ABHW
Advancing Health Care Policy
for Mental Health and Addiction

January 27, 2022

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

Re: Proposed Notice of Benefit and Payment Parameters Rule for 2023 [CMS-9911-P]

Dear Administrator Brooks-LaSure,

The Association for Behavioral Health and Wellness (ABHW) appreciates the opportunity to comment on the Centers for Medicare and Medicaid Services' (CMS) Proposed Notice of Benefit and Payment Parameters Rule for 2023 (proposed rule). Our recommendations are focused solely on the network adequacy provisions and are outlined below.

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

Network Adequacy

ABHW recognizes the importance of having network adequacy and supports policies that will bolster the behavioral health workforce. However, we caution CMS in implementing the proposed provisions to evaluate network adequacy based not only on time and distance standards, but also using appointment wait-times for services. We believe that, particularly for behavioral health services, this proposal will only exacerbate an already overburdened system by creating additional administrative burdens.

Behavioral Health Workforce Issues

We applaud CMS's goal to ensure greater access and believe that strongly focusing on addressing the underlying workforce shortage is a key part of the strategy. COVID-19 has not only exacerbated the longstanding behavioral health workforce shortage, but also increased the need for behavioral health providers.[1] Additionally, wait times are largely tied to provider availability and it may be difficult for payers to influence or correct issues with wait-times for services. Furthermore, there is a complexity to behavioral health providers that may not exist for other types of providers. For example, many behavioral health providers work independently and often use their personal cell phones to book appointments thus making it difficult for plans to monitor and correct any issues with wait times. **As such, we urge CMS to take these behavioral health workforce issues into account when considering these proposed changes.**

Appropriate Use of Telehealth

Additionally, telehealth providers have been an important resource in the nation's response COVID-19 and will continue to provide much-needed services and fill in the gaps in care after the pandemic ends. **CMS should engage with stakeholders and consider methods other government programs use to include telehealth providers in network adequacy standards.**

Need for Specific Parameters

While we appreciate that CMS will issue parameters and specifications in future guidance, it remains unclear how health plans can assess appointment wait times consistently, and how CMS may replicate that process consistently. We believe that there needs to be clearer standards of how wait times are defined and assessed. Additionally, these standards should be based on a verified, data-driven assessment of plan networks, and should be considered as a component of the overall workforce. **Given the burden these requirements may place on providers and payers amid a public health emergency, as well as the need for much more detailed guidance, we urge CMS to delay implementation of this provision until 2024. CMS should use this additional time to work with existing providers on the**

[1] Barna, Mark, Mental health workforce taxed during COVID-19 pandemic: Worker shortage hinders access, *The Nation's Health*, 51(10) 1-14; January 2022.

new requirements (e.g., provision of telehealth services and appointment wait times); the potential need for practices to add providers to the practice; and address operational challenges presented by the new standards.

Proposed Data Collection from Issuers on Telehealth Services
ABHW is supportive of telehealth utilization, as long as it allows for evidence-based, quality care to be delivered. While ABHW is generally supportive of CMS's proposal to collect data from issuers on which of their network providers offer telehealth services, we submit the following for your consideration.

Currently, CMS collects this data element from providers (and not from plans) on a self-reported basis and providers do not consistently furnish this information. Based on these facts, we recommend the following to CMS:

- **Due to the burdens of the ongoing pandemic, CMS should not request or require this information as a condition of qualified health plan certification for the 2023 benefit year.**
- **CMS should engage with stakeholders to establish a reasonable and equitable process for including telehealth providers in the network adequacy determination.**
- **CMS should include language in the final rule that requires providers to share information about the availability of telehealth services with health plans.**
- **CMS should consider providing a telehealth credit towards the percentage of beneficiaries that must reside within required time and distance standards when they contract with telehealth providers in certain specialties, as is the case with Medicare Advantage plans.**
- **Once the data collection begins, CMS should work with the Center for Medicare and Medicaid Innovation on ways to use this data to improve telehealth services.**

Impact of Proposed Provisions on MHPAEA Compliance
More broadly than the issue of wait-times, ABHW urges CMS to consider the implications of the Mental Health Parity and Addiction Equity Act (MHPAEA) on network adequacy standards, as recently examined in a report published by the Office of the Assistant Secretary for Planning and Evaluation (ASPE). The

ASPE report notes that "network adequacy standards that specifically address behavioral health providers and services must comply with parity laws and may need to account for the interplay between parity laws and network design".[2] MHPAEA requires that payers treat behavioral health benefits no more restrictively than physical health benefits. However, federal parity requirements may complicate the development of network adequacy standards for behavioral health because they restrict non-quantitative treatment limitations (NQTLs) for behavioral health services to those applied for physical health services.[3] Furthermore, states may also have enacted additional parity requirements above and beyond the federal floor, adding another level of complexity to mental health parity.[4] **Therefore, we urge CMS to work with the Department of Labor, the U.S Department of Health and Human Services, and the Department of Treasury to better clarify the intersection of mental health parity and network adequacy to ensure the goals of MHPAEA are advanced.**

Conclusion

Thank you for the opportunity to comment on this important proposed rule. Please feel free to contact Deepti Loharikar at loharikar@abhw.org or (202) 499-2279 with any questions.

Sincerely,

Pamela Greenberg, MPP
President and CEO

[2] Network Adequacy for Behavioral Health: Existing Standards and Considerations for Designing, Report by the Office of the Assistant Secretary for Planning and Evaluation, November 2021.
[3] Id. NQTLs include network tier design or restrictions based on geographic location, facility type, or provider specialty.
[4] Id.