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VIA ELECTRONIC SUBMISSION

January 27, 2022

Re: RIN 0938-AU65; CMS-9911-P: Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2023

Chiquita Brooks-LaSure, Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-9911-P, P.O. Box 8016
Baltimore, MD 21244-8016

Dear Administrator Brooks-LaSure:

The Medicare Rights Center (Medicare Rights) appreciates this opportunity to comment on the Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2023 proposed rule. Medicare Rights is a national, nonprofit organization that works to ensure access to affordable and equitable health care for older adults and people with disabilities through counseling and advocacy, educational programs, and public policy initiatives. Each year, Medicare Rights provides services and resources to nearly three million people with Medicare, family caregivers, and professionals.

While our organizational focus is Medicare and the older adults and people with disabilities the program serves, health care's interconnectedness requires all payers to play a role in providing needed coverage. The continuing COVID-19 public health emergency demonstrates the need for high-quality, affordable, equitable, and accessible health care for people throughout America. People without comprehensive health coverage may avoid care or face extreme financial hardship when they obtain it.

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Access to affordable, comprehensive health coverage helps individuals and the system as a whole. The Medicare program benefits when incoming beneficiaries have insurance coverage. As individuals approach Medicare eligibility, their health is often compromised. This is especially true for those who have unmet health care needs from being un- or underinsured. The absence of quality coverage can lead to reduced well-being for entire families;¹ poorer health;² lack of access to care;³ economic devastation;⁴ and higher Medicare costs when they are ultimately eligible.⁵

In addition to these factors, we are committed to increasing equity in the health system and reducing the burdens of people of all ages who need coverage and care. These factors and experiences have influenced our comments below.

Prohibiting Discrimination Based on Sexual Orientation and Gender Identity

HHS proposes to prohibit ACA Exchanges, insurers, and agents and brokers from discriminating based on sexual orientation and gender identity. We strongly support this proposal.

Many LGBTQ+ individuals already have significant challenges finding providers that are able and willing to provide them with culturally competent care,⁶ and LGBTQ+ individuals who are over age 50 in particular experience pronounced health disparities compared to their straight counterparts, underscoring the need for enhanced protections and access to care.⁷ This pattern leads to exacerbated health disparities.⁸

Discrimination hinders a population's ability to thrive. LGBTQ+ adults, especially those over 50, face pronounced health disparities and higher poverty rates compared to their heterosexual and cisgender peers due in large part to historical and ongoing discrimination. The Aging and

¹ Committee on the Consequences of Uninsurance, Board on Health Care Services, "Health Insurance is a Family Matter," INSTITUTE OF MEDICINE OF THE NATIONAL ACADEMIES, Chapter 5 (2002), https://www.ncbi.nlm.nih.gov/books/NBK221016/pdf/Bookshelf_NBK221016.pdf.

² David W Baker, et al., "Changes in Health for the Uninsured After Reaching Age-eligibility for Medicare," J GEN INTERN MED. 2006 Nov; 21(11): 1144–1149 (2006), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1831646/>.

³ Committee on the Consequences of Uninsurance, Board on Health Care Services, "Health Insurance is a Family Matter," INSTITUTE OF MEDICINE OF THE NATIONAL ACADEMIES, pp 91-106 (2002), https://www.ncbi.nlm.nih.gov/books/NBK221016/pdf/Bookshelf_NBK221016.pdf.

⁴ Rohan Khera, et al., "Burden of Catastrophic Health Expenditures for Acute Myocardial Infarction and Stroke Among Uninsured in the United States," CIRCULATION, 2018;137:00–00 (2018), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5780190/>.

⁵ David W Baker, et al., "Changes in Health for the Uninsured After Reaching Age-eligibility for Medicare," J Gen Intern Med. 2006 Nov; 21(11): 1144–1149 (2006), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1831646/>.

⁶ Jennifer Kates, et al., "Health and Access to Care and Coverage for Lesbian, Gay, Bisexual, and Transgender (LGBT) Individuals in the U.S.," Henry J. Kaiser Family Foundation, <https://www.kff.org/disparities-policy/issue-brief/health-and-access-to-care-and-coverage-for-lesbian-gay-bisexual-and-transgender-individuals-in-the-u-s/>.

⁷ Karen I. Fredriksen-Goldsen, et al., "Health Disparities Among Lesbian, Gay, and Bisexual Older Adults: Results From a Population-Based Study," 103 Am J Public Health 1802, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3770805/>.

⁸ *Id.*

Health Report, funded by the National Institutes of Health (NIH) and the National Institute on Aging (NIA), outlines a number of disparities: lesbian, gay, and bisexual adults over 50 face higher rates of disability and mental health challenges; older bisexual and gay men face higher rates of physical health challenges; bisexual and lesbian older women have higher obesity rates and higher rates of cardiovascular disease; and transgender older adults face greater risk of suicidal ideation, disability, and depression compared to their peers.⁹

There is significant evidence that discrimination in health care contributes to these disparities, causing LGBTQ+ older adults to be denied care or provided inadequate care.¹⁰ According to one survey, 8% of lesbian, gay, and bisexual individuals had a recent experience where a doctor or other health care provider refused to see them because of their actual or perceived sexual orientation, while 29% of transgender individuals faced such refusals on the basis of their actual or perceived gender identity.¹¹ Troublingly, refusal was not even the worst outcome: 7% percent of lesbian, gay, and bisexual individuals experienced unwanted physical contact and violence from a health care provider and that number skyrocketed to 29% of transgender people.¹²

As a result of these discriminatory acts, LGBTQ+ individuals may be afraid to seek care for fear of mistreatment, even when the care is necessary.¹³ HHS's Healthy People 2020 initiative recognizes that "LGBT individuals face health disparities linked to societal stigma, discrimination, and denial of their civil and human rights."¹⁴

This reality makes protections against discrimination on the basis of sex, including sex stereotypes and gender identity, a critical bridge to medical care for these historically marginalized populations.¹⁵

CMS also proposes to explicitly prohibit agents, brokers, and web-brokers who assist those enrolling in QHPs from discriminating against enrollees or potential enrollees based on sexual

⁹ Fredriksen-Goldsen, *et al.*, "The Aging And Health Report: Disparities And Resilience Among Lesbian, Gay, Bisexual, And Transgender Older Adults" (November 2011), www.lgbtagingcenter.org/resources/resource.cfm?r=419.

¹⁰ *Id.*

¹¹ Shabab Ahmed Mirza & Caitlin Rooney, "Discrimination Prevents LGBTQ People from Accessing Health Care," Ctr. for American Progress, (Jan. 18, 2018), https://www.americanprogress.org/issues/lgbt/news/2018/01/18/445130/discrimination-prevents-lgbtq-people-accessing-health-care/?link_id=2&can_id=d90c309ac9b5a0fa50d294d0b1cdf0b2&source=email-rx-for-discrimination&email_referrer=&email_subject=rx-for-discrimination.

¹² *Id.*

¹³ National Center for Transgender Equality, "Report from the 2015 U.S. Transgender Survey" (December 2016), <http://www.ustranssurvey.org/>; Center for American Progress, "Discrimination Prevents LGBTQ People from Accessing Health Care" (January 18, 2018), <https://www.americanprogress.org/issues/lgbt/news/2018/01/18/445130/discrimination-prevents-lgbtq-people-accessing-health-care/>.

¹⁴ "Healthy People 2020, Lesbian, Gay, Bisexual, and Transgender Health," U.S. Dept. Health & Human Serv., <https://www.healthypeople.gov/2020/topics-objectives/topic/lesbian-gay-bisexual-and-transgender-health>.

¹⁵ 45 C.F.R. § 92.4.

orientation and gender identity. As above, we support this prohibition and support this explicit statement of its application to such brokers to avoid confusion.

Choice Architecture and Preventing Plan Choice Overload

HHS seeks comment on resuming the meaningful difference standard to limit the number of difficult-to-distinguish plans and enable optimal consumer choice. We strongly support this idea in the Marketplaces, just as we support its reinstatement in the Medicare Advantage market. Consumers who are overloaded with choice are more likely to make poor choices, or to refuse to make a choice at all. [Studies](#) show that when consumers are given too many plan choices, there is the potential to make poor enrollment decisions because of the challenge in processing complex health insurance information. This curtailment of high-quality decision-making is exactly contrary to the goal of choice and competition between plans.

Thank you again for this opportunity to provide comment. For additional information, please contact Lindsey Copeland, Federal Policy Director at LCopeland@medicarerights.org or 202-637-0961 and Julie Carter, Senior Federal Policy Associate at JCarter@medicarerights.org or 202-637-0962.

Sincerely,



Fred Riccardi
President
Medicare Rights Center