November 12, 2024

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

Submitted via www.regulations.gov

RE: Patient Protection and Affordable Care Act, HHS Notice of Benefit and Payment Parameters for 2025; and Basic Health Program (CMS- 9888-P).

Dear Administrator Brooks-LaSure:

The Alliance of Community Health Plans (ACHP) is committed to advancing policies that protect consumers and foster a vibrant and competitive market with robust choices. ACHP appreciates the opportunity to submit recommendations to support enhanced consumer experience and greater efficiency in the marketplace in response to the proposed 2026 Notice of Benefit and Payment Parameters (NBPP).

ACHP is the only national organization promoting the unique payer-provider aligned model in health care. ACHP member companies collaborate with their provider partners to deliver high-quality coverage and care to tens of millions of Americans in nearly 40 states and D.C.. They are leading the industry in practical, proven reforms around primary care delivery, value-based payment and data driven systems improvement.

ACHP is dedicated to safeguarding consumer interests and fostering issuer sustainability, without imposing unnecessary administrative hurdles. Our comments include:

- **Individual Market Risk Adjustment**: ACHP offers recommendations to improve the individual market risk adjustment program, focusing on data access and model accuracy.
- **Consumer Protections**: ACHP supports proposals for transparency and accountability for agents and brokers, including consumer notification of potential loss of Advance Premium Tax Credits (APTCs).
- **Issuer Insolvency**: ACHP supports direct HHS involvement in issuer insolvency cases, prioritizing consumer protection and collaboration with state regulators.
- **Silver Loading**: ACHP supports the continuation of silver loading but does not support codifying in regulation.
- **Risk Adjustment**: ACHP supports phasing-out pricing adjustments for Hepatitis C drugs, request greater clarification for transfer payment proposals and support changes to sampling methodologies.

ACHP Proposed Recommendations to Improve Individual Market Risk Adjustment

ACHP requests CMS share encounter data on existing enrollees after they have enrolled in a new health plan to support consistent, accurate and comprehensive risk adjustment. Further, we recommend CMS share the previous two years of encounter data with the health plan inheriting an enrollee that is switching health plans to ensure ample data for accurate calculation. As consumers shop

for and choose new ACA products, health plans enroll individuals without fully knowing the extent of their health needs. The current risk adjustment program does not provide issuers with a risk score for current enrollees moving from one ACA plan to another, unlike the Medicare Advantage risk adjustment program. This lack of data is disadvantageous to health plans who need patient acuity data to accurately calculate risk. Consumers also deserve access to appropriately priced products and timely delivery of care.

ACHP requests CMS revisit recommendations proposed in its 2021 HHS-Operated Risk Adjustment Technical Paper on Possible Model Changes ("Technical Paper"). As outlined in the Technical Paper, the current risk adjustment models underpredict plan liability for the subpopulation of the lowest-risk enrollees. We request CMS utilize current data to assess whether underprediction remains a prevalent problem. Additionally, we request a detailed analysis of the findings and an opportunity to review the updated analysis and related recommendations to provide input on the best path forward to support improvements to the current risk adjustment program.

Issuer Use of Premium Revenue: Reporting and Rebates

ACHP does not support changing the Medical Loss Ratio (MLR) calculation. We are concerned this proposal would disrupt calculations that have been foundational in the MLR program. The current formula is not incorrect; it simply does not work for the benefit of all issuers. We are concerned about impacts to the proper functioning of risk adjustment and MLR programs if this policy is adopted more broadly. We recommend state and federal regulators address financial stability issues directly, rather than proposing changes to programs to indirectly address the issue. If CMS does finalize these MLR proposals, we do not believe the amended MLR and rebate methodologies should be applied market-wide.

Exchange Establishment Standards and Other Related Standards under the ACA

ACHP supports greater transparency for agents and brokers against misconduct and noncompliance. We support greater protection for consumers and transparency for the agents and brokers who serve them. We applaud the efforts taken by CMS to protect consumers from illegal enrollments and plan switching and encourage continued transparency in enrollment processes to ensure consumers are afforded appropriate plan selections.

ACHP supports the requirement to notify tax filers and consumers who have failed to file and reconcile APTC (or enhanced tax credits) for two consecutive tax years. We appreciate efforts to protect consumers' access to enhanced tax credits. Notifying consumers at risk of losing their enhanced tax credits and educating them about the requirement to file their federal income taxes and reconciling their enhanced tax credits, helps ensure individuals have access to affordable coverage. This is especially important as enhanced tax credits are set to expire at the end of 2025 and could mean the difference between remaining enrolled and going uninsured. Ensuring consumer access to enhanced tax credits would mitigate potential uncompensated care and medical debt resulting from a lapse in coverage.

ACHP recommends CMS differentiate between subscriber-level inaccuracies versus broader, Exchange-level discrepancies in State-based Exchange review of enrollment data. We request differentiation between responding to versus resolving inaccuracies, with consideration for grace period status. This is particularly important with shortening the timeline from 90 to 60 days.

ACHP supports the option for issuers to establish a $5 or less premium payment threshold or a 95 percent or more percentage-based threshold. We support the proposal to limit issuers to one type of premium payment threshold policy (fixed-dollar or percentage-based, but not both). More time is needed to review the gross premium, percentage-based threshold concept. We recommend CMS not finalize that part of the proposal to allow for further deliberation and feedback. Additionally, we recommend CMS consider circumstances in which states try to impose incredibly challenging rules around premium payment thresholds that do not align with federal rules. **We recommend CMS issue guidance outlining the best practices to guide states in the process and ensure a smooth experience for consumers. If finalized, it's imperative that this be an optional policy.** For states that adopt a policy, it is important that it is not mandatory and is easy to understand and implement.

Health Insurance Issuer Standards under the ACA, Including Standards Related to Exchanges

ACHP supports direct involvement in instances of issuer insolvency. CMS should focus on consumer impacts as enrollees get switched from plan to plan when issuers become insolvent. We support increased coordination with the National Association of Insurance Commissioners and state regulators to ensure alignment, including directly addressing financial stability issues.

We support formalizing current guidance to allow for silver-loading. Silver loading increases the number of zero-dollar-premium bronze plans available to consumers and reduces premiums for consumers purchasing other metal level plans. It is a vehicle to expand access to affordable coverage options. However, we caution that putting this in regulation may not be necessary, as it is not altering the interpretation.

ACHP supports the inclusion of a meaningful difference standard to provide consumers with appropriate coverage options. We do not support the "clarification" as it relates to non-standardized plan option limits. Under this policy change, carriers could still offer many plan variations. This does not align with the stated intent to prevent choice overload and simplify plan selection and the consumer shopping experience.

We strongly support issuing one final Actuarial Value calculator each plan year. If HHS does not release a draft and final calculator, we request CMS provide the final calculator in a timelier fashion.

HHS Risk Adjustment

ACHP requests HHS model the impact of introducing a new type of factor for Pre-Exposure Prophylaxis (PrEP) in the HHS risk adjustment program. We have significant concerns about the long-term and downstream impacts of creating the Affiliated Cost Factor (ACF) for PrEP in the HHS risk-adjustment adult and child models. We encourage CMS to further study this concept and include a list of potential other ACFs (beyond PrEP) so risk adjustment participants have a better understanding of how change will transpire.

If this proposal is finalized, we urge caution and a phase-in approach (e.g., a trial period for incorporating PrEP in this manner). We request HHS implement this provision on a pilot basis, followed by analysis of impacts on risk adjustment, in conjunction with continued study and assessment of the appropriateness of incorporating ACFs into risk adjustment. Additionally, we strongly oppose excluding generics from the factor. This approach would represent a substantial shift for the risk adjustment program and requires

greater vetting if it is to be implemented more broadly.

ACHP does not support considering the time value of money for collection of transfer payments. We acknowledge the concerns related to the time value of money; however, we are concerned with using federal programs and policies to address issuer financial stability. We prefer empowering regulators and policymakers to address this issue head-on and find more direct ways to ensure stability. We also seek greater clarification on how HHS plans to implement this provision. We are not opposed to an acceleration mechanism to address the lag in payments, but do not support a potential inclusion of interest on payments from participants who make delayed remittance to the program.

ACHP supports proposals to exclude enrollees without Hierarchical Conditions Categories (HCC) from Initial Validation Audits (IVA). Audits are intended to investigate plans that overstate the sickness of their population, and individuals without HCCs cannot fall into that category. We support this proposal to prevent over-coding and stop plans from capturing diagnosis codes that are not appropriate.

ACHP supports proposals related to both Initial Validation Audit (IVA) and Second Validation Audit (SVA) sampling methodology. We affirm that using Risk Adjustment Data Validation (RADV) data (in lieu of the Neyman allocation data) and other changes would allow for a more substantial IVA sample. We recommend that CMS finalize the IVA sampling methodology change first and evaluate the impact of the IVA change, before making any changes to the SVA process.

Additionally, we are concerned that $10,000 is too low for the RADV Materiality Threshold and will require a high volume of reanalysis of RADV results, as well as potential corresponding impacts to finality of state transfers. We request CMS reconsider and raise the threshold.

ACHP supports phasing out the pricing adjustment for Hepatitis C drugs. While the price of these drugs was stagnant or even declining, that trend is reversing and it's necessary to incorporate these drugs into the special drug tier.

ACHP member companies are committed to preserving access to quality and affordable care, through a highly functioning and stable individual and small group market. We welcome additional opportunities to engage with the Administration to ensure a successful individual market that provides robust coverage options. Please contact Nissa Shaffi, Associate Director of Public Policy, at nshaffi@achp.org, with any questions or to discuss these recommendations further.

Sincerely,

Dan Jones

Dan Jones
Senior Vice President, Federal Affairs
Alliance of Community Health Plans