



Global Healthy Living Foundation  
515 North Midland Avenue  
Upper Nyack, New York 10960 USA  
+1 845 348 0400  
+1 845 340 0210 fax  
www.ghlf.org

January 26<sup>th</sup>, 2022

Xavier Becerra, 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 2023 (CMS-9914-P)

Dear Secretary Becerra:

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 2023 (NBPP) proposed rule (CMS-9911-P). The Global Healthy Living Foundation (GHLF) writes to express our concern and disappointment that this rule continues to allow the proliferation of copay accumulator policies in health plans across the country. While we are encouraged by some significant parts of the NBPP, we hope to see accumulator adjustor reform included in the final rule.

By way of background, GHLF is a 501(c)(3) non-profit 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, and migraine. These patients incur significant financial burdens due to the high cost of the necessary treatments to manage their condition.

### *Standardized Plan Options*

When choosing a health plan, patients can feel overwhelmed by the number of plan options available to them, and it can lead them to pick a health plan that may not be their best option. Patients often do not have the time or health literacy knowledge to fully understand some of the plan options available to them, which may lead them to pick a plan based on only one or two factors that they know, such as monthly premiums, without being fully aware of other cost-sharing or utilization management policies. One of the most encouraging developments of the 2023 NBPP is that HHS is resuming requiring insurers on the federal and state-based marketplaces to offer standardized health plan options at every metal level. This change will go beyond simply adding a new plan option to the marketplaces; the additional requirements around how insurers must present their plans options to patients will significantly impact making sure patients have a greater understanding of the complete details of their health plan.

We are happy to see these standardized plans move away from coinsurance as a form of cost-sharing and require insurers to charge a set copay for specialty medications. Our patient community is one of many that relies on high-cost drugs to live their daily lives with little to no interruption from pain or symptoms. Coinsurance penalizes these patients for having a disease they had no control over getting. While we are still concerned that the copayment levels are still very high for specialty medications, they remain significantly less than previous coinsurance amounts. The 2023 NBPP would begin to create a system that, while still not perfect, will limit patient cost-sharing by a significant amount and ensure that our community is no longer punished for having to rely on expensive medications. We ask that CMS ensure that all copays are counted towards the patient deductible and out-of-pocket requirements in the final rule. Additionally, we are also pleased to see that the 2023 NBPP requires that health plans cannot discriminate based on sexual orientation and gender identity. Patients should not be penalized or have a fear of being discriminated against for being who they are and loving whom they love.

### *Copay Assistance and Accumulator Adjustors*

While we are encouraged by significant pieces of the 2023 NBPP, we are very concerned that there has not been a more significant effort to reign in copay accumulator adjustor policies and other practices used by insurers to limit copay assistance. In previous comments on NBPPs in the past four years, GHLF has been one of many patient organizations that have expressed our concern with insurers' growing use of copay accumulator adjustor policies and the lack of interest in regulating them by CMS. With insurers pushing more costs onto patients through higher deductibles and greater cost-sharing, patients rely on copay assistance programs to afford the medications that allow them to live their daily lives. These programs are frequently the only way for patients to afford the medication on which they are stable, and their doctor has determined is the best option for them. The programs have also seen a rapid growth in use since the 2021 NBPP allowed them to be used for any medications, regardless of whether it has a generic equivalent or not.

Typically, funds from copay assistance programs count toward the enrollee's deductible, ensuring that when their coupons run out, they can still 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. However, due to changes in the previous NBPPs, insurers have continued to implement policies that negate these programs and once again push the price of these medications onto the patients and penalize them simply for having a disease they had no control over. We have noted in previous comment letters that research has shown that when cost-sharing exceeds \$250, nearly 70% of new prescriptions are not picked up at the pharmacy.<sup>1</sup> Many patients, if not all, in our community rely on biological medications that far

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<sup>1</sup> IQVIA. *Medicine Use and Spending in the US: A Review of 2018 and Outlook to 2023*. (May 2019.) [Medicine Use and Spending in the US; A Review of 2018 outlook to 2023](#). A recent patient experience survey showed that of respondents taking prescription medicines with a high-deductible health plan, 52% report one or more episodes of non-adherence in the past year



exceed the \$250 threshold. Any hesitation or delay in picking up their treatment can lead to a severe and immediate deterioration of their condition and health status.

Copay assistance programs are vital for ensuring continued patient adherence to their medications without putting them under financial stress. We agree that when a branded drug has a generic alternative, these policies have merit. However, the expensive medications that our patients rely on often do not have a generic equivalent, and insurers often enforce these policies to switch patients to a treatment that offers the insurer a higher rebate and increases their bottom line. We want to see patients treated less as a profit center and more for the patient that they are. By allowing copay assistance to count towards deductibles everybody wins. Patients can continue to use the medications that work for them without maxing out their credit card every month and insurers still get paid the same amount that they originally agreed to when the health plan was purchased. On behalf of the millions of patients we represent around the country we strongly urge CMS to return to the 2020 NBPP language and ensure that copay assistance for medications without a generic equivalent are counted towards patient deductibles and out-of-pocket maximums.

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

