

January 8, 2024

Ms. Chiquita Brooks-LaSure
Administrator
Centers for Medicare & Medicaid Services
U.S. 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 2025; CMS-9895-P

Dear Administrator Brooks-LaSure:

The Association for Behavioral Health and Wellness (ABHW) appreciates the opportunity to submit comments on the U.S. 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 2025 (NBPP).

ABHW is the national voice for payers managing 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 historic structural and systemic disparities in access and quality of care. We are deeply concerned about health disparities in MH and SUD services in this country and are committed to promoting health equity in the healthcare system that addresses those access and quality of care issues.

I. Network Adequacy:

(1) Time and Distance Network Adequacy Standards.

CMS proposes that for plan years beginning on or after January 1, 2025, state marketplaces, State-based Exchanges (SBE), and State-based Exchanges on the Federal Platform (SBE-FPs) establish and impose quantitative time and distance standards on qualified health plan network adequacy standards that are consistent with the Federally-facilitated

Marketplace (FFM) time and distance standards, excluding stand-alone dental plan issuers that qualify. The proposed rule would also apply to provider specialties, including those used for the FFMs.

ABHW opposes this one-size-fits-all approach that requires every SBE/SBE-FP to adhere to federal standards. States that selected to run their exchanges should have the latitude to set their network adequacy requirements consistent with the needs of their local market and circumstances. State regulators are best positioned to understand the unique nature of their states' geography and regional markets. As such, they can best design and enforce review processes that reflect geographical variances. Local markets have unique circumstances, such as provider quality, innovative healthcare delivery approaches, and geographic barriers. For example, one of our members was found to not comply with federal network adequacy requirements for failing to contract with a hospital in a particular county. However, that county does not have a hospital with which to contract.

ABHW urges CMS not to implement this requirement or, at the very least, delay it until 2026 to allow sufficient time for plans to contract with providers. This delay will allow time to address operational challenges presented by the new standards. Sufficient time is also needed to allow states to build their process for network adequacy reviews or pass any legislation necessary to provide them the authority to conduct network adequacy reviews.

Additionally, CMS should ensure that telehealth provider access is counted towards meeting network adequacy standards, particularly the proposed time and distance standards, regardless of whether the telehealth provider offers in-person appointments. Telehealth is a proven way to increase access to unavailable services in specific geographies, particularly those with provider shortages. This has been particularly true and necessary in behavioral health, given the historic workforce shortages and challenges in MH and SUD care delivery systems. Telehealth can also reduce barriers to care, such as transportation issues, improving equity and access for all. All modes of care delivery should be considered when assessing a health plan's compliance with access standards.

ABHW appreciates that CMS is proposing that, similar to the federal process, issuers that cannot meet the specified standards can submit a justification to account for variances. **We urge CMS to include exceptions that consider circumstances such as the local availability of providers and variables reflected in regional patterns of care.**

(2) Requirement to Submit Information on Telehealth Services.

CMS proposes that state marketplaces and SBM-FPs collect and submit information from Qualified Health Plan (QHP) issuers about whether their providers offer telehealth services to inform network adequacy and provider access standards for future plan years.

Unless states can consider telehealth services towards compliance with time and distance standards, ABHW believes this submission is unnecessary and will increase the compliance burden on health plans. We recommend CMS delay this requirement until 2026 to provide time for health plans and providers to determine the most efficient and least burdensome way to collect and share this information. Additionally, collecting this information is contingent upon provider responses, so, at a minimum, a complementary requirement for providers to produce and provide this information for health plans should be included.

Conclusion

Thank you for the opportunity to provide feedback on this critical initiative. We are committed to engaging with HHS, 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.

Sincerely,

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

Pamela Greenberg, MPP
President and CEO