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August 27, 2010

Mr. Jim Mayhew

Office of Consumer Information and Insurance Oversight

Department of Health and Human Services

Attention: OCIO-9994-IFC, RIN 0991-AB69

P.O. Box 8016

Baltimore, Maryland 21244-1850

**Re: Comments on Interim Final Rules for Patient Protections
(File Codes OCIO-9994-IFC, RIN 0991-AB69/ RIN 1210-
AB43/REG-120399-10)**

Dear Mr. Mayhew:

The American Academy of Physical Medicine and Rehabilitation (AAPM&R) appreciates the opportunity to comment on interim final rules that implement provisions of the Patient Protection and Affordable Care Act (P.L. 111-148, "Affordable Care Act" or "ACA") regarding patient protections, preexisting condition exclusions, and lifetime and annual limits. We applaud the issuance of these interim final rules by the Departments of Health & Human Services, Labor, and Treasury (collectively, the "Departments") because their promulgation is an important step forward in protecting patients and consumers against certain practices within the private health insurance market.

AAPM&R has endorsed a broader set of comments submitted by the Consortium for Citizens with Disabilities (CCD) and we align ourselves with the specific recommendations and concerns contained in those comments. However, the Academy would like to take this opportunity to amplify our comments on one of the most important patient protections encompassed by the Rule, access to specialty care.

AAPM&R is a national specialty society of more than 7,500 physical medicine and rehabilitation physicians, also known as physiatrists. Physical medicine and rehabilitation has been a recognized board-certified specialty since 1947 and our members have a primary focus on restoring function to patients with health conditions ranging from physical mobility impairments and pain to those with complex physical and cognitive deficits. Typical patients treated by physiatrists include those with spinal cord injuries, brain injuries, amputations, and a variety of musculoskeletal and neuromuscular conditions and chronic illnesses.



Patient Protections: Access to Specialty Care

AAPM&R strongly supports the interim final rules regarding patient protections, which allow consumers greater choice in selecting their primary care provider in health plans that utilize a network of providers.¹ This consumer access provision is one of several similar protections that were previously contained in more comprehensive patients' rights legislation proposed in 2001, which AAPM&R supported but was not enacted at the time.² The promulgation of a limited set of patients' rights in this Rule is a positive development, but we urge the Departments to use their own authority to strengthen these consumer protections in the following ways:

- **Broad Conception of Primary Care Provider:** The Secretaries of the Departments should strengthen the definition of a "primary care provider," as used in the consumer protection rules. AAPM&R believes that a "primary care provider" should be defined in *functional* terms, and not solely on the basis of *who* is providing care. In particular, we urge the Departments to adopt a multidimensional definition of primary care, as suggested by the Institute of Medicine (IOM):

"Primary care is the provision of integrated, accessible health care services by clinicians who are accountable for addressing a large majority of personal health care needs, developing a sustained partnership with patients, and practicing in the context of family and community."³

We believe this definition would remove unnecessarily sharp distinctions between generalists and specialists, at least when it comes to the provision of care to people with chronic conditions and disabilities. Consequently, adoption of this concept of primary care may allow patients, particularly those with disabilities and chronic conditions, to have better access to specialty care without prior authorization from a primary care "gatekeeper" who is a generalist. This would be a critical protection in health plans that use a network of providers that are only accessible through a primary care coordinator or case manager. Many people with disabilities and chronic conditions know their condition well and are active participants in managing their health care. In this instance, direct access to a specialist, such as a physiatrist, is often more efficient, less costly to the plan, and may lead to better, more timely care. In fact, in many instances, physiatrists and other specialists already serve as *de facto* care coordinators for persons with disabilities.

¹ The interim final rules are set forth at 26 CFR 54.9815-2719AT, 29 CFR 2590.715-2719A, 45 CFR 147.138. The interim final rules implement the statutory provisions of Sec. 2719A of the PHS Act, which was added by Sec. 1001 of the ACA.

² See the Bipartisan Patient Protection Act, S. 1052 and H.R. 2563 (as introduced) from the 107th Congress. Sections 112, 115, 116 contain provisions for access to primary care, obstetrical and gynecological care, and pediatric care, respectively.

³ Institute of Medicine, Committee on the Future of Primary Care, *Primary Care: America's Health in a New Era* (Washington: National Academy Press, 1996), p. 31.

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- Physiatrists as Care Coordinators for People with Disabilities and Chronic Conditions:
AAPM&R therefore believes the Departments should permit enrollees, particularly those with disabilities and chronic conditions, to select a willing specialist—such as a physiatrist—to serve as a care coordinator in plans that employ a network delivery model that utilizes the care coordinator concept. Physicians such as physiatrists who treat patients with chronic illnesses and disabilities and who are willing to serve in the care coordinator role should have that same designation under the Rule.

AAPM&R believes that the interim final rule provides significant new protections for the patients we serve but we believe that the rules can still be strengthened in the manner described above and through the recommendations offered by the Consortium for Citizens with Disabilities.

Please feel free to contact Suzanne Butler at 847-737-6022 or AAPM&R counsel, Peter W. Thomas, at 202-466-6550 if you have any questions. Thank you for your time and consideration.

Sincerely,



M. Elizabeth Sandel, MD
President

Cc:

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Internal Revenue Service
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