



Advancing Health Care Policy
for Mental Health and Addiction

January 29, 2020

The Honorable Alex M. Azar II
Secretary
Department of Health and Human Services
330 C Street, SW
Washington, DC 20416

The Honorable Seema Verma
Administrator
Centers for Medicare and Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244

The Honorable Preston Rutledge
Assistant Secretary
Employee Benefits Security Administration
Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

The Honorable Sunita Lough
Deputy Commissioner for Services and Enforcement
Internal Revenue Service
Department of Treasury
1111 Constitution Avenue, NW
Washington, DC 20224

Re: Formula for Calculating an Issuer's Medical Loss Ratio Proposed Rule [45 CFR Part 148]; Transparency in Coverage Proposed Rules (Department of Health and Human Services [45 CFR 147]), Department of Labor [29 CFR Part 2590], Department of Treasury [26 CFR Part 54])

Dear Secretary Azar, Administrator Verma, Assistant Secretary Rutledge, and Deputy Commissioner Lough,

The Association for Behavioral Health and Wellness (ABHW) appreciates the opportunity to comment on the Department of Health and Human Services' (HHS) proposed rule to change the medical loss ratio calculation (MLR Proposed Rule) as

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well as the proposed rules put forth by the Department of Treasury, Department of Labor and Department of Health and Human Services related to Transparency in Coverage (Transparency Proposed Rules). Our comments are outlined below.

ABHW is the trade association which serves as the national voice for payers that manage behavioral health insurance benefits. ABHW member companies provide coverage to approximately 200 million people in both the public and private sectors to treat mental health, substance use disorders (SUDs), and other behaviors that impact health and wellness.

ABHW supports changing the formula for medical loss ratio (MLR).

ABHW members are dedicated to providing the best care to patients struggling with mental health and addiction issues and any changes made to assist plans that provide coverage for same. As such, ABHW fully supports the MLR Proposed Rule (45 CFR Part 158), which changes the formula for calculating an issuer's medical loss ratio to include any shared savings payments an issuer has made to an enrollee as a result of the enrollee choosing to obtain health care from a lower-cost, higher value provider. This change will be especially helpful to smaller and other types of health plans to more accurately calculate MLR.

Standards set for price transparency tool are burdensome.

Under Section (b)(2) of each of the Transparency Proposed Rules, health plans will be required to develop a price transparency tool that meets rigorous standards. ABHW believes these requirements to be burdensome and potentially duplicative. Such tools are costly to develop and smaller health plans may have difficulty meeting all of the requirements of the Transparency Proposed Rules. Furthermore, many health plans already have price transparency tools tailored to the services they offer. We strongly urge the agencies, through a defined stakeholder engagement process, to instead set minimum standards that all plans can meet. Additionally, we believe the agencies should allocate resources to focus on educating the public on already available tools.

Requiring health plans to publish negotiated rates will have negative unintended consequences.

While ABHW supports the goal of empowering patients to make informed healthcare decisions, we do not believe that requiring health plans to publish negotiated rates, as mandated by both Section (b) and Section (c) of each of the Transparency Proposed Rules, is helpful in achieving this goal. In fact, we strongly believe there will be a number of unintended consequences which will ultimately have a negative impact on patient care.

i. Patients may be overwhelmed or confused by the information.

First, we urge the agencies to consider the aftermath of the 2019 Inpatient Prospective Payment Final Rule, which in part requires hospitals to make available online a listing of standard hospital charges. An article by Kaiser Health News found that the information posted was largely unhelpful to patients because hospitals are

posting massive compendiums of prices set by each hospital for every service or drug a patient may encounter.¹ To estimate the cost of a trip to the emergency room, a patient would have to locate and piece together costs for each component of the visit, many of which would be unknown until the visit actually happened.² Furthermore, the compendia published are nearly entirely in incomprehensible abbreviations that are meaningless to the patient. The time and effort to decipher the material is likely to lead to patient frustration and potential miscalculations of cost.

ii. *Publishing negotiated rates may affect patient choice.*

Second, such proprietary disclosures to competitors will likely undermine a payer's ability to secure discounts for our customers and clients, thus impacting competition and choice in the market. To demonstrate, a similar proposal in Minnesota was strongly opposed by the Federal Trade Commission (FTC). The Minnesota Government Data Practices Act (MGDPA) was amended to require public health plans to publicly disclose competitively sensitive information, including information related to price and cost.³ The FTC stated "Such disclosures may chill competition by facilitating or increasing the likelihood of unlawful collusion and may also undermine the effectiveness of selective contracting by health plans, which serve to reduce healthcare costs and improve overall value in delivery..."⁴ Ultimately, the FTC urged the Minnesota government to reconsider the amendments to MGDPA.

iii. *Publishing negotiated rates may raise healthcare costs for patients.*

Lastly, these disclosures may actually lead to an increase in cost for patients, as suggested by the Congressional Budget Office's (CBO) analysis in its cost estimate for the Lower Health Care Costs Act (S.1895), which is aimed at eliminating surprise billing. Under Title V, Section 501 of S.1895, health insurers must provide health claims, network, and cost information to consumers that would enable patients to have access to information through third-party applications. The CBO determined that such a requirement would "generate new administrative costs for insurers that...would be passed along to enrollees in the form of **higher premiums for private health insurance**" [emphasis added].⁵ This in turn, would increase federal spending on subsidies in the nongroup market. The CBO estimates that this requirement would ultimately lead to a deficit of about \$322 million.

¹ Appleby, J., Ostrov, B. *As Hospitals Post Sticker Prices Online, Most Patients Will Remain Befuddled*. Kaiser Health News, January 4, 2019. <https://khn.org/news/as-hospitals-post-sticker-prices-online-most-patients-will-remain-befuddled/> (Last visited January 16, 2020).

² *Id.*

³ Lao, M., Feinstein, D., and Lafontaine, F. Amendments to the Minnesota Government Data Practices Act Regarding Health Care Contract Data. June 29, 2015, pp. 1. https://www.ftc.gov/system/files/documents/advocacy_documents/ftc-staff-comment-regarding-amendments-minnesota-government-data-practices-act-regarding-health-care/150702minnhealthcare.pdf (Last visited January 16, 2020).

⁴ *Id.*

⁵ Congressional Budget Office Cost Estimate S.1895, Lower Health Care Costs Act, July 16, 2019. https://www.cbo.gov/system/files/2019-07/s1895_0.pdf (Last visited January 16, 2020)

As such, we urge the agencies to take the analysis from the FTC regarding MGDPA and the CBO regarding S. 1895 into account and remove the provisions in the Transparency Proposed Rules requiring health plans to disclose negotiated rates.

Conclusion

Thank you for the opportunity to comment on these proposed rules. Please feel free to contact Deepti Loharikar, Director of Regulatory Affairs, at loharikar@abhw.org or (202) 449-7659 with any questions.

Sincerely,

A handwritten signature in cursive script that reads "Pamela Greenberg".

Pamela Greenberg, MPP
President and CEO