



January 8, 2024

The Honorable Janet Yellen
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue NW
Washington, DC 20220

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

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

Re: 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 (CMS-9895-P)

Dear Secretary Yellen, Secretary Becerra, and Administrator Brooks-LaSure:

Thank you for the opportunity to submit comments on the proposed rule regarding the Notice of Benefit and Payment Parameters for 2025.

The American Lung Association is the oldest voluntary public health association in the United States, representing the more than 34 million individuals living with lung disease. The Lung Association is the leading organization working to save lives by improving lung health and preventing lung disease through research, education and advocacy.

The Affordable Care Act (ACA) marketplaces provide quality, affordable healthcare to millions of individuals across the United States. Preliminary data shows that over 19 million people will enroll in coverage through the ACA marketplaces for 2024, a record high.¹ This coverage is essential to help people with lung disease access preventive services like lung cancer screening and tobacco cessation, prescription medications, pulmonary rehabilitation, and many more important treatments and services at an affordable cost.

Many of the policies in the proposed rule will improve access to quality, affordable healthcare for the individuals and families with lung disease served by the ACA marketplaces. In addition to

¹ US Department of Health and Human Services, Healthcare.gov Enrollment Exceeds 15 Million, Surpassing Previous Years' Milestones. December 20, 2023. Available at: <https://www.hhs.gov/about/news/2023/12/20/healthcaregov-enrollment-exceeds-15-million-surpassing-previous-years-milestones.html>.

the robust comments that we submitted with other patient advocacy organizations,² the Lung Association offers the following comments and recommendations addressing specific provisions of the proposed rule:

State-Based Marketplaces

The Lung Association strongly supports policies in the proposed rule to extend minimum federal standards to state-based marketplaces (SBMs), which are in line with many of the recommendations on this topic that we offered last year.³ Specifically we urge the Departments to finalize proposals that would require every SBM to run a centralized eligibility and enrollment platform on its website, hold an annual open enrollment period that begins on November 1 and ends no earlier than January 15, and adopt baseline federal standards for web-brokers and direct enrollment entities.

The critical role of call centers in helping patients enroll in and maintain quality, affordable healthcare coverage has become even more apparent during the unwinding of the COVID-19 continuous coverage requirements. The Lung Association supports the minimum standards for marketplace call centers included in the proposed rule and urges the Department of Health and Human Services (HHS) to also include minimum standards for call center wait times moving forward. These should include protections for individuals who require assistance in a language other than English, who have particularly struggled to receive call center assistance during the unwinding process.⁴ Additionally, during the unwinding process, the Centers for Medicare and Medicaid Services (CMS) publicly released monthly call center statistics for each state that have been enormously helpful in understanding patients' experiences in different states. Publicly releasing similar data on call center operations in SBMs in a timely manner would be similarly valuable. For existing SBMs, CMS already monitors call center operations through annual data collections that include call center volume, wait times, and calls abandoned. We urge the CMS to make this data public.

Finally, the Lung Association supports proposals that would improve the transition process when a state moves from the federal marketplace to an SBM. These include requiring states that intend to transition to an SBM to first operate an SBM using the federal platform (SBM-FP) for least one plan year. This will help to give states sufficient time to create, staff, and assume all the responsibilities of running a "full" SBM that can best service patients and consumers. The Lung Association also supports policies that would improve transparency and opportunities for public engagement when a state transitions to a SBM, including requiring states to publish their transition blueprints. We recommend that HHS clarify that a state must provide a formal notice and comment period on this document to ensure adequate opportunities for patient and consumer input.

² Partnership to Protect Coverage, Comments on Notice of Benefit and Payment Parameters for 2025, January 8, 2024. Available at: <https://www.lung.org/policy-advocacy/advocacy-archive>.

³ Partnership to Protect Coverage, Letter to Secretary Becerra re: Patient Priorities for the Notice of Benefit and Payment Parameters, July 27, 2023. Available at: <https://www.protectcoverage.org/siteFiles/45068/07%2027%202023%20PPC-2025-Policy-Priorities-for-NBPP.pdf>.

⁴ Unidos US. At Florida's Medicaid call center, long and discriminatory delays prevent eligible families from keeping their health care. August 17, 2023. Available at: <https://unidosus.org/publications/long-and-discriminatory-delays-at-floridas-call-center/>

Network Adequacy

Network adequacy standards are important for individuals with lung disease to access primary care providers and a range of different specialists to manage their health conditions. The Lung Association supports the policies in the proposed rule requiring SBMs to adopt quantitative time and distance standards that are at least as stringent as federal standards, as well as review insurer compliance with these standards before certifying plans for sale. Wait times are also an important component of network adequacy, as timely access to a robust network of providers should not vary based on the state in which a patient lives. We encourage HHS to include wait time standards in the minimum network adequacy standards for SBMs moving forward.

Additionally, the Lung Association strongly supports the proposal, reflected in this year's letter to issuers, to require insurers to contract with an independent third-party to administer secret shopper surveys to determine compliance with the federal appointment wait time standards that come into effect in 2025. These surveys will be important to ensure that these important standards to ensure patients' access to care are implemented as intended.

Standardized Plans

Standard plans are an important tool to help patients compare healthcare plans and choose the best option for their needs, and the Lung Association has long supported their use on Healthcare.gov as well as in individual SBMs. We urge HHS to require that all SBMs establish a standard plan program, while still allowing states the flexibility to design a framework for standardized plans that may differ from that adopted on Healthcare.gov.

With respect to the federal marketplace, the Lung Association urges HHS to maintain its current limits on non-standard plans without additional exceptions. Current regulations already allow numerous non-standardized plan offerings, including the types of plans that may benefit patients with chronic and other high-cost conditions discussed in the proposed rule. Instead of establishing an exceptions process, HHS should focus on implementing other policies designed to help consumers better understand and differentiate between their coverage options, such as prioritizing the display of standardized plans on HealthCare.gov and reestablishing standards that require an insurer's marketplace plans to be meaningfully different from each other.

Essential Health Benefits

Essential health benefits (EHBs) are designed to ensure that patients have access to comprehensive healthcare coverage that includes the emergency services, preventive services, prescription drugs, and other critical treatments and services that they need. In 2023, the Lung Association commissioned a review of EHB benchmark plans and silver plans offered in the ACA marketplaces in five states to determine whether those benchmark and silver plans provided access to the treatments and services that patients with COPD and lung cancer would need to treat their conditions.⁵ The final report, *Access to Care for COPD and Lung Cancer Patients under Current Essential Health Benefit Standards* (EHB report), found a lack of transparency that made it difficult to determine whether both benchmark plans and silver plans met the standard of care for COPD and lung cancer, as well as a failure of current EHB standards to keep up with medical advances in areas like biomarker testing, which can connect patients with lung cancer with targeted therapies that drastically improve their prognosis. These

⁵ American Lung Association, *Access to Care for COPD and Lung Cancer Patients under Current Essential Health Benefit Standards*. September 2023. Available at: <https://www.lung.org/getmedia/d187d0b3-3b73-41e8-9d12-2aa27877b56f/EHB-Report-FINAL.pdf>.

findings highlight the need for HHS to establish a regular, evidence-based process for reviewing EHB standards that incorporates input from patients and other stakeholders on gaps in the current EHB framework. In addition to this recommendation, the Lung Association offers comments on specific policies related to EHB included in the proposed rule:

Coverage of Adult Dental Benefits

The Lung Association supports the proposal to remove the regulatory provision that prevents adult dental services from being treated as EHB. Oral health is an essential part of individuals' overall health and the current policy can lead patients to forgo needed services and potentially experience worse health outcomes. For example, 40% of people aged 20 and 64 who smoke have untreated tooth decay, which can lead to pain and infection.⁶ By allowing states to add adult dental services to their EHB benchmark plans, patients who smoke could get better dental care and get additional advice and treatment to quit their addiction, improving their overall health. We thank HHS for moving to eliminate this unnecessary barrier to care.

Coverage of Prescription Drugs

The proposed rule includes a number of policies related to prescription drug coverage under current EHB standards. The Department proposes to transition from the U.S. Pharmacopeia Medicare Model Guidelines (USP MMG) to the USP Drug Classification (DC) system. The Lung Association supports this change, as the DC system includes additional drug classes and is updated more frequently. We also recommend that HHS adopt an annual process, including feedback from patients, to review the USP DC system and ensure it remains updated for patients' evolving needs.

However, this transition alone would not ensure that patients with lung disease have access to a sufficient range of treatment options. Our 2023 EHB report found that certain recommended medications for both COPD and lung cancer were not covered by all plans and included barriers like prior authorization, quantity limits, and placement on specialty tiers that can create barriers to care.⁷ HHS could further strengthen the prescription drug standard by requiring coverage of a minimum of two drugs per USP class and category or the number covered by the benchmark plan, whichever is greater, as well as "all or substantially all" drugs in certain specified classes that are critical to vulnerable populations, an approach similar to that adopted under Medicare Part D.

Finally, the proposed rule also clarifies that, in the event a plan covers prescription drugs in excess of the minimum number covered by the state's EHB benchmark plan, the additional drugs are considered EHB. HHS states that this is not a policy change but rather a clarification of this longstanding rule. The Lung Association appreciates and supports this clarification.

User Fees

HHS proposes that the 2025 user fee rates for issuers that participate on the FFM or an SBM-FP will be 2.2 percent and 1.8 percent, respectively. While this would be a continuation of the

⁶ Centers for Disease Control and Prevention. Oral Health Dental Professionals: Helping Your Patients Quit. March 19, 2020. Available at: <https://www.cdc.gov/oralhealth/publications/features/dental-pros-help-your-patients-quit-tobacco.html>

⁷ American Lung Association, *Access to Care for COPD and Lung Cancer Patients under Current Essential Health Benefit Standards*. September 2023. Available at: <https://www.lung.org/getmedia/d187d0b3-3b73-41e8-9d12-2aa27877b56f/EHB-Report-FINAL.pdf/>.

fee rates in effect in 2024, user fee rates should be returned to pre-2022 levels to facilitate greater investments in outreach and enrollment and improvements to Healthcare.gov that would serve the record number of individuals and families now enrolled in coverage through the ACA marketplaces.

Enforcement

Finally, greater resources are needed for enforcement of many of the policies discussed in this proposed rule, ranging from network adequacy to essential health benefit standards. For example, the Lung Association's 2023 EHB report found substantial gaps in coverage of tobacco cessation treatment. This preventive service receives an "A" recommendation from the United States Preventive Services Task Force for both counseling and medications and is required to be covered under current EHB standards. In three of the five states included in the report, only a fraction of the silver plans covered tobacco cessation counseling and in one state, there was no coverage of tobacco cessation counseling.⁸ Improved oversight and enforcement of EHB standards is needed to ensure that plans meet existing coverage requirements, especially for preventive care like tobacco cessation.

Conclusion

Thank you for the opportunity to provide these comments. We look forward to continuing to partner with you to advance quality, affordable healthcare for patients.

Sincerely,



Harold P. Wimmer
President and CEO

⁸ Id.