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December 28th, 2020

Alex Azar, Secretary
U.S. Department of Health and Human Services
200 Independence Avenue SW
Washington, DC 20201

Re: *Comments on HHS Notice of Benefit and Payment Parameters for 2022 (CMS-9914-P)*

Dear Secretary Azar:

Thank you for the opportunity to submit comments on the Department of Health and Human Services (HHS or “the Agency”) Notice of Benefit and Payment Parameters for 2022 (NBPP) proposed rule (CMS-9914-P). The Global Healthy Living Foundation (GHLF) writes to express our concern and disappointment that this rule does nothing to address the growth of copay accumulator adjusters and PBM limits on copay assistance following the 2021 NBPP.

By way of background, GHLF is a 22-year-old 501(c)(3) patient organization reaching millions of chronically ill patients and their caregivers across the country through social media, community events and our online support and education. GHLF works to improve the quality of life for patients living with chronic disease by making sure their voices are heard and advocating for improved access to care at the community level. Our patients suffer from chronic conditions including arthritis, psoriasis, gastrointestinal disease, cardiovascular disease and migraine. As a result, these patients incur significant financial burden due to the high cost of the treatments that are necessary to manage their disease. It is on behalf of the patients we represent that we provide this information for your consideration.

Last year, GHLF opposed the revisions to §156.130(h) and asked the Agency to leave in place the provisions in the 2020 NBPP that allowed copay coupons to count toward deductibles for first-time Medicare drug costs and in the federal health care marketplace. Unfortunately, our request was not only ignored, but it continues to be left unaddressed in this year’s rule. Copay assistance programs have often become the only means for many patients covered by these types of plans to afford their medications and gain access to life saving therapies. Typically, funds from copay assistance programs count toward the enrollee’s deductible, ensuring that when their coupons run out, they are still able to access their treatment without exorbitant copayments. This enables patients to plan for their medical expenses, maintain their prescribed therapies, and stay in control of their health.

Additionally, these assistance programs have only grown in importance during the ongoing COVID-19 pandemic. Not only did manufactures continue to provide assistance to ensure patients stay stable on their medications while the pandemic was raging, many of them expanded

their programs to cover the millions of patients who lost their job and their insurance during the pandemic.

Under the 2021 NBPP rule, insurers were allowed to not count payments made with coupons towards an annual limitation on cost sharing. This was in contrast to the goal of positive health outcomes, i.e. making sure that patients have access to the best treatment for them. For many serious chronic conditions, there are often only expensive brand name drugs available with no generic equivalent, making copay cards an essential part of access-to-care. This policy was not just a bad decision, but it forced many patients to choose between maxing out credit cards they cannot pay, bankruptcy, or not taking their medications. A 2018 report found that when patient cost sharing exceeds \$250, 69 percent of new prescriptions are not filled or are not picked up at the pharmacy.¹ Many biologic medications used to treat complex conditions cost thousands of dollars per treatment, far above that \$250 threshold. Without the ability of copay assistance programs to count toward their deductible, the 2021 NBPP rule is putting patients at greater risk of not having access to their medications and suffering needlessly and the 2022 NBPP does nothing to correct this grievous error.

Permitting patients to use funds from copay assistance programs to meet their annual limitation on cost sharing has clear benefits: insurance companies still receive their payments while those with chronic health conditions are able to access their treatments and retain autonomy over their healthcare spending. GHLF disagrees with the rationale provided in the 2021 rule that the existence of financial assistance programs changes the patients' cost-sharing obligation. Rather, we view these programs as a means for those with chronic illnesses to meet their financial obligations that are no different than a patient using a gift, a Go Fund Me account, a tax refund, or other means to pay for their medications. We urge you, on behalf of our community members, to consider the millions of people who rely on copay assistance programs to access their needed medications and repeal the 2021 language in the 2022 NBPP.

Thank you for your consideration and we would be please to provide any further information that you need.

Sincerely,



Steven Newmark
Director of Policy and General Counsel
Global Healthy Living Foundation

¹ IQVIA. Patient Affordability Part Two: Implications for Patient Behavior & Therapy Consumption. <https://www.iqvia.com/locations/united-states/patient-affordability-part-two>.