

**Congress of the United States**  
**Washington, DC 20515**

January 27, 2022

The Honorable Xavier Becerra  
Secretary  
U.S. Department of Health and Human Services  
200 Independence Avenue, SW  
Washington, DC 20201

The Honorable Chiquita Brooks-LaSure  
Administrator  
Centers for Medicare & Medicaid Services  
7500 Security Boulevard  
Baltimore, MD 21244

Dear Secretary Becerra and Administrator Brooks-LaSure:

We write today to express strong support for the policies included in the proposed Notice of Benefit and Payment Parameters for 2023 (“Proposed NBPP”), which was published in the Federal Register on January 5, 2022.<sup>1</sup> We believe the policies in the Proposed NBPP build on the success of the *Affordable Care Act* (ACA) and will help ensure that more people have affordable, comprehensive coverage. Specifically, we commend the Biden Administration for its work to expand access to quality, affordable health coverage and advance health equity efforts that have resulted in 4.6 million individuals gaining health care coverage in the last year and more than 14 million people choosing a Marketplace plan for 2022.<sup>2</sup> If finalized, we believe the proposed policies would further expand coverage, lower health care costs, and address health inequities. Thus, we urge the Administration to finalize the policies as proposed.

***Standardized Plan Options Are Critical For Consumer Choice***

We support the Administration’s proposal to require issuers in the Federally-Facilitated Marketplaces (FFMs) and state-based Marketplaces that use the federal platform to offer

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<sup>1</sup> Department of Health and Human Services, Centers for Medicare and Medicaid Services, *Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2023*, 87 Fed. Reg. 584 (Jan. 5, 2022) (proposed rule).

<sup>2</sup> The White House, *Statement by President Biden on 4.6 Million Americans Gaining Health Insurance This Year* (Dec. 22, 2021); Centers for Medicare & Medicaid Services, *Ahead of January 15<sup>th</sup> Open Enrollment Deadline, New Numbers Show 14.2 Million Americans Have Quality, Affordable Coverage- Many With Even Lower Deductibles Under the American Rescue Plan* (Jan. 13, 2022) (press release).

standardized plan options at every product network type, plan classification, and metal level beginning with the 2023 plan year. On average, a consumer has more than 100 plan options to choose from on the ACA Marketplaces—a fact that often leads to consumer “choice overload,” which can present barriers to selecting an appropriate health plan.<sup>3</sup> As documented in a report by the Office of the Assistant Secretary for Planning and Evaluation (ASPE) at the U.S. Department of Health and Human Services, offering standardized options simplifies consumer choice, enhances the value of Marketplace coverage, reduces administrative expenses, and improves health equity.<sup>4</sup> We believe the proposed policy will make it easier for consumers to navigate plan options and choose the best plan. We also support the proposal to resume differential display of standardized plans on HealthCare.gov and to extend this requirement to web-brokers and issuers utilizing Direct Enrollment. We urge the Administration to finalize these policies as proposed.

### ***Reduced Consumer Burden During SEP Will Improve Coverage Take-Up***

The Proposed NBPP also includes several policies that would streamline and remove unnecessary barriers to enrollment for consumers. In particular, the proposal to scale back pre-enrollment verification for Special Enrollment Periods (SEPs) to include only the SEP for the loss of minimum essential coverage would remove barriers to coverage and decrease consumer burden. We support the proposal to give Marketplaces the option to conduct a pre-enrollment SEP verification process and provide an exception for special circumstances, such as natural disasters or public health emergencies. We share the Administration’s concerns that pre-enrollment SEP verification contributes to a higher uninsured rate and disproportionately has a negative impact on Black consumers who submit verification documentations at much lower rates than White consumers.<sup>5</sup> If finalized, we believe the proposed policy would help expand access to coverage and ensure that consumers who qualify for SEPs can enroll in coverage without unnecessary barriers.

### ***Expanded Coverage of Essential Community Providers Will Expand Access to Care***

The Proposed NBPP’s policy to raise the Essential Community Providers (ECPs) threshold would also improve access to health care for low-income and medically underserved communities. Specifically, we strongly support the proposal to require issuers to include 35 percent of ECPs in their network for each plan’s service area and the inclusion of Substance Use Disorder Treatment Centers as eligible ECPs. ECPs play a critical role in our communities and help serve low-income, high-risk, and underserved individuals, as well as those who lack access to providers, and we urge the Administration to finalize the policy as proposed.

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<sup>3</sup> Assistant Secretary for Planning and Evaluation, *Facilitating Consumer Choice: Standardized Plans in Health Insurance Marketplaces* (Dec. 2021) ([aspe.hhs.gov/sites/default/files/documents/222751d8ae7f56738f2f4128d819846b/Standardized-Plans-in-Health-Insurance-Marketplaces.pdf](https://aspe.hhs.gov/sites/default/files/documents/222751d8ae7f56738f2f4128d819846b/Standardized-Plans-in-Health-Insurance-Marketplaces.pdf)).

<sup>4</sup> *Id.*

<sup>5</sup> See note 1, at page 653.

***Improved Network Adequacy Will Ensure Access to Care***

We support the proposed policy to reestablish federal network adequacy reviews in states on the FFM and to adopt quantitative time and distance standards and appointment wait-time standards. We believe such policies will establish continuity of care for consumers and ensure that consumers have access to necessary care and to the right type of providers in accessible locations.

***Protection Against Discrimination is Critical for Reducing Health Inequities***

We strongly support the Administration's efforts to ensure that LGBTQI+ individuals are protected from discrimination. The Proposed NBPP will reduce barriers to health coverage for LGBTQI+ individuals by prohibiting Marketplaces, issuers, agents, and brokers from discriminating against individuals based on sexual orientation and gender identity. This policy will expand access to health coverage, decrease health inequities, and lead to improved outcomes in the LGBTQI+ community. The proposed rule also clarifies the ban on discriminatory benefit design, and ensures that benefit designs, benefit limitations, and plan coverage requirements are based on clinical evidence. This would guarantee the LGBTQI+ community has access to medically necessary care and we urge the Administration to finalize both policies as proposed.

***Clarification to the Medical Loss Ratio Improves Value for Consumers***

The Proposed NBPP's requirements to the ACA's Medical Loss Ratio (MLR) calculations will ensure that plans provide value to consumers. We appreciate the Administration's clarification of the type of expenses issuers can include in the MLR calculation, and we support the proposal that requires expenses be directly related to activities that improve health care quality. We are concerned that without this change, artificial inflation of the MLR that skirts the law will result in denial of rebates to consumers. We also encourage the Administration to finalize the proposal to require issuers to address health and health care disparities in their quality improvement strategy standards.

We applaud the Proposed NBPP and the Biden Administration's commitment to ensuring Americans have access to affordable, comprehensive coverage. The Proposed NBPP builds on the ACA's historic coverage gains, includes critical policies to address inequities in health care, and expands access for our underserved and vulnerable communities. We urge the Administration to finalize the policies as outlined in the Proposed NBPP, and we applaud the agency's work in enhancing the health and well-being of families.

Sincerely,



Frank Pallone, Jr.  
Chairman  
Committee on Energy and Commerce  
U.S. House of Representatives



Richard E. Neal  
Chairman  
Committee on Ways & Means  
U.S. House of Representatives



Robert C. "Bobby" Scott  
Chairman  
Committee on Education & Labor  
U.S. House of Representatives



Patty Murray  
Chairwoman  
Committee on Health, Education,  
Labor and Pensions  
United States Senate



Ron Wyden  
Chairman  
Committee on Finance  
United States Senate