April 21, 2014

The Honorable Marilyn Tavenner, Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-9949-P
Baltimore, MD 21244-8016
Filed via: www.regulations.gov

RE: **Patient Protection and Affordable Care Act; Exchange and Insurance Market Standards for 2015 and Beyond – CMS 9949-P**

Dear Ms. Tavenner:

The Alliance of Community Health Plans (ACHP) is pleased to respond to the proposed rule referenced above and published in the *Federal Register* on March 21, 2014.

ACHP is a national leadership organization representing community-based and regional health plans and provider organizations. ACHP members provide coverage and care for more than 18 million Americans. Our members are not-for-profit health plans or subsidiaries of not-for-profit health systems participating in state and Federally-facilitated Marketplaces, Medicare Advantage, Medicaid, and commercial products. Member plans share longstanding commitments to their communities, close partnerships with providers, and substantial investments in the innovative approaches and infrastructure necessary to provide health care that is coordinated, affordable and high quality. In the 2013-14 National Committee for Quality Assurance (NCQA) rankings of health plans, ACHP plans are all 10 of the nation's top 10 Medicare plans, 5 of the top 10 plans in the commercial rankings and 5 of the top 10 plans in the Medicaid rankings.

ACHP offers the following comments in response to the proposed rule:

Subpart H. Exchange Functions: Employee Choice and Enrollment Periods in the Small Business Health Options Program (SHOP)

ACHP is very concerned about and strongly opposes CMS' proposal to provide for a one-year transition policy – effectively a delay – with respect to the offering of "employee choice" under the SHOP. As we have said in previous comment letters, ACHP believes that employee choice is both statutorily required and a core element necessary to establish the SHOP's value and attract participation by small employers.

Strengths of the SHOP

By making available a choice of coverage options, the SHOP offers to small businesses a significant advantage that has been enjoyed by larger employers in sponsoring employee health plans. Without employee choice, small business owners may not see sufficient value in the SHOP to participate, choosing instead to remain uninsured or seek coverage for their workers outside of the Marketplaces.

In order for the SHOP to be successful in achieving the ACA's goals, it must offer choices and services that are not readily available to small employers in the current small group market. A successful SHOP will offer both multiple coverage options at competitive prices and also better and more available information on key consumer issues like quality and plan service. We believe that a SHOP that is functioning effectively will in turn push the market towards higher quality coverage and stronger competitive forces among carriers. Another advantage that will be attractive to small businesses is that the SHOP will ease their administrative burden of offering coverage.

For a SHOP to have maximum impact, it should not only offer the employer a choice among health plans at the various metal levels but also offer the employees a choice among health plans within the metal levels. When employers select health plans for group coverage, they are frequently choosing their employees' providers – often with the result that employees have to change providers against their will. The greater availability of options in the SHOP would allow employees to select the combination of provider network, price, quality performance and other relevant factors that meet their needs. Employee choice increases the value of the health benefits offered by small employers, thus encouraging more employers to participate in the SHOP.

The decision by CMS to postpone the employee choice option along with premium aggregation for 2014 for the federally facilitated SHOPs is likely to be one of the major reasons why small employers have generally not elected SHOP options to date. With the exception of a very few states that are operating their own SHOP marketplaces, SHOP enrollment has been disappointing. We remain worried that small employers who have concluded for 2014 that there is little or no value to SHOP participation may not take the time to reconsider this decision in future years, particularly if employee choice is postponed for yet another year.

Concerns about the Proposed Rule

ACHP believes that employee choice within the SHOP is required by the Affordable Care Act. Under Section 1312 (a)(2)(A) and (B), the law establishes a choice environment by indicating that the employer may specify the level of coverage and that the employee may choose plans within that level. While we recognize that the challenge of developing a premium aggregation process was reasonable grounds for delaying full implementation of employee choice in 2014, we strongly urge CMS not to offer a transition policy for 2015.

Under CMS' proposed transition policy for 2015, a SHOP would be permitted to not implement employee choice if: (1) employee choice would result in significant adverse selection in the state's small group market that could not be fully remediated by the single risk pool or premium stabilization programs; or (2) there is an insufficient number of issuers offering qualified health plans or qualified stand-alone dental plans to allow for meaningful plan choice among qualified health plans or qualified stand-alone dental plans for all actuarial value levels in the state's SHOP. A determination of whether one of these conditions is met would primarily be the responsibility of a state's department of insurance (or other regulatory agency), which could submit to the SHOP Marketplace (or, in the case of the FF-SHOP, to the Secretary) a recommendation supporting either of the two proposed extenuating circumstances for 2015.

ACHP is concerned about this proposed process and the transition policy as a whole. We anticipate that a state insurance department could present preliminary or speculative evidence of market destabilization that would result in postponement of employee choice for that state's SHOP Marketplace, whether it be an FF-SHOP or a state-established SHOP.

- ***ACHP strongly believes that CMS should not adopt the proposed 2015 transition policy as final, but if CMS moves ahead with this proposal, we urge CMS to require a state regulatory entity in FF-SHOPs and state-based SHOPS to fully support the evidence of adverse selection and absence of meaningful plan choice in its small group market with concrete, specific details*** of its estimated adverse effects on small group insurance plan premiums and enrollment (in and outside of the Marketplaces), taking into account the single risk pool and premium stabilization provisions. The evidence presented should be subject to public review and comment.

With respect to the proposed transition procedure, CMS has noted in the NPRM's preamble that a state agency recommendation would need to include concrete evidence that employee choice would have adverse selection effects or that there would not be meaningful choice of plans. However, the *regulatory* text states only that in electing to not implement employee choice in 2015, a SHOP would be acting based on recommendations of a state agency.

- ***ACHP urges that, should CMS adopt this provision, it include the requirement for concrete evidence in the regulatory text and apply it broadly so that it will apply to the FF-SHOPs and the state-based SHOPs***. The regulating entity should also be required to address whether a more modified version of employee choice, including the three identified by CMS (i.e., within a single issuer's plan offerings within an actuarial value level; for all plans from a single issuer across two contiguous actuarial value levels; and for all plans, all actuarial value levels, from a single issuer) would not sufficiently mitigate any adverse selection effects of providing for employee choice in 2015.

- ***Further, if CMS adopts the proposed transition policy as final, ACHP urges CMS to require the state regulatory entity to include, as part of its recommendation for a delay, a mitigation plan describing how the agency intends to ensure full implementation of employee choice in 2016.*** This plan should be required to include how any adverse effects of a delay in employee choice in 2015, such as lower-than-expected small business participation in the SHOP, will be addressed so that these conditions do not persist into 2016.

- ***CMS should also apply to all states the requirement for public review and comment of a state's insurance regulator's recommendation in favor of delay in 2015***. The Secretary of Health and Human Services should include a review of the public comments in the Secretary's consideration of the state regulators' recommendations.

- ***Finally, if this proposed transition policy is finalized, a deadline should be included for a state's recommendation to delay employee choice***. Our strong preference would be the timing option described by CMS whereby the state agency would have to make recommendations prior to the close of the initial QHP application window, giving time for QHPs to make informed participation decisions. The earlier this decision is made, the better it will be for all relevant stakeholders in planning for 2015.

Quality Standards for Exchanges: Quality Rating System (§155.1400) and Enrollee Satisfaction Survey System (§155.1405)

ACHP continues to strongly support the long-term value of the Quality Rating System (QRS), and believes that it has the potential to play as important a role in the Marketplace as the star ratings system plays in Medicare. We have been concerned about the delayed implementation of the QRS, and are pleased that HHS intends to begin beta testing the QRS in 2015.

We encourage HHS to use the Triple Aim framework to guide the evolution of the rating system, balancing measures of patient experience, outcomes and costs so that patients can best assess value in choosing health plans. HHS' stated intent to incorporate information regarding consumer experience into the QRS will provide a meaningful set of overall performance experience measures to consumers, coupled with the ability to drill down to domains, composite and individual measures of particular concern.

We strongly support HHS' intent to align the quality measures with measures health plans currently report in the commercial and public markets; that alignment will minimize complexity and facilitate long-term consumer understanding as well as support health plan and provider quality improvement. We urge CMS to incorporate HEDIS measures of clinical quality in the QRS, as those measures have been tested over time and used and accepted widely by consumers, employer purchasers, and health plans. Finally, we emphasize the importance of adopting a nationally uniform methodology to determine quality ratings for all health plans. To facilitate consumer choice, we believe that comparative information among plans should be presented at the state level.

Quality Rating System (§156.1120) and Enrollment Satisfaction Survey (§156.1125)

ACHP supports product-level reporting for populations inside and outside the Marketplace, especially in the early years of implementing the QRS. More granular reporting, such as reporting at each metal level, will not be feasible until enrollment reaches a point where the sample sizes support robust measurement.

Consistent with our overall view of the need for alignment with other quality reporting, ACHP believes that data validation should be done in a manner comparable to that used for the MA program. We look forward to reviewing the technical guidance for the validation process for measures for which a measures steward has not defined a validation process. Any such guidance should be aligned with the reporting and validation processes under the recognized accreditation entities that are required for QHP issuers.

Thank you for considering ACHP views on the proposed rule. If you have any questions or require additional information, please contact Howard Shapiro, ACHP Director of Public Policy, at 202-785-2247 or hshapiro@achp.org.

Sincerely,

Patricia P. Smith

Patricia P. Smith
President and CEO