. For people with HIV drug resistance can occur, requiring them the ability to switch to another drug without interruption.

It was for these reasons that when Medicare Part D was first implemented, CMS determined that a minimum of only two drugs in a class was simply not enough for certain patients, including those with HIV, mental illness, cancer, epilepsy, and those undergoing organ transplantation. The “six protected classes” was created so that patients could have access to all the drugs in these classes.

For the past 10 years, Medicare Part D has been working for millions of seniors and people with disabilities, including over 100,000 people with HIV. As part of the Affordable Care Act (ACA), Congress even further codified the “six protected classes.” We see no reason why the protected classes should be changed, and if they were, we would like to see more classes of drugs gain “protected” status rather than reducing them so that more patients can gain access to the medications that are prescribed by their providers.

As I commented earlier, we were shocked when we read the proposed rule. The Secretary used the authority granted to her under the ACA to develop criteria to alter the “six protected classes” and at the same time, proposed to eliminate three of the six classes. One would think that if the Administration was contemplating any changes, the criteria for class review would be developed first with adequate public comment before it was applied. Instead a very arbitrary criterion was developed in secret and then arbitrarily applied at the same time.

Thankfully, the proposed rule continues the protections for antiretrovirals. That would not be the case for antidepressants and immunosuppressants in 2015 and antipsychotics in 2016,

if the proposed rule was finalized. Frankly, we are worried. Who will be next? How much longer will people with HIV, cancer, or epilepsy have access to all the medications they need through Medicare Part D?

Because it is estimated that about half of people living with HIV experience mental illness or substance abuse, we are concerned that people with HIV who rely on antidepressants and antipsychotics will not be able to access their medications. We are also concerned that people with hepatitis who undergo liver transplants will not be able to access their immunosuppressants.

Medicare Part D, including the “six protected classes” is working. It is enabling the elderly and the disabled to access the medications their providers prescribe and at the same time saving and prolonging countless lives. We see no reason to change the “six protected classes” and urge the Administration to withdraw this proposal.

Thank you very much.

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