January 30, 2023

Xavier Becerra, Secretary
Department of Health and Human Services
200 Independence Avenue SW
Washington, DC 20201

Chiquita Brooks-LaSure, Administrator
Centers for Medicare and Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244

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

Dear Secretary Becerra and Administrator Brooks-LaSure:

Thank you for the opportunity to comment on the "Patient Protection and Affordable Care Act, HHS Notice of Benefit and Payment Parameters for 2024."[1] This letter comments on two issues related to the state option to request a reduction in individual and small group market risk adjustment transfers of up to 50%.

First, HHS solicits comment on a proposal to eliminate this option for the one state (Alabama) that continues to qualify for it, effective with the 2025 benefit year. We recommend that HHS finalize this proposal. As we have argued in detail in past comment letters, HHS' risk adjustment methodology already accounts for differences in market conditions across states, and risk adjustment transfers under HHS' existing methodology are, in general, likely already too small to fully compensate for adverse selection against more generous plans.[2] Accordingly, we believe that allowing these types of reductions would worsen market outcomes by raising the premiums of plans that offer more generous coverage or driving these types of plans from the market.

Second, HHS solicits comment on whether to approve Alabama's request for a 50% reduction in risk adjustment transfers in its individual and small group markets for the 2024 benefit year. For the reasons outlined above, we encourage HHS to reject this request or, at a minimum, continue the process of phasing down the reduction that HHS began for the 2023 benefit year. (For 2023, HHS approved a reduction of 25% in the individual market and 10% in the small group market).

Alabama's letter to HHS suggests that reducing risk adjustment transfers is necessary to sustain robust competition in its markets, which until recently were dominated by a single insurer. We view this as unlikely. While reducing risk adjustment transfers makes the market more attractive to insurers that offer less generous coverage, it makes the market less attractive to insurers that offer more generous coverage. Moreover, ongoing work by one of us highlights that vigorous competition for healthy enrollees due to inadequate risk adjustment can spur price competition so

[1] Please note that the views expressed in this letter are our own and do not necessarily reflect the views of the Brookings Institution, Harvard University, or anyone affiliated with those institutions other than ourselves.

[2] Matthew Fiedler and Timothy Layton, "Comments on the 2022 Notice of Benefit and Payment Parameters," December 31, 2020, https://www.brookings.edu/opinions/comments-on-the-2022-notice-of-benefit-and-payment-parameters/; Matthew Fiedler and Timothy Layton, "Comments on Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2023," January 27, 2022, https://www.regulations.gov/comment/CMS-2021-0196-0399.

intense that some insurers are ultimately forced to exit the market, thereby actually reducing competition in addition to reducing plan quality.[3] The fact that Alabama's individual market saw two new entrants for the 2023 plan year—after HHS approved a smaller transfer reduction than in past years and signaled that it might eliminate that reduction entirely in future years—is consistent with the view that weaker risk adjustment has not promoted more robust competition.

The shift toward a more competitive landscape in Alabama does, however, magnify the downsides of inadequate risk adjustment. Risk selection incentives are more intense when insurers have competitors from which they can lure away healthier enrollees, so inadequate risk adjustment is more likely to undermine plan quality now that Alabama's market is more competitive.

Thank you for the opportunity to comment on this proposed rule. We hope this information is helpful to you. If we can provide any additional information, we would be happy to do so.

Sincerely,

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and
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[3] Timothy J. Layton, Edward Kong, and Mark Shepard, "Adverse Selection, Price Sensitivity, and Instability in Insurance Markets" (10th Annual Conference of the American Society of Health Economists, ASHECON, 2021), https://ashecon.confex.com/ashecon/2021/meetingapp.cgi/Paper/11049.