



**Association of  
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Via E-mail submission to [E-OHPSCA-FAQ.ebsa@dol.gov](mailto:E-OHPSCA-FAQ.ebsa@dol.gov)

August 1, 2014

Sylvia Mathews Burwell  
Secretary, Department of Health and Human Services  
200 Independence Avenue, SW  
Washington, DC 20201

Jack Lew  
Secretary, Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington, DC 20220

Thomas E. Perez  
Secretary, U.S. Department of Labor  
200 Constitution Avenue, NW  
Washington, DC 20210

**RE: Departments of Labor, Treasury, and Health and Human Services Inquiry Regarding Application of the Out-of-Pocket Limitation to the Use of Reference-Based Pricing**

Dear Secretaries Burwell, Lew, and Perez:

The Association of American Medical Colleges (AAMC or Association), which represents all 141 accredited U.S. medical schools, nearly 400 major teaching hospitals and health systems, and nearly 90 academic and scientific societies, and through these institutions and organizations represents 128,000 faculty members, 83,000 medical students, and 110,000 resident physicians, is pleased to comment on “Question 4” of the document entitled “FAQs about Affordable Care Act Implementation Part XIX” available at <http://www.dol.gov/ebsa/faqs/faq-aca19.html>. Specifically, the Departments of Labor, Treasury, and Health and Human Services (the Departments) invite comments on the application of the out-of-pocket limitation to the use of reference-based pricing, including standards that plans using reference-based pricing structures should be required to meet to ensure that individuals have meaningful access to medically appropriate, quality care.

Under reference-based pricing structures, insurance plans provide payment up to a fixed amount for a particular service. Patients who elect to receive treatment at a facility charging more than that payment limit are personally responsible for paying the difference. The Affordable Care Act imposes annual limitations on out-of-pocket costs. The issue the Departments raise is whether

the amount individuals pay above the reference price should count toward out-of-pocket maximums. As the Departments note,

Reference pricing aims to encourage plans to negotiate cost effective treatments with high quality providers at reduced costs. At the same time, the Departments are concerned that such a pricing structure may be a subterfuge for the imposition of otherwise prohibited limitations on coverage, without ensuring access to quality care and an adequate network of providers.

The AAMC is extremely concerned about patients' ability to access care provided by a sufficient number of quality providers and is also concerned about the potential for significant financial harm that could befall patients if amounts patients pay above the reference price are not counted toward out-of-pocket maximums. To ensure adequate access, the Association also believes that the in-network portion of the health plan network should have to meet network adequacy requirements applicable to non-grandfathered plans under the Affordable Care Act (ACA). These network adequacy standards should also apply to the lowest tier of plans with multiple network tiers.

The AAMC believes the Departments should indeed impose standards on plans using reference-based pricing structures to ensure patient access to high-quality, appropriate medical care. The AAMC believes the use of reference-based pricing should be limited to: (1) non-urgent, relatively standard services, for which consumers have sufficient time and ability to compare prices; (2) services for which there are a sufficient number of high-quality providers able and willing to perform the service at or below the reference price; (3) discrete services that would not be paid for as part of a larger episode of care; and (4) a small number of total services provided.

America's teaching hospitals would struggle in a world in which all services were paid based on reference prices. AAMC member teaching hospitals maintain the vast majority of the country's critical standby units, including trauma centers, burn units, neonatal and pediatric ICUs. Compared to other hospitals, major teaching hospitals care for patients that are sicker, poorer, and more likely to be disabled and non-white. Teaching hospitals are committed to the missions of providing critical services, serving vulnerable populations, and educating the next generation of physicians. However, these missions carry heavy expenses that tend to be underpaid by insurers and the government and often must be absorbed by the hospitals themselves. The global use of reference-based pricing would be highly problematic for teaching hospitals, because it fails to provide a way for hospitals to cover the higher costs that support the services and programs that are a benefit to all in the community.

Reference-based pricing should not simply be about cost shifting or about insurance companies obtaining higher profit margins. Patients must benefit from its use as well: for example, by being permitted to count their out-of-pocket costs against their deductibles and out-of-pocket cost limitations, and/or by requiring insurers to use any savings from reference-based pricing to lower patient premiums. Insurers also should be required to demonstrate a high standard of quality for services providing within reference-based pricing.

Secretaries Burwell, Lew, and Perez

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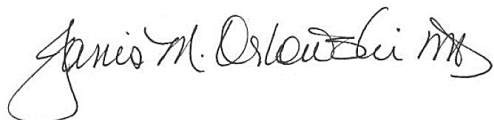
In addition to benefiting from the use of reference-based pricing, patients must also understand when it will apply and what the implications will be for their own finances. The AAMC is concerned that patients do not understand exceptions to what counts toward their out-of-pocket limit or even that there could be exceptions and urges the Agencies to consider ways of ensuring that proper patient education takes place around this complex subject.

The AAMC is firmly committed to efforts that bend the health care cost curve and reduce unnecessary healthcare spending. The Association is a Facilitator Convenor of 28 teaching hospitals in the Centers for Medicare and Medicaid Innovation (CMMI) Bundled Payments for Care Improvement (BPCI) Initiative. The AAMC has also been named as a recipient of a CMMI Healthcare Innovation Award for an eConsult/eReferral project that will improve communication and coordination between primary care and specialty physicians to integrate care delivery practices and reduce unnecessary expense. Many of our members participate in the Centers for Medicare and Medicaid Services (CMS) Medicare Shared Savings Program (MSSP) and in Pioneer Accountable Care Organizations (ACOs). America's teaching hospitals are working to redesign care delivery systems and reduce costs – but believe such goals should not be accomplished at the expense of access to high-quality and appropriate patient care.

Finally, in the future, the AAMC urges the Departments to publish requests regarding reference pricing in the *Federal Register* to ensure they are seen by all interested parties who may wish to comment.

Thank you for your consideration of our comments on the Departments' Question 4 on reference-based pricing. Should you have questions, please feel free to contact Lori Mihalich-Levin at [lmlevin@aamc.org](mailto:lmlevin@aamc.org) or at 202-828-0599.

Sincerely,

A handwritten signature in black ink that reads "Janis M. Orlowski" with a stylized flourish at the end.

Janis M. Orlowski, M.D., M.A.C.P.  
Interim Chief, Health Care Affairs  
Senior Director, Clinical Transformation Unit

Cc: Ivy Baer, J.D., M.P.H.  
Atul Grover, M.D., Ph.D.  
Lori Mihalich-Levin, J.D.