

# Federal health policy update

NAIC Fall Meeting  
Consumer Liaison  
December 12, 2022

[Lucy Culp](#) - The Leukemia & Lymphoma Society

[Wayne Turner](#) - National Health Law Program

[Carl Schmid](#) - HIV + Hepatitis Policy Institute

# Roadmap

- Open enrollment
  - Family glitch fix
  - Standardized plans
- Rulemaking
  - Notice of Benefit and Payment Parameters
  - Essential Health Benefits Request for Information
  - Section 1557
- Litigation update
  - Copay accumulators
  - Preventive services

# **Open enrollment**

# Open Enrollment

- Just past the halfway point for 2023 Marketplace open enrollment
- The family glitch has been fixed!
- Average benchmark premiums increased, but consumer costs are aided by the continuation of ARPA subsidies
- Relaxed eligibility rules and increased navigator funding should aid consumers in signing up for coverage



**Recommendation:** Increase state and local outreach and enrollment efforts

# Standard Plans

- Now available in most states
- Potential to help consumers by:
  - simplifying shopping experience
  - stabilizing cost sharing requirements
  - addressing health disparities
- Concerns about unmet potential and alternative plan design

**Recommendation:** Regulators can take further steps to aid consumers

- Regulatory tools
- Consumer education
- Monitoring the marketplace

# Rulemaking

# Notice of Benefit and Payment Parameters (NBPP) for 2024

- Consumer and patient advocacy groups have submitted letters to HHS urging:
  - Improving benefits in select EHB categories (e.g., Rx, pediatric services, maternity care)
  - Cost sharing
  - Network adequacy
  - Standardized plans
  - Broker standards
- HHS and states should take action against insurers and PBMs that evade ACA cost sharing protections by declaring certain benefits “non-EHB”
  - classifying a particular drug as covered but non-EHB means that a patient will pay the full cost of the drug until the deductible is met, share costs with the plan (via copay or coinsurance) until the plan’s annual or lifetime cap is hit, and then the patient must pay out-of-pocket for all further costs for the drug
- Letters sent by advocates on priorities for NBPP 2024
  - [Health Partners Coalition Letter to Sec. Becerra](#)
  - [NHeLP Letter to CCIIO Director, Ellen Montz - Re: Request for Modifications to the Federal Prescription Drug and Maternity Care Essential Health Benefit Standards](#)

# Essential Health Benefits - Request for Information

EHBs - minimum set of benefits that non-grandfathered individual and small group plans and Medicaid Alternative Benefit Plans must cover

ACA requires HHS Secretary to:

- Define EHB
  - Benchmarking, plus national minimums for Rx and habilitative services
- “Periodically” review and update EHB
  - difficulty in accessing services
  - ID coverage gaps
  - account for new evidence medical/scientific developments
  - report to Congress
- Update EHB “to address any gaps in access to coverage or changes in the evidence”
- CMS also seeks comments on substitution, changing the Rx classification system, pediatric services, and how plans describe benefits for consumers



# Section 1557 Non-discrimination Rule

- Awaiting Final Rule-Comments on Draft Closed October 2022
- Restores Many Patient Protections that were eliminated in 2020, Expands Others
- Expands Scope: All HHS Health Programs & Activities
  - Includes all plans and operations by carriers, not just ACA plans
  - Includes Health Insurance
- Restores Inclusion of “Benefit Design” & “Marketing Practices”
  - Includes 3rd Party Contractors such as PBMs
  - Network Adequacy & Prescription Drugs
    - Labels Excessive Prior Authorization as Potential Discrimination
    - Seeks comments on whether Value Assessments using QALY’s is discriminatory
- States responsible for implementing & enforcement

# **Litigation update**

# Copay Accumulator Litigation

- [APA Complaint](#) against HHS & CMS for 2021 NBPP Rule
- Filed by HIV+Hepatitis Policy Institute & Diabetes Groups in U.S. District Court for D.C.
  - Case 1:22-cv-02604
- **Major Claims**
  - Violates the ACA Law
  - Contrary to ACA Regulations
  - NBPP Rule is Arbitrary and Capricious
- **US Government Moved to Dismiss for Lack of Standing**
- Filed [Amended Complaint](#) w/3 affected patients

# ACA Preventive Services - Braidwood v. Becerra

- Challenges [ACA requirements](#) that most health plans cover certain preventive screenings and services without cost sharing (42 U.S.C. § 300gg-13)
- Judge O'Connor ruled that requiring coverage of [USPSTF](#) recommended services (A or B) is unconstitutional
- Also ruled that coverage of PreExposure Prophylaxis (PrEP) violates “religious exercise” of Braidwood (a for-profit corp.)
- Parties are currently briefing remediation (nationwide injunction?)
- Approx. [15 states](#) have codified ACA requirements
- EHB preventive services, a separate ACA provision (42 U.S.C. § 18022(b)(1)(I)), requires coverage with cost sharing limits

**Recommendation:** regulators should remind issuers of their obligation to cover preventive services

- [State Leaders: Affordable Care Act Ruling in Texas Does Not Currently Change Covered Preventive Care](#)
- [NM OSI - Cost-sharing protections for contraceptives and PrEP](#)

# Questions?

Contact us:

- [Lucy Culp](mailto:lucy.culp@lls.org) - The Leukemia & Lymphoma Society - [lucy.culp@lls.org](mailto:lucy.culp@lls.org)
- [Wayne Turner](mailto:turner@healthlaw.org) - National Health Law Program - [turner@healthlaw.org](mailto:turner@healthlaw.org)
- [Carl Schmid](mailto:cschmid@hivhep.org) - HIV + Hepatitis Policy Institute - [cschmid@hivhep.org](mailto:cschmid@hivhep.org)