



January 8, 2024

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

Re: CMS-9895-P: Patient Protection and Affordable Care Act, HHS Notice of Benefit and Payment Parameters for 2025; Updating Section 1332 Waiver Public Notice Procedures; Medicaid; Consumer Operated and Oriented Plan (CO-OP) Program; and Basic Health Program

Submitted electronically via <https://www.regulations.gov>

Dear Administrator Brooks-LaSure:

Thank you for the opportunity to comment on the proposed Notice of Benefit and Payment Parameters for 2025 (NBPP).¹ This comment is submitted on behalf of the Center for American Progress (CAP), an independent, nonpartisan policy institute based in Washington, D.C. dedicated to improving the lives of all Americans through bold, progressive ideas, as well as strong leadership and concerted action.² CAP's policy experts and advocates have spearheaded and published research on ways to build on the Affordable Care Act (ACA), expand health coverage, strengthen access to care, and improve affordability.

With ACA individual market enrollment reaching a record high of 15.7 million in 2023,³ and 2024 on pace to surpass that enrollment milestone,⁴ we applaud the continued

¹ Proposed Rule; Patient Protection and Affordable Care Act, Notice of Benefit and Payment Parameters for 2025; Updating Waiver Public Notice Procedures; Medicaid; Consumer Operated and Oriented Plan Program; and Basic Health Program (CMS-9895-P), 88 FR 82510, (published November 24, 2023), available at <https://www.federalregister.gov/documents/2023/11/24/2023-25576/patient-protection-and-affordable-care-act-hhs-notice-of-benefit-and-payment-parameters-for-2025#open-comment>

² Center for American Progress, "About Us," available at <https://www.americanprogress.org/about-us/>.

³ Centers for Medicare and Medicaid Services, "Effectuated Enrollment: Early 2023 Snapshot and Full Year 2022 Average," available at <https://www.cms.gov/files/document/early-2023-and-full-year-2022-effectuated-enrollment-report.pdf> (last accessed January 2024).

⁴ Centers for Medicare and Medicaid Services, "HealthCare.gov Enrollment Exceeds 15 Million, Surpassing Previous Years' Milestones," December 20, 2023, available at <https://www.cms.gov/newsroom/press-releases/healthcaregov-enrollment-exceeds-15-million-surpassing-previous-years-milestones>.

commitment of the Department of Health and Human Services (HHS) and the Centers for Medicare and Medicaid Services (CMS) to bolster access to affordable, high-quality coverage options. The draft 2025 NBPP proposes important market reforms and policy changes to further expand access to health care services and improve consumers' plan shopping and enrollment experiences.

In this letter, we offer recommendations and additional considerations for key marketplace operational provisions designed to strengthen consumer protections and ease the enrollment process. We also detail our strong support for the proposed updates to the essential health benefit coverage standards to include adult dental services.

I. Proposed Amendments to Normal Public Notice Requirements

CAP supports the proposed changes to the Section 1332 state innovation waiver application process to enable states to conduct virtual or hybrid public hearing and post-award forums. As a growing number of states leverage Section 1332 waivers to increase affordability and expand coverage for their residents, this proposal compliments those efforts.⁵ While the flexibility of virtual and hybrid convenings offers increased opportunity for community participation, CMS should provide clear guidance to promote equitable access for individuals with disabilities, those with limited English proficiency, and those impacted by the digital divide. We recommend that CMS include in the final rule accessibility standards for virtual and hybrid meetings, including practices related to pre-event information, live captioning, assistive technology, and document and platform accessibility.⁶

II. Increase State Flexibility in the Use of Income and Resource Disregards for Non-MAGI Populations

We generally support the proposed changes to allow states to implement a less restrictive Medicaid income eligibility methodology for specific non-MAGI populations and tailor income and/or resource disregards for certain subpopulations in the same eligibility group such as older adults or individuals with disabilities. This approach has the potential to stabilize coverage for populations for whom small changes in income or assets might otherwise interrupt access to essential services such as long-term services and home or community-based services/supports. To prevent states from using this new flexibility to restrict eligibility and access, we recommend that CMS establish clear guardrails. Specifically, CMS should stipulate that states are prohibited from

⁵ Natasha Murphy, "How States Can Use Section 1332 Waivers To Improve Health Care Affordability and Access," Center for American Progress, October 23, 2023, available at <https://www.americanprogress.org/article/how-states-can-use-section-1332-waivers-to-improve-health-care-affordability-and-access/>.

⁶ Lindsey Volz, "Making Public Meetings Accessible to All," National League of Cities, June 20, 2022, available at <https://www.nlc.org/article/2022/06/20/making-public-meetings-accessible-to-all/>.

implementing income eligibility methodologies that are more restrictive than their current policy.

III. Changes to the Basic Health Program Regulations

We support the proposed changes to Basic Health Program (BHP) regulations which would allow BHP states to streamline enrollment and initiate coverage on the first day of the month following the month in which BHP eligibility is determined. While Minnesota and New York are the only two states that have implemented a BHP to date, additional states, including Oregon, are currently exploring implementing BHPs to improve affordability, particularly for mid- to low-income families.⁷

IV. Approval of a State Exchange

CAP supports the proposed requirement that states seeking to transition to a state-based marketplace (SBM) operate on the federal platform for one year before transitioning. Actuarial experts anticipate that many of the 32⁸ remaining federally-facilitated marketplace (FFM) and federal-partnership states will transition to SBMs in the coming years to better meet the needs of their marketplace enrollees and reduce costs by avoiding federal user fees,⁹ so now is an opportune time for CMS to finalize transition requirements. A mandatory transitionary period will offer these state policymakers time to navigate the policy, operational, technology and infrastructure changes needed to facilitate a state marketplace¹⁰ while ensuring consumers retain access to core functions related to outreach, eligibility and enrollment through Healthcare.gov.

⁷ Natasha Murphy and Sarah Millender, “How States Can Build Bridges by Smoothing Medicaid-to-Marketplace Coverage Transitions,” Center for American Progress, February 14, 2023, available at <https://www.americanprogress.org/article/how-states-can-build-bridges-by-smoothing-medicaid-to-marketplace-coverage-transitions/>.

⁸ Kaiser Family Foundation, “State Health Insurance Marketplace Types, 2024,” available at <https://www.kff.org/health-reform/state-indicator/state-health-insurance-marketplace-types/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D> (last accessed January 2024).

⁹ Terry Burke, Ben Sobolewski, and Ali Mar. “5 themes to watch as the ACA heads into its second decade,” Oliver Wyman, available at https://www.oliverwyman.com/our-expertise/perspectives/health/2023/dec/5-themes-to-watch-as-the-aca-heads-into-its-second-decade.html?utm_source=dynamics-marketing&utm_medium=email&utm_campaign=owhealth-newsletter&utm_content=29-dec-2023&utm_id=cmp-15920-m7n9v1#msdyntrid=OYgLI9meqzriDFsHtclWdvDeZVvu-zgdkUtbQfdqq_w

¹⁰ Sarah Lueck, “Adopting a State-Based Health Insurance Marketplace Poses Risks and Challenges,” Center on Budget and Policy Priorities, February 6, 2020, available at <https://www.cbpp.org/research/health/adopting-a-state-based-health-insurance-marketplace-poses-risks-and-challenges>.

V. Election to Operate an Exchange after 2014

We also support the proposed changes to the State Exchange Blueprint requirements, including public posting of the Blueprint, live demonstrations of marketplace functionality, and providing accessible public notices and engagement sessions. These proposed measures will offer federal regulators greater transparency and oversight into the SBM transition process.

VI. Consumer Assistance Tools and Programs of an Exchange

We support the proposed changes to establish additional minimum standards for exchange call center operations and their inclusion in the State Exchange Blueprint. To strengthen the proposed changes, we recommend CMS provide additional guidance and support to marketplace call centers as they establish dedicated language-specific phone lines to serve a diverse population of enrollees, including those with disabilities and/or proficiency in a language other than English. Dedicated phone lines for these supports can help streamline enrollee experience and maximize enrollment.

VII. Requirement for Exchanges to Operate Centralized Exchange Eligibility and Enrollment Platform on the Exchange's Website

We support the proposed requirement for state-based marketplaces to operate a centralized eligibility and enrollment platform on their website, allowing consumers to submit a single, streamlined application to enroll in insurance coverage and affordability programs. CAP also supports the clarification that only the SBM can determine consumer eligibility for health plans and affordability programs. This aligns with the ACA's broader "no wrong door" philosophy, where the marketplace enrollment application directs consumers to the appropriate health insurance program based on their household characteristics, including income and family size. This ensures that individuals seeking marketplace coverage are guided to more affordable options for comprehensive coverage if their incomes render them ineligible for marketplace financial assistance.

VIII. Initial and Annual Open Enrollment Periods

CAP supports the proposal to require all state-based marketplaces to adopt an open enrollment period that begins on November 1 and ends no earlier than January 15. We agree that this policy is a strong minimum standard that would help to reduce confusion among enrollees, provide a more consistent window of opportunity for outreach and navigator support, and maximize enrollment through improved alignment with open enrollment periods for Medicare and employer-sponsored insurance.

IX. Effective Dates of Coverage and Monthly Special Enrollment Period for APTC-Eligible Qualified Individuals with a Household Income at or Below 150 Percent of the Federal Poverty Level

We support the proposal to allow special enrollment period (SEP) enrollees to have coverage effective on the first day of the month after they make their plan selection. This change would align disparate coverage effective date policies across SBMs to the federal standard and help reduce unnecessary gaps in coverage for enrollees.

We also support the proposed changes to revise the parameters for the low-income SEP and remove the limitation that this SEP only be available during periods when available APTC results in the applicable taxpayers' applicable percentage is set to zero. This proposal will better maximize access to affordable coverage, particularly for individuals who have had trouble enrolling during standard enrollment timelines or who are facing a coverage transition due to loss of Medicaid or CHIP coverage.

X. Establishment of Exchange Network Adequacy Standards

CAP supports the proposed changes to require state-based marketplace to establish quantitative time and distance standards that are at least as stringent as the network adequacy standards for the FFM. Given the proliferation of plans with narrow networks that may be insufficient to meet the needs of enrollees, particularly for mental health, behavioral health, and substance use disorder treatment services,¹¹ we agree with CMS that it is necessary to subject all plans seeking certification to a quantitative analysis of provider network adequacy. In future rulemaking, we encourage CMS to apply federal requirements for appointment wait time measures to SBMs to promote a consistent consumer experience across marketplace type.

XI. Provision of EHB

CAP agrees with CMS' reinterpretation of adult dental services as a commonly covered benefit in employer-sponsored insurance (ESI) and per the typicality standard, strongly supports the proposal to remove the regulatory prohibition on issuers from including routine non-pediatric dental services as an essential health benefit. While the ACA improved access to dental coverage by requiring pediatric dental benefits as an EHB and encouraging some states to expand dental benefits to Medicaid beneficiaries, it did not establish a comprehensive dental coverage system for individuals over 18.¹² Non-pediatric dental coverage largely remains a separate and optional coverage component. During 2023 marketplace open enrollment, 2.3 million Americans enrolled in standalone dental coverage compared to 16.4 million who enrolled in health coverage.¹³

¹¹ Olena Mazurenko, Heather Taylor, and Nir Menachemi, "The impact of narrow and tiered networks on costs, access, quality, and patient steering: A systematic review," Medical Care Research and Review, November 10, 2021, available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9817087/>.

¹² Jihee Song, Jeon Nam Kim, Scott Tomar, and Lauren Wong, "The Impact of the Affordable Care Act on Dental Care: An Integrative Literature Review," International Journal of Environmental Research and Public Health, July 25, 2021, available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8345350/>.

¹³ Centers for Medicare & Medicaid Services, "2023 OEP State-Level Public Use File," available at <https://www.cms.gov/data-research/statistics-trends-and-reports/marketplace-products/2023-marketplace-open-enrollment-period-public-use-files> (last accessed January 2024).

Removing the regulatory prohibition and enabling states to include coverage of adult dental services as an EHB will improve access to care and supports CMS' commitment to advancing health equity. Access to dental insurance remains a challenge for many adults due to coverage and financial barriers. In 2021, an estimated 22.8 percent of nonelderly U.S. adults lacked dental coverage,¹⁴ and coverage options are often limited for individuals who are low-income, racial/ethnic minorities, immigrants, or residents of rural areas, contributing to oral health disparities.¹⁵ The cost of dental services is also commonly cited as a barrier to accessing care, particularly for low-income working adults.¹⁶ Regular dental visits can help detect health issues including heart problems and digestion issues while poor oral health can cause or worsen heart disease, diabetes, and pregnancy complications.¹⁷ Inclusion of adult dental as an EHB offers a pathway to high-quality insurance coverage that can advance equitable access for oral health services.

Consistent with other commenters, including the National Health Law Program¹⁸, CAP also supports similar changes be made regarding routine non-pediatric eye exam services. Annual comprehensive eye exams are important to maintaining ocular health but can also detect other physical health conditions such as diabetes, multiple sclerosis, and hypertension.¹⁹ According to the 2023 KFF Employer Health Benefits Survey, among firms offering health benefits in 2023, 80 percent of small firms and 88 percent of large firms offer a vision insurance program to their employees.²⁰ Since vision benefits are another commonly covered service by employers, we believe this arrangement should be reflected in EHB standards consistent with the typicality standard.

¹⁴ American Dental Association, "National Trends in Dental Care Use, Dental Insurance Coverage, and Cost Barriers," November 2023, available at https://www.ada.org/-/media/project/ada-organization/ada/ada-org/files/resources/research/hpi/national_trends_dental_use_benefits_barriers.pdf?rev=7006dc9bd0e84269a62b4d27c2f630a4&hash=56B777DF468FF587325D1E7A3BBC56DF.

¹⁵ Jeffrey Fellows, Kathryn Atchison, Jeffrey Chaffin, Elisa Chavez, and Norman Tinanoff, "Oral Health in America," Journal of the American Dental Association, May 25, 2022, available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9637008/>.

¹⁶ Marko Vujicic, Thomas Buchmueller, and Rachel Klein, "Dental Care Presents The Highest Level Of Financial Barriers, Compared To Other Types Of Health Care Services," Health Affairs, December 2016, available at <https://www.healthaffairs.org/doi/pdf/10.1377/hlthaff.2016.0800>.

¹⁷ U.S. Department of Health and Human Services, "Oral Health in America: Advances and Challenges," 2021, available at <https://www.nidcr.nih.gov/sites/default/files/2021-12/Oral-Health-in-America-Advances-and-Challenges.pdf>.

¹⁸ Hector Hernandez-Delgado and Wayne Turner, "Potential Changes to Essential Health Benefits Regulations in the Notice of Benefit and Payment Parameters for 2025, National Health Law Program, September 13, 2023, available at <https://healthlaw.org/wp-content/uploads/2023/09/NHeLP-Letter-to-CCIO-on-EHB-authorities-9.2023.pdf>.

¹⁹ American Optometric Association, "Systemic Conditions with Ocular and Visual Manifestations," December 2014, available at <https://www.aoa.org/AOA/Documents/Healthy%20Eyes/Eye%20and%20vision%20conditions/Systemic%20Conditions%20with%20Ocular%20and%20Visual%20Manifestations.pdf>

²⁰ Gary Claxton and others, "Employer Health Benefits: 2023 Annual Survey" (San Francisco: Kaiser Family Foundation, 2023), available at <https://files.kff.org/attachment/Employer-Health-Benefits-Survey-2023-Annual-Survey.pdf>.

XII. Standardized Plan Options

We support the proposal to limit the number of non-standardized plans an issuer can offer to two per product network type, metal level, and inclusion of dental and/or vision benefit coverage, in any service area. Existing research, including a 2021 ASPE issue brief focused on the ACA marketplace, found that consumers having too many choices for coverage, often called “choice overload,” can result in poor decision-making regarding plan options.²¹

CAP however has concerns that the proposed exceptions process may be abused by issuers, undermining CMS’ intent to reduce choice overload for consumers. We recommend that CMS limit the number of exceptions an issuer can receive to one plan per metal level.

Conclusion

As of February 2023, more than 15 million Americans rely on the ACA marketplace for access to affordable, comprehensive insurance coverage.²² As this number continues to grow, CMS has an opportunity to build on this enrollment success when finalizing the 2025 Notice of Benefit and Payment Parameters. CMS can maximize future enrollment by finalizing proposals related to consumer assistance tools, open enrollment periods, coverage effective dates, and standardized plan options. CMS can empower states and strengthen the marketplaces by finalizing proposals related to marketplace operations. Finally, CMS can further improve ACA coverage and better meet enrollee health needs by finalizing the proposal to add non-pediatric dental and routine non-pediatric eye exam services as essential health benefits.

For any questions regarding this comment letter, please contact Natasha Murphy, Director of Health Policy, at nmurphy@americanprogress.org. CAP appreciates the opportunity to provide comment and thanks CMS for considering our recommendations.

Sincerely,

Center for American Progress

²¹ Rose C. Chu and others, “Facilitating Consumer Choice: Standardized Plans in Health Insurance Marketplaces” (Washington: Assistant Secretary for Planning and Evaluation Office of Health Policy, 2021), available at <https://aspe.hhs.gov/sites/default/files/documents/222751d8ae7f56738f2f4128d819846b/Standardized-Plans-in-Health-Insurance-Marketplaces.pdf>.

²² Centers for Medicare and Medicaid Services, “Effectuated Enrollment: Early 2023 Snapshot and Full Year 2022 Average.”