January 27, 2022

The Honorable Chiquita Brooks-LaSure
Administrator
Centers for Medicare and Medicaid Services
Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Re: CMS-9911-P, ACA Proposed Notice of Benefit and Payment Parameters for 2023

Dear Administrator Brooks-LaSure:

AARP, on behalf of our 38 million members and all older Americans nationwide, appreciates the opportunity to submit comments on the Proposed Notice of Benefit and Payment Parameters for 2023. Overall, we applaud several proposed provisions that would protect against discrimination and expand access to affordable, quality health insurance coverage for more Americans.

**Standardized Options**

AARP has supported the establishment of healthcare.gov and state-based marketplaces and continues to advocate for these marketplaces to expand and improve access to coverage. Furthermore, we support continued efforts to better support consumers in making enrollment decisions, especially important for those between 50 and 64 years of age. There are five principles that should be followed to improve accessibility and informed enrollee participation. Exchanges should:

- Be permitted to negotiate with QHP providers and other vendors to contain costs for participating enrollees;
- Ensure that consumers have meaningful choices among plans, including by standardizing benefit offerings to simplify plan comparisons;
- Consider limiting the number of offerings so that enrollees have a manageable choice, especially if there are several meaningfully different offerings;
- Provide enrollees with information and decision supports to help them navigate their options, including easy-to-find and easy-to-use information on plan networks and drug formularies; and
- Offer a simple enrollment process.

We support the proposed requirement of standardized benefit options for insurance carriers offering QHPs through healthcare.gov or a state/federal partnership exchange marketplace for
plan year 2023. We agree with HHS that resuming standardized options will enhance enrollee experience, increase understanding of plan options, and simplify the plan selection process, combat discriminatory benefit designs, and advance health equity. The requirement is also appropriately limited to one required standardized option for any metal tier in which a carrier makes an offering. This will allow for continued carrier flexibility in benefit offerings while bringing existing and potential enrollees a much more manageable and understandable enrollment and utilization process. To ensure that standardized plans continue to remain meaningful options for consumers, HHS should monitor standardized plan premiums and networks and make adjustments as needed. We also encourage CMS to continue exploring ways to improve affordability and make the overall enrollment process more manageable by considering ways to limit the overall number of QHPs offered in any given exchange marketplace.

Telehealth Services

Telehealth has proven to be a vital lifeline to millions of Americans in the last two years. The expansion of this mode of health care delivery has been swift, and there is still much to be learned about what impacts this will have on the health care system writ large. We support the proposal to require insurance carriers who want to be certified to make offerings on healthcare.gov to submit information on network providers and their telehealth service offerings. This is a necessary first step in determining the efficacy of telehealth services and the potential incorporation of telehealth availability into network adequacy standards in a meaningful and consumer-friendly way.

Discrimination Protections for Sexual Orientation and Gender Identity

AARP strongly supports strengthening protections against discrimination based on sexual orientation or gender identity in response to the majority opinion in Bostock v. Clayton County, Georgia, 140 S. Ct. 1731 (2020), a case in which AARP and AARP Foundation filed an amicus brief. Discrimination against LGBT individuals is an issue that threatens the health and personal fulfillment of too many Americans aged 50 plus, and it is particularly problematic when these individuals face discrimination from the entities that they traditionally rely upon for support – especially health care services and institutions. According to AARP’s 2018 landmark national LGBT research study, Maintaining Dignity, while LGBT individuals are largely satisfied with their current health care relationships, they are also fearful of discrimination and prejudice and continue to face barriers to care. The report states that 52 percent of respondents have concerns about discrimination or prejudice affecting quality of care, while 57 percent have concerns about providers not being sensitive to patient needs.

AARP is pleased that CMS has proposed to restore and clarify discrimination protections for sexual orientation and gender identity in accessing and maintaining quality, affordable coverage. We support CMS’ interpretation of its rulemaking authority to permit specifying that discrimination based on sex includes discrimination based on sexual orientation and gender identity. This comports with the Supreme Court’s finding in Bostock (2020) concluding that federal law protects against this type of discrimination.
We also support proposals to restore nondiscrimination protections within the context of the establishment of health insurance exchanges (155.120(c) & 156.125) and federally facilitated exchange (healthcare.gov) standards of conduct (155.220(j)). Ensuring that insurance carriers offering qualified health plans (QHPs) through healthcare.gov do not engage in discriminatory marketing conduct is consistent with CMS’ overall role in protecting against discrimination for any potential or existing QHP enrollee.

Once again, we appreciate the opportunity to share our comments on the proposed rule. If you have any questions, please do not hesitate to contact me or have your staff contact Brendan Rose on our Government Affairs Team at 202-434-3770 or brose@aarp.org.

Sincerely,

David Certner
Legislative Counsel and Legislative Policy Director
Government Affairs