January 27, 2022

Chiquita Brooks-LaSure
Administrator, Centers for Medicare & Medicaid Services
Hubert H. Humphrey Building
200 Independence Avenue, S.W., Room 445-G
Washington, D.C. 20201

RE: Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2023

Dear Administrator Brooks-LaSure:

Consumers for Quality Care (CQC), a coalition of advocates and former policymakers working to provide a voice for patients in the health care debate as they demand better care, appreciates the opportunity to provide comments on the Centers for Medicare and Medicaid Services (CMS) proposed rule on the plan year 2023 Notice of Benefit and Payment Parameters (NBPP). CQC is committed to ensuring a patient's right to affordable, high-quality care remains at the forefront in the development of health care policies and regulations.

We applaud your action to promote greater health equity in America. Many of your proposed actions in the draft NBPP 2023 take steps to achieve this very important goal and it is with this goal in mind that we submit the following comments.

Part 147 – Health Insurance Reform Requirements for the Group and Individual Health Insurance Markets

Guaranteed availability of coverage (§ 147.104)

Expanding access to health coverage is a CQC priority and an important step toward reducing health disparities. CMS's proposal would require issuers to accept individuals and employers who apply for coverage even when the individual or employer owes past-due premiums for coverage. It would also prohibit them from applying a premium payment to an individual's past owed debt. This will remove barriers to enrollment for low-income individuals and promote equitable access to insurance coverage.

CQC applauds the administration's efforts to protect consumers against discrimination based on sexual orientation and gender identity by codifying guidance issued by the administration in 2021. We fully support protecting members of the LGBTQI+ community, who face pervasive health and health care disparities, by reverting section 45 CFR 147.104(e), 45 CFR 155.120(c), and § 155.220(j)(2)(i) to pre-2020 nondiscrimination protections and explicitly prohibiting

discrimination based on sexual orientation and gender identity. This is an important step in protecting the health and wellbeing of LGBTQI+ people.

Part 156 – Health Insurance Issuer Standards Under the Affordable Care Act, Including Standards Related to Exchanges

Prohibition on discrimination (§ 156.125)

We support refining the Essential Health Benefits (EHB) nondiscrimination policy for health plan designs by explicitly prohibiting discrimination based on sexual orientation and gender identity and by proposing a clear regulatory framework for entities that are required to comply with EHB nondiscrimination policy. This will ensure consistent application of EHB nondiscrimination policy and better safeguard consumers who depend on nondiscrimination protections.

Health plan design, including benefit limitations and plan coverage requirements, must be nondiscriminatory and ensure equitable coverage and care for all. Plan design should be based on clinical evidence, and CQC supports this regulatory requirement proposed as a revision to § 156.125. However, large group plans and self-insured plans may be taking advantage of loopholes within the guidance and implementing benefit designs that could be discriminatory. The Affordable Care Act (ACA) makes it clear that insurers must not discriminate against beneficiaries based on health conditions. Yet the use of prior authorization, step therapy requirements, and other utilization management techniques have the potential to violate this provision. These harmful barriers to the medications and therapies patients need must be excluded from plan design. We encourage HHS to more closely scrutinize health plans using additional robust formulary reviews for Exchange plans.

Standardized Options (§ 156.201)

We applaud CMS for advancing plan options in the Federally Facilitated Marketplaces (FFM) and State-Based Marketplaces using the Federal Platform (SBM-FP) by requiring issuers to offer standardized plan options at every product network type, metal level, and throughout every service area where non-standardized options are offered. All consumers deserve access to quality, affordable care and coverage, yet choosing the right health insurance coverage can be complicated. Barriers to analyzing plan designs are particularly pronounced for those with constrained resources, including those with limited English proficiency, limited internet access, and complex health needs. Standardized plans can be a tool for improving health equity, as they help simplify plan choice and usage for consumers while improving value for enrollees, allowing for apples-to-apples comparisons of plan premiums, network, and quality. Standardized options also help consumers more easily identify plans with discriminatory benefit designs that target individuals with certain health conditions or disabilities by leaving them with substantial out-of-pocket costs.

Given the ease to consumers offered by Standardized Plans, CQC supports the preferential display of Standardized Plans on HealthCare.gov and for approved web-brokers and QHP issuers

using a direct enrollment pathway to facilitate enrollment through an FFE or SBE-FP to ease plan shopping for consumers.

In designing Standardized Plans, broad stakeholder input should be sought and plan designs should seek to reduce disparities within health conditions that disproportionately impact communities of color.

Standardized Plans offered on HealthCare.gov and approved web-brokers and QHP issuers should not use Copay Accumulator Adjustment Programs (CAAP). These programs are extremely harmful to patients and increase out-of-pocket costs for prescription medications, particularly for those living with chronic conditions.

In 2021, CQC partnered with researchers from Georgetown University's McCourt School of Public Policy to conduct research into Standardized Plans. The product of this research, our Advocate's Guide to Standardized Health Plans, is a useful tool to guide consumer advocates and other stakeholders in plan design that improves the consumer experience.

Network Adequacy (§ 156.230)

Telehealth services have become increasingly important since the onset of the COVID-19 pandemic. They help remove barriers to health care access for vulnerable populations such as the elderly, the immunocompromised, the chronically ill, and those living in rural areas without access to a hospital. Research from CQC conducted in 2021 found that a majority of Americans (55%) used telehealth services and many like it more than in-person care.

CQC supports the agency's proposal requiring all issuers seeking certification of plans to be offered as QHPs through the FEEs to submit information on whether network providers offer telehealth services. While telehealth services should not replace in-person care for the purposes of assessing network adequacy, it is an important offering that benefits many individuals. Data collection is an important first step in developing future telehealth standards.

Quality Standards: Quality Improvement Strategy (§ 156.1130)

Health care disparities in America are serious issues that harm communities of color, the LGBTQI+ community, and low-income populations. The COVID-19 pandemic worsened these disparities, having a disproportionately deadly impact on communities of color. CQC research in 2021 found that Americans are feeling the real effects – more than half (56%) of Americans say that COVID-19 has shown the racial disparities within our health care system.

It is crucial that our leaders implement changes that strengthen our nation's foundation for better, more equitable health. We thank the administration for taking positive steps toward addressing the inequality that has long persisted within the system and applaud the agency for proposing new guidelines to require QHP issuers to address health and health care disparities as a specific topic area within their Quality Improvement System (QIS). Improving demographic data collection and requiring National Committee for Quality Assurance (NCQA) health equity

accreditation for QHP issuers will go a step further in ensuring equitable health care for all. We urge the agency to take these steps as well.

Copay Accumulator Adjustment Programs

While we are grateful to the administration for their efforts to increase access to health care and coverage and support many positive and impactful proposals in the agency's Notice of Benefit and Payment Parameters (NBPP) for 2023, we are concerned that the draft NBPP does not include a provision that prohibits insurers from using copay accumulator adjustment programs. The lack of action on copay accumulator adjustment programs will impede progress toward greater health equity. These programs are harmful to patients and increase out-of-pocket costs for prescription medicines, targeting the most vulnerable patients among us and creating an inequitable health care system. They create an unfair financial burden on those with chronic conditions and undermine pre-existing condition protections. We strongly urge CMS to address this policy when it issues a final rule.

Thank you for the opportunity to comment on the Notice of Benefit and Payment Parameters for Plan Year 2023 proposed rule. Many of the provisions included will help better achieve health equity throughout the country. CQC stands ready to work with the administration and CMS to ensure patients – and their right to high-quality health care – remain a top priority.

Sincerely,

Consumers for Quality Care