



January 30, 2023

Ms. Chiquita Brooks-LaSure  
Administrator  
Centers for Medicare & Medicaid Services  
Department of Health and Human Services  
Attention: CMS-9898-NC  
P.O. Box 8016, Baltimore, MD 21244-8016.

**Re: Patient Protection and Affordable Care Act, HHS Notice of Benefit and Payment Parameters for 2024 - CMS-9899-P**

Dear Administrator Brooks-LaSure:

The Association of Behavioral Health and Wellness (ABHW) appreciates the opportunity to submit comments on the United States Department of Health and Human Services (HHS) and Centers for Medicare & Medicaid Services (CMS) Notice of Proposed Rulemaking (NPRM) on the Notice of Benefit and Payment Parameters for 2024 (NBPP 2024).

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

Our organization aims to increase access, drive integration, support prevention, raise awareness, reduce stigma, and advance evidence-based treatment and quality outcomes. Furthermore, through our policy work, we strive to promote equal access to quality treatment and address the stark inequities created by systemic racism. We are deeply concerned about health disparities in this country in the areas of MH and SUD services and are committed to promoting health equity in the healthcare system.

**1. Network Adequacy: Adding New Essential Community Provider (ECP) Requirements**

This NPRM proposes to revise the network adequacy and Essential Community Provider (ECP) standards at §§ 156.230 and 156.235. The proposed rule would require all plans, at the beginning of the plan year 2024, regardless of marketplace type, to comply with network adequacy and enhanced ECP standards. The proposed rule also suggests expanding behavioral health care access

by including two new stand-alone ECP categories: Substance Use Disorder Treatment Centers (SUDTC) and Mental Health Facilities.

ABHW members support expanding access to MH and SUD treatment. They recognize the importance of ECP participation in their provider networks and continually review and refine their contracting strategies to maximize access to affordable behavioral health care coverage. Mental Health Treatment Centers and SUDTC are invaluable for delivering quality care and treatment.

Unfortunately, adding two new ECP categories for SUDTCs and Mental Health Facilities won't solve the current behavioral health workforce crisis, which is the most significant barrier to behavioral health access. The proposed rule requires that health plans offer a contract to at least one SUDTC and one Mental Health Facility in every county in the plan's service area. ABHW members are grateful that health plans will not be penalized if no providers are within the respective contract area. Many geographic regions won't have SUDTC or Mental Health facilities because of the limited provider supply. Additionally, it will take time for health plans to meet these standards since our members must ensure they are contracting with certified SUDTC and Mental Health Facilities and delivering quality, evidence-based care. **At a minimum, our members request a delay until further analysis can be conducted to appropriately determine the best way to contract with quality SUDTC and Mental Health Facilities.**

On a separate note, we recommend that HHS and CMS provide health issuers a voluntary telehealth credit toward meeting the time and distance standard if they offer telehealth providers within their network adequacy standards. Telehealth has proven to be an effective way to expand access to high-quality care. HHS and CMS have acknowledged the benefits of telehealth and should continue to evaluate ways to improve access, particularly in rural areas or areas with significant provider shortages.

## **2. Essential Community Provider - 35% Provider Participation**

In the NPRM, HHS and CMS propose that Qualified Health Plan (QHP) issuers meet the overall current 35% provider participation threshold for ECPs and contract with at least 35% percent of available Federally Qualified Health Centers (FQHCs) and at least 35% of available Family Planning Providers (FPP) that qualify as ECPs in the plan service area.

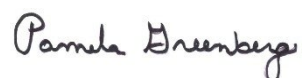
ABHW members are committed to improving the quality of behavioral care and growing their provider networks. However, we are concerned with the new minimum 35% threshold for provider categories such as Federally Qualified Health Centers (FQHCs) and Family Planning Providers (FPP). These categorical thresholds could likely constrict health plans' flexibility to contract with a variety of quality providers that meet the needs of the members of the health plan. Additionally, this expansion will likely add an increased administrative burden related to tracking information and compliance requirements. This additional burden could end up impacting the costs of premiums. It will likely lead to restrictive product offerings and less consumer choice because it limits the flexibility to account for variables such as provider shortages and varying population distributions. It has also been acknowledged from the ACA's reformed market that

many price-sensitive consumers prefer to purchase a lower-priced plan that offers fewer providers rather than paying more for a conventional broad network.<sup>1</sup>

Increasing the ECP participation threshold during a behavioral health workforce shortage will not solve the behavioral health workforce crisis because it does not increase the existing supply of providers. The workforce shortage is a central barrier to addressing health-related social needs in our members' communities and contributes to behavioral health care and service gaps. ABHW and our members would like to work with HHS and CMS to help develop broader actions to address the root causes of the provider shortage.

Thank you for the opportunity to provide feedback on this critical initiative. We are committed to engaging with CMS and other partners on opportunities to improve behavioral health access. If you have questions, please contact Kathryn Cohen, Senior Director of Regulatory Affairs, at [cohen@abhw.org](mailto:cohen@abhw.org).

Sincerely,

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

Pamela Greenberg, MPP  
President and CEO

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<sup>1</sup> P.B. Ginsburg, *A Better Approach to Regulating Provider Network Adequacy*, (Washington, D.C.: The Brookings Institution, 2017); available at <https://www.brookings.edu/wp-content/uploads/2017/09/regulatory-options-for-provider-network-adequacy.pdf>