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November 12, 2024

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

Re: CMS-9888-P: Patient Protection and Affordable Care Act, HHS Notice of Benefit and Payment Parameters for 2026; 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 2026 (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 21.4 million in 2024,[3] we applaud the continued 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. CMS is exercising its mandate under the ACA to ensure stable and affordable coverage options, in alignment with the goals for the law that Congress envisioned. The proposed 2026 NBPP reflects CMS' regulatory authority to make necessary adjustments in response to evolving marketplace dynamics.

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[1] Proposed Rule; Patient Protection and Affordable Care Act, Notice of Benefit and Payment Parameters for 2026; and Basic Health Program (CMS-9888-P), (published October 10, 2024), available at https://www.govinfo.gov/content/pkg/FR-2024-10-10/pdf/2024-23103.pdf

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

[3] Centers for Medicare and Medicaid Services, "Health Insurance Marketplaces 2024 Open Enrollment Report," available at https://www.cms.gov/files/document/health-insurance-exchanges-2024-open-enrollment-report-final.pdf (last accessed November 2024).

In this letter, we detail our strong support for the proposal to codify silver loading and offer recommendations and additional considerations for key marketplace operational provisions designed to improve consumers' plan-shopping and enrollment experiences and enhance program integrity.

I. Silver Loading

CAP strongly supports the proposal to codify silver-loading practices, which enhance premium affordability for millions of marketplace enrollees. CMS has previously and repeatedly clarified that silver loading is permitted under the existing regulatory framework, which allows for plan-level adjustments based on "actuarial value and cost-sharing design of the plan."[4]

Consistent with other commenters, including Georgetown University's Center on Health Insurance Reforms, CAP recommends that CMS codify the current policy to align with existing policy. 45 CFR 156.80(d)(2) requires that plan adjustments be actuarially justified, and we recommend that 45 CFR 156.80(d)(2)(i) be revised to state that plan-level adjustments for "actuarial value and cost-sharing design of the plan" include adjustments for unreimbursed cost-sharing reductions.[5] We recommend the following changes, with new language underlined.

> (2) Permitted plan-level adjustments to the index rate. For plan years or policy years beginning on or after January 1, 2014, a health insurance issuer may vary premium rates for a particular plan from its market-wide index rate for a relevant state market based only on the following actuarially justified plan-specific factors:
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> > (i) The actuarial value and cost-sharing design of the plan, including cost-sharing reductions under Subpart E of this Part 156 if not paid for under section 156.430.

We also recommend that CMS finalize language that codifies the current approach to silver loading without imposing new restrictions or changes. The Administrative Procedure Act requires that the public have a meaningful opportunity to comment on proposed regulations.[6] Because the proposed rule does not seek feedback on specific language governing silver loading methodology, finalizing language that alters existing

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[4] U.S. Department of Health and Human Services, "Offering of plans that are not QHPs without CSR "loading," August 3, 2018, available at https://www.cms.gov/cciio/resources/regulations-and-guidance/downloads/offering-plans-not-qhps-without-csr-loading.pdf.

[5] The Patient Protection and Affordable Care Act, Pub. L. 111-148, 60, available at https://www.congress.gov/111/plaws/publ148/PLAW-111publ148.pdf.

[6] The Administrative Procedure Act, Pub. L. 79–404, 60 Stat. 237, available at https://www.archives.gov/federal-register/laws/administrative-procedure.

policy would deny stakeholders opportunity to comment and potentially raise legal concerns. For these reasons, we urge CMS to codify the current approach.

II. Ability of States to Permit Agents and Brokers and Web-Brokers to Assist Qualified Individuals, Qualified Employers, or Qualified Employees in Enrolling in QHPs

CAP supports CMS' actions to prevent fraud and to hold bad actors (unscrupulous brokers, agents, and web-brokers) accountable for unauthorized enrollment practices and plan changes. This type of fraud can have serious consequences for consumers, including disruptions in access to care, unexpected medical bills, and potential tax liabilities for premium tax credits received without eligibility.

We commend CMS for clarifying its authority to hold agencies accountable for any misconduct among brokers they supervise or employ, reinforcing a vital level of oversight as well as CMS' clarification of its authority to suspend brokers' access to the marketplace when there is an "unacceptable risk" to eligibility determinations, marketplace operations, enrollees, or IT systems. To strengthen this safeguard, we recommend CMS specify that brokers suspended from the federally facilitated marketplace should also be suspended from state-based marketplace platforms, including those using enhanced direct enrollment or direct enrollment pathways.

III. Navigator, Non-Navigator Assistance Personnel and Certified Application Counselor Program Standards

We support the proposal to empower consumer assisters, including Navigators, non-Navigator assistance personnel, and Certified Application Counselors, to refer individuals to programs aimed at reducing medical debt. Medical debt remains a widespread issue impacting millions of Americans: in 2023, 41 percent of American adults reported having debt from medical or dental bills, and 49 percent stated they would need to go into debt to cover an unexpected $500 medical expense.[7] A policy option some states, like Oregon, are pursuing to avert and alleviate medical debt is improving access to hospital financial assistance programs.[8] CMS can support these efforts by expanding the role of consumer assisters to include referrals to financial assistance and medical debt relief programs. Consumer assisters are equipped with the skillsets to increase financial assistance program visibility, address gaps in consumer awareness, and reduce the financial strain of medical debt for Americans.

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[7] Lunna Lopes, Alex Montero, Marley Presiado, and Liz Hamel, "Americans' Challenges with Health Care Costs," KFF, March 1, 2024, available at https://www.kff.org/health-costs/issue-brief/americans-challenges-with-health-care-costs/.

[8] Natasha Murphy, "Event Recap: State Policy Efforts To Avert and Alleviate Medical Debt," Center for American Progress, August 6, 2024, available at https://www.americanprogress.org/article/event-recap-state-policy-efforts-to-avert-and-alleviate-medical-debt/.

To support the expanded responsibilities of consumer assisters, we recommend that CMS issue guidance to ensure that assisters are well-equipped to identify legitimate assistance programs and avoid potential pitfalls associated with predatory services. Additionally, if this proposal is finalized, CMS should ensure that marketplace grant-funded assisters, such as Navigators, receive the necessary financial resources to effectively connect consumers with assistance and payment relief programs.

IV. Certification Standards for Qualified Health Plans

CAP supports CMS' proposal to explicitly state that the marketplace may deny certification to any qualified health plan that does not meet certification requirements or whose participation is not in the best interest of enrollees. Section 1311(e)(1) of the ACA grants the marketplace "active purchasing" authority to certify a plan only if it meets established standards and benefits qualified individuals and employers in the state.[9] However, the marketplace's authority to *deny* certification, though already established and exercised, is not explicitly referenced. This proposal clarifies the marketplace's existing authority to both grant and deny certification for qualified health plans.

V. Standardized Plan Options

CAP supports reinstating a "meaningful difference" standard for standardized plans offered on the federally facilitated marketplace. 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.[10] Reintroduction of the "meaningful difference" standard will build on CMS' recent policy changes to streamline consumer choice and minimize confusion.[11] We recommend that CMS issue sub-regulatory guidance that further clarifies what constitutes a "meaningful difference" between plans, particularly related to differences in covered benefits. This clarity will prevent insurers from offering plans that are indistinguishable from one another and enable consumers to more easily compare and contrast their coverage options during future open enrollment periods.

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[9] The Patient Protection and Affordable Care Act, Pub. L. 111-148, 60, available at https://www.congress.gov/111/plaws/publ148/PLAW-111publ148.pdf.

[10] 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.

[11] Natasha Murphy, "What To Know Ahead of 2025 Affordable Care Act Open Enrollment," Center for American Progress, October 30, 2024, available at https://www.americanprogress.org/article/what-to-know-ahead-of-2025-affordable-care-act-open-enrollment/.

VI. User Fees

We support the proposal to increase user fees if Congress does not pass legislation to extend the enhanced premium tax credits beyond 2025. HHS has the authority under sections 1321(c)(1) and 1311(d)(5)(A) of the ACA to collect and spend user fees.[12] The increased user fees would not only help offset lower enrollment but also address the anticipated surge in call center volume, appeals, and other administrative demands arising from the nearly 20 million enrollees who will face significantly higher monthly premiums for their 2026 coverage.[13]

Conclusion

CAP commends CMS for its commitment to building on the ACA and a proactive approach in addressing important features such as silver loading, consumer assistance, and standardized plan options—all of which play a significant role in promoting affordability and access to quality health coverage for the millions of Americans with marketplace coverage.

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

[12] The Patient Protection and Affordable Care Act, Pub. L. 111-148, 60, available at https://www.congress.gov/111/plaws/publ148/PLAW-111publ148.pdf.

[13] Jared Ortaliza, Anna Cord, Matt McGough, Justin Lo, and Cynthia Cox, "Inflation Reduction Act Health Insurance Subsidies: What is Their Impact and What Would Happen if They Expire?," KFF, July 26, 2024, available at https://www.kff.org/affordable-care-act/issue-brief/inflation-reduction-act-health-insurance-subsidies-what-is-their-impact-and-what-would-happen-if-they-expire/.