

# CANCER LEADERSHIP COUNCIL

A PATIENT-CENTERED FORUM OF NATIONAL ADVOCACY ORGANIZATIONS  
ADDRESSING PUBLIC POLICY ISSUES IN CANCER

January 8, 2024

The Honorable Chiquita Brooks-LaSure  
Administrator  
Centers for Medicare & Medicaid Services  
U.S. Department of Health and Human Services  
200 Independence Avenue SW  
Washington, DC 20201

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

Dear Administrator Brooks-LaSure:

The undersigned cancer patient, provider, and research organizations are writing to offer advice regarding the proposed rule including the Notice of Benefit and Payment Parameters (NBPP) for 2025. We appreciate the opportunity to comment.

Important advances have been made in detection and treatment of cancer. The cancer research and development enterprise has yielded – and continues to yield at an impressive pace – new treatments that extend and improve the lives of those diagnosed with cancer. Even those who are not cured can often look forward to many years of life after diagnosis. These promising outcomes are only possible if cancer patients have access to affordable and adequate insurance that covers and reimburses the care they need. In addition, cancer patients need insurance policies that cover the care they may need after active treatment, to address possible late and long-term effects of cancer and its treatment. Lack of adequate and affordable insurance is one factor that may have a negative impact on cancer care outcomes.

We are writing in support of several proposals in the NBPP for 2025 that advance better insurance options, as these proposals may improve access to quality care for cancer patients. We also note additional actions that the Centers for Medicare & Medicaid Services (CMS) should consider to improve access to affordable and adequate insurance for those with cancer and other serious and life-threatening illnesses.

## **Essential Health Benefits**

### *Coverage of Prescription Drugs*

The NBPP for 2025 would, according to CMS, codify current policy that prescription drugs that are in excess of those covered by a state's essential health benefit (EHB) benchmark plan are considered essential health benefits (EHBs). Cancer patients and many others with serious health care needs, including the need for access to specialty drugs, have been adversely affected by the decisions of insurers to classify drugs in excess of the benchmark plan to be "non-essential health benefits." By making this declaration that drugs are non-essential, insurers also declare that the drugs are not subject to the Affordable Care Act (ACA) EHB requirements and can be removed from the ACA out-of-pocket maximums requirement. These practices result in a significant financial burden on those who rely on specialty drugs declared "non-essential."

Plans are relying on the classification of drugs as non-essential benefits in order to take advantage of alternative funding programs or maximizers. We support the clarification of the policy regarding prescription drug coverage and the rejection of some drugs being declared non-essential, as it will limit the use of maximizers.

We ask for clarification from HHS on the applicability of the amendment to large groups and self-funded plans. While these plans are not required to offer EHBs, if they do, they must use an HHS-authorized definition of EHB and are subject to the annual limits on cost-sharing and the restrictions on annual and lifetime dollar limits.

### *Pharmacy and Therapeutics Committee Standards*

We support the proposal in the NBPP for 2026 that the Pharmacy and Therapeutics (P&T) Committee must include a consumer representative.

We support the requirements that the consumer representative have an affiliation with or be an active participant in a consumer or consumer-based organization and that the consumer representative have experience in the analysis of complex data. Finally, we endorse the limitations on relationships of the consumer representative to a health facility or other health agency.

The requirements that have been articulated for consumer representatives seem to be aimed at ensuring that these representatives are truly representing a consumer perspective and not a health facility or health insurance perspective. In keeping with the desire for genuine consumer representation, we urge that issuers be required to cover travel expenses and a per diem for consumer representatives.

## **Network Adequacy**

We support the proposal in the NBPP to require all marketplace plans, in all states, to meet minimum quantitative standards for network adequacy. This proposal expands network adequacy standards to State Marketplaces (SMs) and State-Based Marketplace Federal Platforms (SBM-FPs). This extension of standards represents additional protections for consumers, including cancer patients, in marketplaces previously not governed by network adequacy rules.

CMS is not in the current NBPP establishing and imposing appointment wait time standards. We urge the agency to develop and implement these standards for SMs and SBM-FPs as soon as possible.

## **Standards for Establishing and Operating a State-Based Marketplace**

We applaud the provisions in the NBPP that establish some basic standards and processes that states must honor if they wish to assume responsibility for their own marketplaces. The transitions that states undertake are of concern to us because they may cause consumers to lose protections they enjoy under HealthCare.gov.

To avoid the loss of patient-friendly processes and procedures of HealthCare.gov, CMS must extend minimum federal standards to all marketplaces, including SMs and SBM-FPs. We support the CMS proposal to require states that are assuming marketplace responsibilities to publish their plans and engage the public in the process. We recommend that the public engagement process of the states include a formal notice and comment period regarding the marketplace plan.

## **Important Next Steps Related to EHB Standards**

Although we commend CMS for some proposals in the NBPP for 2025 that may improve access to prescription drugs and adequate and affordable insurance through ACA marketplaces, we urge the agency to establish a process to review and update EHBs, a process required by the ACA. We believe that such a process is critically important in light of therapeutic developments that are not reflected in the EHB standards developed years ago.

We identify cutting-edge new therapies like gene and cell therapies as among those things that might be affected by an EHB update, to the benefit of patients. We also identify habilitative and rehabilitative services as an essential health benefit that should be evaluated and perhaps more carefully or aggressively defined. Survivorship care is often critically important to cancer patients both during and after active treatment; survivorship care is care that addresses the late and long-term effects of cancer and cancer treatment and helps cancer patients regain function after treatment. Unfortunately, the definition of habilitative and rehabilitative services as an EHB has not led to coverage

of survivorship services for cancer patients. We support an EHB review and update and believe that a thoroughgoing review might be of substantial benefit to cancer patients.

Thank you again for the opportunity to comment on the NBPP for 2025.

Sincerely,

**Cancer Leadership Council**

American Society for Radiation Oncology  
Association for Clinical Oncology  
*CancerCare*  
Cancer Support Community  
Children's Cancer Cause  
Fight Colorectal Cancer  
Hematology/Oncology Pharmacy Association  
International Myeloma Foundation  
LUNGeVity Foundation  
Lymphoma Research Foundation  
National Coalition for Cancer Survivorship  
Ovarian Cancer Research Alliance  
Susan G. Komen