



December 3, 2019

The Honorable Steven Mnuchin
Secretary of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

The Honorable Alex Azar
Secretary of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

The Honorable Eugene Scalia
Secretary of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

RE: Request for Extension of Comment Period on Transparency in Coverage Proposed Rule (IRS 26 CFR Part 54, EBSA 29 CFR Part 2590 and HHS 45 CFR Parts 147 and 158)

Dear Secretaries Mnuchin, Scalia, and Azar:

America's Health Insurance Plans (AHIP) and The Blue Cross Blue Shield Association (BCBSA) respectfully request that the Departments of the Treasury, Labor, and Health and Human Services ("Tri-Agencies") extend the public comment period on the above referenced proposed rule by a minimum of 90 days beyond the currently scheduled public comment deadline.¹

On November 15, 2019, the Tri-Agencies released a Notice of Proposed Rulemaking (NPRM) that would create new price transparency requirements for commercial health insurers. The rule would require plans and issuers to provide consumers with personalized, real-time estimates of expected out-of-pocket costs via an internet-based tool before seeking care. It would also require public disclosure of all negotiated rates for in-network providers, devices, and drugs as well as historic allowed amounts for all out-of-network providers. The NPRM provided a 60-day public comment period that closes on January 14, 2020.

¹AHIP is the national association whose members provide coverage for health care and related services to hundreds of millions of Americans every day. Through these offerings, we improve and protect the health and financial security of consumers, families, businesses, communities and the nation. We are committed to market-based solutions and public-private partnerships that improve affordability, value, access, and well-being for consumers. BCBSA is a national federation of 36 independent, community-based and locally operated Blue Cross and Blue Shield (BCBS) companies that collectively provide healthcare coverage for one in three Americans. For 90 years, Blue Cross and Blue Shield companies have offered quality healthcare coverage in all markets across America – serving those who purchase coverage on their own as well as those who obtain coverage through an employer, Medicare and Medicaid.

We agree that every American should be able to get personalized health care cost and quality information before they seek care. Increasing access to actionable and personalized information will help patients make informed decisions that best meet their health and financial needs. We support clear, consistent, and concise information that is customized to an individual's circumstances. However, the proposed rule solicits comments on a far-reaching proposal that impacts how consumers access and shop for every healthcare service, device, or prescription drug. In announcing the proposed transparency initiatives, Secretary Azar noted that this announcement "may be a more significant change to American healthcare markets than any other single thing we've done." Given the potential for significant disruption to health care markets outlined in the NPRM, we are concerned that development of thoughtful, constructive comments will not be possible under the current 60-day timeframe. Thus, stakeholders will not have a meaningful opportunity to comment as required by the Administrative Procedure Act.

Executive Order 13877 recognized these complexities by directing the Tri-Agencies to release an advance notice of proposed rulemaking (ANPRM), consistent with applicable law, to seek preliminary feedback before developing a specific regulatory proposal. The Executive Order contemplated that the ANPRM solicit comment on a proposal to require healthcare providers, health insurance issuers, and self-insured group health plans to provide or facilitate access to information about expected out-of-pocket costs for items or services to patients before they receive care. Instead, the Tri-Agencies moved forward with an NPRM that has a much broader scope. The NPRM released on November 15th extends well beyond the most common shoppable services available today in tools offered by health plans to their enrollees. It also extends beyond the notion of out of pocket costs, instead contemplating the public release of negotiated rates for *all* covered items or services regardless of their relationship to out of pocket costs faced by individual consumers.

The sheer volume of data that the government is proposing health plans disclose is staggering – dollar amounts for every single item or service, for every single provider and facility, for every single individual and employer plan. This is an unprecedented request of private industry to disclose publicly, with little time for health plans to adequately account for the number of complexities in complying with the proposed requirements in the NPRM. Additionally, the NPRM included a detailed economic burden analysis. We are in the process of collecting information to respond to this portion of the NPRM and will need additional time to respond in a meaningful manner to ensure you have accurate information on the costs of complying with these new proposals.

The NPRM asked dozens of questions to which AHIP & BCBSA intends to offer comments. We believe that thoughtful feedback on these questions from AHIP, BCBSA, and other stakeholders can help the agencies formulate policies that appropriately further empower consumers with information in a way that is efficient and effective. However, the timeline as proposed, severely limits our ability to offer thorough and thoughtful responses to those questions.

December 3, 2019

Page 3

For example, the NPRM asks stakeholders to provide feedback on: the rule's treatment of ACOs, unique issues related to prescription drug pricing, the rule's impact on the move for value based care in lieu of a fee-for service system, how the rule should address quality, whether staff model HMOs should be exempt from the rule, and the rule's impact on overall health care costs.

Moreover, we note that there are many moving pieces regarding the issue of transparency and further clarity on how they all fit together may be relevant to our comments to the NPRM. Our response to the quality request for information should reflect the final recommendations in the Federal Quality Roadmap which will not be released until December 21st. In addition, there are several pending regulations and legislative proposals that are relevant to the current NPRM and commenters should have the opportunity to reflect on their relationship.

AHIP and BCBSA respectfully request that the Tri-agencies extend the public comment period for at least an additional 90 days, or until no earlier than April 14, 2020. We support the Administration's goal of empowering consumers with greater access to information to help them make the best choices for their care. We want to ensure that the rollout of any requirements are thoughtfully deliberated. Thank you for considering this request.

Sincerely,



President and Chief Executive Officer
America's Health Insurance Plans



Senior Vice President
Office of Policy and Representation
Blue Cross Blue Shield Association