

January 27, 2022

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

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

Re: Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2023 [CMS-9911-P]

Dear Secretary Becerra and Administrator Brooks LaSure:

On behalf of The Patient Access Network (PAN) Foundation, one of the nation's largest charities, I write to provide comment on the Department of Health and Human Services' (HHS) proposed 2023 Notice of Benefit and Payment Parameters (NBPP) rule. The Biden administration has made progress increasing access to health care and coverage, but more is needed to ensure that people living with chronic illness are able to get the ongoing care they need. We are extremely disappointed that the proposed 2023 NBPP rule does not include any reference to copay accumulator adjustment policies, which financially benefit insurance issuers and pharmacy benefit managers while making crucial treatments unaffordable for patients. PAN urges you to reverse the department's decision to allow insurers and pharmacy benefit managers to include copay accumulator adjustment policies in their qualified health plans in plan year 2023.

PAN is a non-profit organization whose mission is to help underinsured people with life-threatening, chronic, and rare diseases get the medications and treatments their physicians prescribe for them by providing financial assistance for their out-of-pocket costs and by advocating for improved access and affordability. PAN provides patients with direct assistance through nearly 70 disease-specific programs and collaborates with national patient advocacy organizations to provide patients with education and additional support. Since 2004, more than one million underinsured patients have received financial assistance from the Foundation, those with federal insurance, as well as those who are commercially insured.

PAN is pleased that HHS has taken meaningful steps to ensure beneficiaries on the federal exchange can afford their prescription drugs by requiring issuers to offer standardized plans that, for the most part, include reasonable copays. Additionally, we are pleased you are including regulations that address discriminatory plan design and warn insurers and pharmacy benefit managers (PBMs) about designing benefits that include adverse tiering which results in discriminating against

beneficiaries with chronic health conditions. However, PAN is extremely disappointed that the proposed rule does not require issuers and PBMs to count copay assistance for prescription drugs towards beneficiary deductible and out-of-pocket maximum obligations, thus allowing the continuation of copay accumulator adjustment programs.

PAN is a strong advocate for copay assistance which help patients cover the cost of copays and coinsurance, as imposed by the health issuer's benefit design. Copay assistance is financial assistance provided by manufacturers, charitable assistance foundations, or from a family member that helps a patient cover the cost of their copays and co-insurance, ensuring older adults and people living with disabilities can afford and access their prescriptions. It does not change how much a patient must pay toward the cost of their care; it is simply a source of funding to pay those costs.

Copay accumulators, which have been permitted through the 2021 Notice of Benefit & Payment Parameters, create barriers to patients in accessing and affording their prescription medications. Copay assistance helps patients cover the cost of copays and coinsurance, as imposed by the health issuer's benefit design. When that assistance is not counted toward a patient's deductible and out-of-pocket costs, the patient alone is left responsible for paying what is often an exorbitant amount in out-of-pocket costs that can inhibit access to a needed prescription medication. This means that the insurer is often accepting payments above and beyond the maximum cost sharing requirement required by the Affordable Care Act, as the dollars from third-party payments are not counted towards the calculation of the patient's deductible or annual OOP maximum. Pharmacy benefit managers are potentially collecting the payments twice - once via copay assistance, and again when the patient requires other care, or when their copay assistance runs out and they need to get their prescriptions refilled assuming they can afford to do so.

We commend the Biden administration and HHS for focusing on health equity. The ASPE report, [Comprehensive Plan for Addressing High Drug Prices: A Report in Response to the Executive Order on Competition in the American Economy](#) identified HHS' three guiding principles for drug pricing reform the first of which is "mak[ing] drug prices more affordable and equitable for all consumers and throughout the health care system." PAN believes that several proposals contained in the proposed rule, including the establishment of standardized plans and non-discrimination regulations, will better achieve health equity across the country. However, allowing insurers and PBMs to continue to not count copay assistance for prescription drugs will increase beneficiary cost-sharing and exacerbate inequalities in healthcare.

In 2019, CMS implemented a policy to require insurance issuers and pharmacy benefit managers to count copay assistance toward a beneficiaries' out-of-pocket costs. However, in a reversal of rule, the final 2021 NBPP, issued in May 2020, permitted health insurance issuers and pharmacy benefit managers (PBMs) to adopt copay accumulator policies without restriction. **We urge CMS to reinstate the agency's original rule requiring issuers to count all payments made by or on behalf of the beneficiary (including patient copay assistance) toward patients' annual deductible and out-of-pocket limit.** Keeping medications out of the reach of patients who need them is not good or effective policy.

The PAN Foundation appreciates your leadership in seeking solutions to increase access to and affordability of health care for more Americans. Thank you for your consideration of our comments. If you would like further information or have questions, please contact Amy Niles, Executive Vice President at aniles@panfoundation.org.

Sincerely,



Kevin L. Hagan
President and Chief Executive Officer