



January 30, 2023

Chiquita Brooks-LaSure  
Administrator  
Centers for Medicare & Medicaid Services  
Department of Health and Human Services  
P.O. Box 8013  
Baltimore, MD 21244-8013

*Submitted electronically via regulations.gov*

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

Dear Administrator Brooks-LaSure:

The Academy of Managed Care Pharmacy (AMCP) thanks the Centers for Medicare & Medicaid Services (CMS) for the opportunity to provide comments in response to the proposed rule titled "Patient Protection and Affordable Care Act, HHS Notice of Benefit and Payment Parameters for 2024, CMS-9899-P" ("NBPP"), published in the Federal Register on December 21, 2022.

AMCP is the nation's leading professional association dedicated to increasing patient access to affordable medicines, improving health outcomes, and ensuring the wise use of healthcare dollars. Through evidence and value-based strategies and practices, AMCP's nearly 8,000 pharmacists, physicians, nurses, and other practitioners manage medication therapies for the 270 million Americans served by health plans, pharmacy benefit management firms, emerging care models, and government health programs.

AMCP submits this comment to address two issues from the proposed NBPP: continuing formulary tier limitations for standardized plan options and new limits on the number of non-standardized plan options that issues may offer through the federal Marketplace.

#### Standardized Plan Options (§ 156.201)

Although AMCP generally supports CMS' goal to maintain continuity with respect to its approach on standardized plan options from PY 2023, AMCP is opposed to continuing the limitation on formulary design to just four tiers for standardized plans. Formulary tiers serve the important function of allowing plans to cover a greater number of medications at a lower cost, by incentivizing use of

lower cost medications<sup>1</sup> while also providing an important tool for negotiation of lower drug prices.<sup>2</sup> Further, requiring that all generic drugs be included in the generic tier despite the wide range of cost among generics removes plans' ability to use tiering to promote the use of lower cost drugs. AMCP urges CMS to allow issuers the needed flexibility to develop formulary drug tiers to effectively promote prescription drug access and affordability while responding to a complex and continually changing health care delivery system.

#### Non-standardized Plan Option Limits (§ 156.202)

AMCP encourages CMS to reconsider its proposed limitation on the number of non-standardized plan options that QHP issuers can offer through the federal Marketplace. The U.S. health care delivery system benefits from a competitive marketplace, in which issuers have the flexibility to provide a wide range of innovative options for consumers. We are concerned that imposing artificial limits on the number of plans that issuers can offer on the Marketplace may reduce innovation and issuer participation or lead to other unintended consequences.

Ultimately, having too few options could be worse than having too many. In a recent study comparing the effects of choice overload and deprivation on the overall satisfaction with a choice, the study's authors concluded that deprivation had a significantly greater impact.<sup>3</sup> "Sometimes this pattern emerged dramatically—in the U.S., for example, having too few doctors to choose from could make you six times less satisfied than having too many."<sup>4</sup>

While AMCP understands the concern with preventing plan choice overload, we believe that reducing options is not the best way to ensure that consumers are able to find a plan that best meets their needs. It is important for CMS to ensure that innovative plans designed to meet unique needs are not prohibited. Instead, AMCP believes that the focus should be on further streamlining the plan selection process and facilitating more meaningful evaluation of available plan choices by consumers.

CMS proposed that, alternatively, it could apply a meaningful difference standard under which plans would be evaluated based on differences in deductible amounts. Plans would need to have deductibles that differ by more than \$1,000 to meet the new proposed meaningful difference standard. However, for certain populations, this difference may not be as meaningful as having

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<sup>1</sup> "The formulary has at its heart one of the most promising concepts in health care today: *value-based care*. Pharmacy and therapeutic (P&T) committees, which are made up of diverse health care professionals including pharmacists and physicians, identify those medications that offer the best value in terms of outcomes and costs. These products are then placed on formulary tiers with different copayments to incentivize patient and provider utilization behaviors." Cantrell, S., AMCP CEO Blog, Mar. 1, 2019. Available at <https://www.amcp.org/ceo-blog-030119>.

<sup>2</sup> See, e.g., Health Affairs, *Formularies: Health Policy Brief*. Available at <https://www.healthaffairs.org/doi/10.1377/hpb20171409.000177/>

<sup>3</sup> Cheek, N., Reutskaja, E, Schwartz, B., and Iyengar, S. "Is Having Too Many Choices (Versus Too Few) Really the Greater Problem for Consumers?" Behavioral Scientist (Oct. 3, 2022). Available at <https://behavioralscientist.org/is-having-too-many-choices-versus-too-few-really-the-greater-problem-for-consumers/>

<sup>4</sup> Ibid.

options that meet the patient's specific needs when choosing a plan. AMCP believes that focusing on the difference in the deductible amount to determine whether there is a meaningful difference is arbitrary and may stifle innovation. For this reason, AMCP recommends that CMS consider the unique attributes in an overall plan design rather than focusing on deductible amounts.

AMCP appreciates your consideration of the concerns outlined above and looks forward to continuing work on these issues with CMS. If you have any questions regarding AMCP's comments or would like further information, please contact Geni Tunstall at [etunstall@amcp.org](mailto:etunstall@amcp.org) or (703) 705-9358.

Sincerely,

A handwritten signature in black ink, appearing to read "S. Cantrell".

Susan A. Cantrell, MHL, RPh, CAE  
Chief Executive Officer