AMERICAN ACADEMY OF FAMILY PHYSICIANS

January 25, 2023

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

RE: RIN: 0938-AU97: Patient Protection and Affordable Care Act, HHS Notice of Benefit and Payment Parameters for 2024

Dear Administrator Brooks-LaSure:

On behalf of the American Academy of Family Physicians (AAFP), representing more than 127,600 family physicians and medical students across the country, I write in response to the proposed rule regarding the Notice of Benefit and Payment Parameters for 2024, as published in the Federal Register on December 21, 2022.

Network Adequacy

CMS seeks to bolster network adequacy by making changes to essential community provider (ECP) requirements. ECPs serve predominantly low-income and medically underserved individuals. These include family planning providers, Indian health care providers, Federally Qualified Health Centers (FQHCs), hospitals, Ryan White providers, and others. Regulations require Qualified Health Plan (QHP) issuers in the federally-facilitated marketplaces (FFM) to have 35 percent of available ECPs participating in their networks and to offer a contract in good faith to at least one provider in each ECP category in each county in the plan's service area.

CMS proposes to retain the overall 35 percent provider participation threshold for available ECPs in plan year 2024. In addition, CMS also proposes to require QHPs contract with at least 35 percent of available FQHCs and 35 percent of available Family Planning providers (that qualify as ECPs) within the plan's service area.

The AAFP strongly supports the proposal to maintain the ECP threshold and set a minimum threshold of 35 percent to both FQHCs and Family Planning Providers. In light of policies facilitating enrollment of low-income enrollees, maintaining the ECP threshold and setting specific minimum thresholds for the largest categories of ECP provider types is vital to ensuring low-income enrollees can access timely, high-quality services at little or no cost. The proposed minimum thresholds for FQHCs and Family Planning Providers will ensure that low-income enrollees can access comprehensive preventive and primary care services. Under the broader requirement for QHPs to contract with 35 percent of all eligible ECPs, challenges contracting with certain types of ECPs can be masked by contracting with higher proportions of other ECP provider types. The AAFP has long advocated for standardized minimum thresholds like this one to advance equitable, affordable access to comprehensive care across programs.

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CMS proposes to establish mental health facilities and substance use disorder (SUD) treatment centers as stand-alone ECP categories, thereby removing these from the "Other ECP Providers" category and requiring issuers to attempt to contract with at least one of each in each county they serve. CMS also proposes to add Rural Emergency Hospitals (REHs) as a provider type in the "Other ECP Providers" category.

The AAFP supports establishing mental health facilities and SUD treatment centers as standalone ECP categories to facilitate access to behavioral health care for QHP enrollees. The AAFP previously raised concerns about lumping these categories together and encouraged CMS to implement separate standards for SUD treatment services and other behavioral health facilities. CMS should ensure family medicine practices and other primary care that provide SUD treatment in their practice should be considered ECP SUD treatment centers for the purposes of this requirement. We also urge CMS to clarify in the final rule, which clinicians and facilities qualify as SUD treatment centers for the purpose of meeting the ECP requirement.

The AAFP shares CMS' concern regarding the shortage of SUD and mental health professionals. Patients are increasingly turning to primary care physicians for behavioral health needs. While family physicians are trained to provide certain high-quality, whole-person behavioral health services, including SUD treatment, patients and physicians sometimes benefit from care coordination with other behavioral health professionals or more intensive, specialized care. The ongoing shortage of behavioral health professionals has made it difficult, and sometimes impossible, for family physicians to integrate behavioral health into their practice and to make referrals for patients requiring additional care. This proposal will help improve access to behavioral health care and SUD treatment for low-income QHP enrollees, as well as bolster CMS' ability to monitor network and access challenges.

CMS notes that issuers will not be penalized for not contracting with a mental health facility or SUD treatment center if one does not exist in that county. However, AAFP recognizes that telehealth visits are often uniquely suited for behavioral health care, and there is a robust evidence base supporting this modality. This includes audio-only and telehealth appointments for SUD treatment, as detailed in SAMHSA's recent proposal to allow buprenorphine initiation via telehealth. Thus, the AAFP urges CMS to consider how issuers might contract with clinicians offering tele-mental health services when one is not available in a specified county, while also ensuring patient safety, high-quality care, and care continuity.

The AAFP also shares CMS' belief that REHs are a vital source of emergency care in rural areas and supports the proposal to include them in the "Other ECP Providers" category. The AAFP recently shared input on the conditions of participation for REHs, noting that family physicians regularly provide emergency care in rural communities and are uniquely suited to staff and serve as medical directors of REHs.

Special Enrollment Periods

CMS proposes to establish a new special enrollment period (SEP) for 60 days before and 90 days after an individual loses Medicaid or CHIP coverage, when such coverage is considered minimum essential coverage (MEC).

The AAFP strongly supports the addition of this SEP and has long advocated for eligibility and enrollment policies that facilitate continuous, comprehensive coverage. The AAFP recently applauded CMS' action to finalize new similar SEPs under revisions to the Medicare Enrollment and Eligibility Rules revisions. The AAFP has also urged CMS to take steps to minimize Medicaid

coverage disruptions after the end of the COVID-19 public health emergency (PHE), including by efficiently connecting Medicaid beneficiaries who lose their coverage to other forms of comprehensive coverage.

Thank you for the opportunity to provide comments on this proposed rule. The AAFP looks forward to working with CMS to improve equitable access to high-quality, comprehensive care for all. Please direct any additional questions to Meredith Yinger, Manager of Regulatory Affairs, at myinger@aafp.org or (202) 235-5126.

Sincerely,

Sterling Ransone, Jr., MD, FAAFP
American Academy of Family Physicians, Board Chair