



February 23, 2024

The Honorable Xavier Becerra  
 Secretary  
 Department of Health and Human Services  
 200 Independence Ave., SW  
 Washington, D.C. 20201

Neera Tanden  
 Director, Domestic Policy Council  
 Executive Office of the President  
 1650 Pennsylvania Ave., NW  
 Washington, D.C. 20504

Dear Secretary Becerra and Director Tanden:

The undersigned organizations, representing millions of patients and consumers facing serious, acute and chronic health conditions across the country, urge you to promptly finalize a number of pending rules that will greatly advance affordable, accessible, and adequate healthcare coverage.

In March of 2017, our organizations agreed upon three overarching principles<sup>1</sup> to guide any work to reform and improve the nation’s healthcare system. These principles state that: (1) healthcare should be accessible, meaning that coverage should be easy to understand and not a pose a barrier to care; (2) healthcare should be affordable, enabling patients to access the treatments they need to live healthy and productive lives; and (3) healthcare must be adequate, meaning healthcare coverage should cover treatments patients need, including all the services in the essential health benefit (EHB) package.

We appreciate that the Administration’s leadership in developing and proposing rules that protect and expand Americans’ access to quality, affordable health care. It is vital the Administration finalize these rules that will have significant impact on patient access no later than April 2024.

**Section 1557; Nondiscrimination in Health Programs and Activities (RIN Number 0945AA17)**

Section 1557 of the Affordable Care Act (ACA) prohibits discrimination in, among other places, “any program or activity that is administered by an Executive Agency or any entity established under” Title I. In 2020, the previous administration significantly narrowed the scope of the prohibition to include only the Title I entities, an interpretation that flatly contravenes the statute and has impermissibly limited nondiscrimination protections for consumers. We were thrilled<sup>2</sup> when the Department of Health and Human Services (HHS) reexamined this issue in the 2022 proposed rule to restore Section 1557’s nondiscrimination protections for all health programs and activities of the Department, as required by law. It is essential the 1557 rule is finalized without further delay, in order to reduce discrimination and improve equitable access to quality, affordable care for all patients.

**Medicaid Program:**

*Streamlining the Medicaid, Children’s Health Insurance Program, and Basic Health Program Application, Eligibility Determination, Enrollment, and Renewal Processes; Proposed Rule (CMS-2421-P)*

The unwinding of the COVID-19 continuous coverage requirements has highlighted the urgent need to update current Medicaid and Children’s Health Insurance Program (CHIP) eligibility and enrollment policies. The proposed rule would bring Medicaid and CHIP eligibility and enrollment policies into better balance by simplifying application and renewal processes, ensuring that applicants and enrollees have adequate time to respond to requests for information, and improving transitions between insurance affordability programs. Our organizations continue to urge<sup>3</sup> that the rule be effective 30 days after finalization, and for the Centers for Medicare and Medicaid Services (CMS) to require states to comply with the provisions eliminating access barriers in CHIP and the returned mail processes as soon as possible given their importance for protecting patients’ access to care during the unwinding process.

*Ensuring Access to Medicaid Services (CMS-2442-P) and Medicaid and Children’s Health Insurance Program Managed Care Access, Finance and Quality (CMS-2439-P)*

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<sup>1</sup>Consensus Healthcare Reform Principles <https://www.protectcoverage.org/ppc-consensus-healthcare-reform-principles>

<sup>2</sup> PPC Response comments on 1557 Nondiscrimination Proposed Rule:

<https://www.protectcoverage.org/siteFiles/43068/10-03-22-PPC-Comments-on-1557-Nondiscrimination-Rule.pdf>

<sup>3</sup> PPC comments on Medicaid Eligibility Rule: <https://www.protectcoverage.org/siteFiles/43053/11-04-22-PPC-Comments-on-Medicaid-Enrollment-and-Eligibility-Rule.pdf>

In April 2022, many of our organizations submitted recommendations to CMS in response to the Request for Information: Access to Coverage and Care in Medicaid and CHIP.<sup>4</sup> We appreciate that CMS incorporated some of our feedback into the development of the Ensuring Access to Medicaid Services<sup>5</sup> and the Medicaid and CHIP Managed Care Access, Finance and Quality<sup>6</sup> proposed rules. Individuals with chronic illnesses depend on prompt access to high-quality care to maintain their optimal level of health, and in some cases, to stay alive. While Medicaid is incredibly beneficial to persons with chronic illness, access problems in both fee-for-service and managed care have negative impacts on health status and outcomes. We believe both rules would make significant advancements to improve access to care for Medicaid and CHIP beneficiaries.

#### **Clarifying Eligibility for a Qualified Health Plan (CMS-9894-P)**

Current policy has inappropriately prevented tens of thousands of young people from enrolling in coverage for which they were otherwise eligible simply because they are DACA recipients. We applaud HHS for proposing to end this unnecessary exclusion. Doing so would ensure DACA recipients are treated the same as other individuals who have been granted deferred action and is consistent with federal law. We continue to urge the rule be finalized as proposed and to do so immediately to ensure these individuals are able to enroll in quality, affordable health insurance.<sup>7</sup>

#### **Mental Health Parity; Requirements Related to the Mental Health Parity and Addiction Equity Act (MHPAEA) (CMS-9902-P) and Processes for Assessing Compliance with Mental Health Parity and Addiction Equity in Medicaid and CHIP**

We applaud the Administration's efforts to increase access to treatments for mental health and substance use disorders (MH/SUD). The growing need for behavioral health services in the United States, particularly since the pandemic, make these efforts even more urgent. Access to mental health care is particularly important to the patients we represent given the frequent co-occurrence of mental health and acute or chronic health needs. Our organizations submitted comments in response to the MHPAEA proposed rule related to commercial coverage (CMS-9902-P)<sup>8</sup> and on the processes for assessing compliance with mental health parity and addiction equity in Medicaid and the Children's Health Insurance Program (CHIP)<sup>9</sup>. When finalized, we believe these rules will strengthen enforcement of mental health parity law that would improve equitable treatment and access to care.

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<sup>4</sup> PPC response to CMS RFI on Access to Coverage and Care in Medicaid and CHIP:

[www.protectcoverage.org/siteFiles/43053/11-04-22-PPC-Comments-on-Medicaid-Enrollment-and-Eligibility-Rule.pdf](http://www.protectcoverage.org/siteFiles/43053/11-04-22-PPC-Comments-on-Medicaid-Enrollment-and-Eligibility-Rule.pdf)

<sup>5</sup> PPC Response to Medicaid Access Rule (CMS-2442-P):

<https://www.protectcoverage.org/siteFiles/45069/06%2029%202023%20PPC-Medicaid-Access-Rule-Comment-FINAL.pdf>

<sup>6</sup> PPC Response to Medicaid Managed Care Rule (CMS-2439-P):

<https://www.protectcoverage.org/siteFiles/45067/06%2029%202023%20PPC-Medicaid-Managed-Care-NPRM.pdf>

<sup>7</sup> PPC response to (CMS-9894-P)

[www.protectcoverage.org/siteFiles/43076/06%2023%2023%20PPC\\_DACA%20NPRM%20Comments\\_FINAL.pdf](http://www.protectcoverage.org/siteFiles/43076/06%2023%2023%20PPC_DACA%20NPRM%20Comments_FINAL.pdf)

<sup>8</sup> PPC response to (CMS-9902-P) <https://www.protectcoverage.org/siteFiles/45072/10%2016%202023%20PPC-MHPAEA-Comments-FINAL.pdf>

<sup>9</sup> PPC response to Processes for Accessing Compliance with Mental Health Parity and Addiction Equity in Medicaid and CHIP

**Short-Term, Limited-Duration Insurance; Independent, Noncoordinated Excepted Benefits Coverage; Level-Funded Plan Arrangements; and Tax Treatment of Certain Accident and Health Insurance (CMS-9904-P)**

In 2018, the prior administration chose to loosen rules governing short-term, limited-duration insurance (STLDI) to encourage the uptake of these products (the 2018 policy). We opposed this decision, which we believed was at odds with our commitment to accessible, affordable, and comprehensive health coverage and put patients at risk. In the years since, the insurance market instability that the prior administration identified as justification for deregulating STLDI has ended, while comprehensive coverage has become far more affordable. At the same time, the effects of this policy choice have become apparent: consumers have had a more difficult time distinguishing between STLDI and full-year ACA-compliant coverage, to the detriment of both those who enroll in STLDI and the consumers and patients who rely on the ACA-compliant individual market. The consequences of this confusion are grave.

Given the failure of the 2018 policy, the change in market conditions since 2018, and lessons learned regarding coverage policy during the COVID-19 pandemic, we believe it is necessary to reestablish consumer protective rules for STLDI and finalize this rule immediately.

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We urge you to release these final rules as quickly as possible ensuring the entire regulatory process is completed. Our organizations applaud HHS for advancing these policies as they will improve coverage and care for millions of patients and people with pre-existing conditions. Thank you for your consideration. For more information, please contact Theresa Alban, Cystic Fibrosis Foundation ([talban@cff.org](mailto:talban@cff.org)).

Sincerely,

ALS Association  
American Cancer Society Cancer Action Network  
American Heart Association  
American Kidney Fund  
American Lung Association  
Arthritis Foundation  
Asthma and Allergy Foundation of America  
Cancer Support Community  
CancerCare  
Child Neurology Foundation  
Chronic Disease Coalition  
Crohn's & Colitis Foundation  
Cystic Fibrosis Foundation  
Epilepsy Foundation

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<https://www.protectcoverage.org/siteFiles/45350/12%2004%202023%20PPC%20Medicaid%20CHIP%20Parity%20RFI%20FINAL.pdf>

Foundation for Sarcoidosis Research (FSR)  
Hemophilia Federation of America  
Immune Deficiency Foundation  
Lupus Foundation of America  
Lutheran Services in America  
Muscular Dystrophy Association  
National Alliance on Mental Illness (NAMI)  
National Bleeding Disorders Foundation  
National Coalition for Cancer Survivorship  
National Eczema Association  
National Health Council  
National Kidney Foundation  
National Multiple Sclerosis Society  
National Organization for Rare Disorders  
National Patient Advocate Foundation  
National Psoriasis Foundation  
NMDP  
Susan G. Komen  
The AIDS Institute  
The Leukemia & Lymphoma Society  
The Mended Hearts, Inc.