AMERICAN BENEFITS COUNCIL

August 1, 2014

Submitted via electronic mail to E-OHPSCA-FAQ.ebsa@dol.gov

Daniel Maguire
Director, Office of Heath Plan Standards and Compliance Assistance
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Ave., NW, Ste. N-5653
Washington, DC 20210

RE: Request for Comments Relating to Reference-Based Pricing

Dear Mr. Maguire:

We write on behalf of the American Benefits Council ("Council") to provide comment in connection with the request for comments regarding reference-based pricing set forth in Q&A-4 of the FAQs About Affordable Care Act Implementation (Part XIX), dated May 2, 2014 (the "FAQ"). Specifically, in the FAQ, the Departments of Labor, Health and Human Services, and the Treasury (collectively, the "Departments") request comment on the application of the out-of-pocket limitation described in Section 2707(b) of the Public Health Service Act ("PHSA"), as added by the Patient Protection and Affordable Care Act ("PPACA"), to reference-based pricing arrangements.

The Council is a public policy organization representing principally Fortune 500 companies and other organizations that assist employers of all sizes in providing benefits to employees. Collectively, the Council's members either sponsor directly or provide services to health and retirement plans that cover more than 100 million Americans.

The FAQ provides that, "[u]ntil guidance is issued and effective, with respect to a large group market plan or self-insured group health plan that utilizes a reference-based pricing program, the Departments will not consider a plan or issuer as failing to comply with the out-of-pocket maximum requirements of PHS Act Section 2707(b)

because it treats providers that accept the reference amount as the only in-network providers, provided the plan uses a reasonable method to ensure that it provides adequate access to quality providers."

The Council's members, continue to look for ways to provide affordable, comprehensive health care for their employees. One way in which they have been able to do this is through the use of reference-based pricing arrangements. With a reference-based pricing arrangement, a plan typically agrees to pay a set dollar amount for a particular service. In many instances, the plan has a network of high-quality providers that are often best-in-class ("Panel Providers"). These Panel Providers agree to accept the set dollar amount as payment in full for a service provided (the "reference price") -- subject to the plan's standard cost-sharing requirements such as co-payments and deductibles. If a participant chooses a provider that is not a Panel Provider and such provider charges more than the reference price, then the participant may be responsible for paying the cost in excess of the reference price.

Reference-based pricing is an evolving practice that benefits employers and employees alike. Reference-based pricing programs lead to greater price and quality transparency and the ensuing increase in competition among health care providers. Through such programs, employees become more aware of the cost of medical care and are incentivized to seek out high-quality providers and care, which has been shown to lower out of pocket costs for employees. Over time, the competition among providers accepting the reference price can be expected to reduce cost variation among such providers for the same services. These arrangements also tend to reduce or wholly eliminate balance billing to participants who utilize a Panel Provider. The end result is improved quality of care, increased participant satisfaction, and an overall reduction in plan costs with respect to the referenced service.

The Council appreciates the opportunity to provide the following comments regarding reference-based pricing.

PRESERVE FLEXIBILITY IN DESIGNING REFERENCE-BASED PRICING ARRANGEMENTS AND RETAIN THE REASONABLENESS STANDARD

The Council supports the guidance provided in the FAQ and that plans may rely on it unless and until additional guidance is provided. We recognize the importance of ensuring that participants have access to high-quality health care and an adequate network of providers in reference-based pricing arrangements.

We appreciate that the Departments have adopted a standard based on reasonableness for purposes of evaluating whether reference-based pricing arrangements comply with the out-of-pocket maximum requirements of PHS Act Section 2707(b). We believe this standard is effective in ensuring that participants have

access to high-quality health care while still providing plan sponsors with appropriate flexibility to craft innovative plan designs aimed at delivering higher quality care at lower costs. To the extent that the Departments issue any additional with respect to reference-based pricing (beyond the FAQ already issued), we encourage the Departments to retain the reasonableness standard set forth in the FAQ.

INCREASING PRICE AND QUALITY TRANSPARENCY THROUGH REFERENCE-BASED PRICING PROGRAMS

Hospitals account for roughly 30 percent of health care expenditures and prices vary widely among hospitals. Implementing reference-based pricing programs is one way employers can put downward pressure on prices in addition to increasing transparency. For example, the California Public Employees' Retirement System (CalPERS) developed with Anthem Blue Cross a reference-based pricing program for hip and knee replacement surgery. CalPERS used data to define a reference price of $30,000 for the hospital component of the procedures and provided their enrollees the list of 41 hospitals accepting the reference price. CalPERS data show that reference-based pricing was responsible for at least a 20 percent decrease in hospital prices on average in 2011 and that these changes were sustained in the second year of the program. The total program savings in 2011 were $3.1 million – of which $2.8 million accrued to CalPERS from lower payments to hospitals and $0.3 million accrued to CalPERS enrollees from lower out-of-pocket cost sharing[1]. The CalPERS case study is one example highlighting the success of reference-based pricing programs and the importance of preserving employer flexibility to design innovative benefit plans.

TO BE EFFECTIVE, THE ESSENTIAL STRUCTURE OF REFERENCE-BASED PRICING ARRANGEMENTS MUST BE PRESERVED

In order for reference-based pricing arrangements to be effective (i.e., to successfully increase competition and transparency and reduce unnecessary costs of an employer-sponsored plan), the essential structure of the arrangements must be preserved. In this regard, it is important that the plan sponsor be able to set an appropriate reference price and educate enrollees about which providers accept the reference price. It is also important that the participant bear the excess cost associated with his or her decision to choose a provider that does not accept the reference price. This puts downward

[1] Robinson, James C., and Timothy T. Brown. "Increases In Consumer Cost Sharing Redirect Patient Volumes And Reduce Hospital Prices For Orthopedic Surgery." Health Affairs 32, no. 8 (August 2013): 1392-1397

pressure on prices and also better informs the participant of the costs of their provider selection.

The FAQ achieves this result by stating that a plan may treat providers that accept the reference-based amount as the only in-network providers, as long as the plan uses a reasonable method to ensure it provides adequate access to quality providers. Some approaches for ensuring reference-based pricing programs maintain access to quality care and an adequate network of providers include: giving employees a reprieve from paying the amount above the reference price if there are not providers accepting the reference price in their area, or if a complication develops during or after the procedure and additional services were necessary.

Another way to achieve this important result would be to merely provide that amounts incurred by a participant as a result of selecting a provider other than a Panel Provider need not be taken into account by a plan for purposes of applying the limit on out-of-pocket expenses.

Given the above, we believe the existing FAQ appropriately ensures plan sponsors have the flexibility needed to craft innovative benefit designs that increase competition and price and quality transparency – while at the same time ensuring access to quality care and an adequate network of providers. We do not believe additional rulemaking on this subject is necessary, however, if the Departments pursue a formal rulemaking, we believe the Departments have several methods at their disposal in order to ensure the full efficacy of reference-based pricing arrangements. We encourage the Departments to utilize one or more of these methods as part of any formal rulemaking.

* * *

Thank you for considering these comments regarding reference-based pricing arrangements and the FAQ guidance. If you have any questions or would like to discuss these comments further, please contact us at (202) 289-6700.

Sincerely,

Katy Spangler
Senior Vice President, Health Policy

Kathryn Wilber
Senior Counsel, Health Policy