



January 28, 2022

Submitted via PMPolicy@cms.hhs.gov

Centers for Medicare & Medicaid Services
Center for Consumer Information & Insurance Oversight
Department of Health and Human Services,
200 Independence Avenue SW
Washington, DC 20201

Re: Draft 2023 Actuarial Value Calculator

To Whom It May Concern:

The District of Columbia Health Benefit Exchange Authority (HBX) appreciates your consideration of our comments regarding the Draft 2023 Actuarial Value Calculator. We've also submitted this feedback in response to the Notice of Proposed Rulemaking titled "Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2023."

By way of background, HBX is a private-public partnership established by the District of Columbia (District) to develop and operate the District's on-line health insurance marketplace, DC Health Link (DCHealthLink.com). We cover approximately 100,000 people -- District residents and people who work for District small businesses. DC Health Link fosters competition and transparency in the private health insurance market, enabling individuals and small businesses to compare health insurance prices and benefits and to purchase affordable, quality health insurance. Since we opened for business, we have cut the uninsured rate by 50% and now more than 96% of District residents have health coverage.

HBX has concerns about some proposed approaches that would inadvertently curtail state health equity initiatives. The proposed actuarial value standards would inadvertently hinder state efforts to address health disparities.

Levels of Coverage (Actuarial Value) (§ 156.140, 156.200, 156.400)

CMS is proposing changes to de minimis ranges and makes additional changes to the AV calculator in the Draft 2023 Actuarial Value Calculator.¹ We request additional flexibility for SBMs using plan design to address health disparities. Specifically, we would like CMS to allow a higher de minimis range for Gold to allow +3 and for Silver to allow +4. Allowing +3 and +4 variations would be consistent with the already allowed de minimis range of +5 for Bronze. CMS could also limit this greater variation to standard plan design that promotes health equity.

¹ CMS, "Draft 2023 Actuarial Value Calculator Methodology" (Dec. 30, 2021), *available at* <https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Draft-2023-AV-Calculator-Methodology.pdf>.



As part of our health equity initiatives, we are in the process of implementing equity focused value-based insurance designs in our standard plans. As we discussed in section on EHB nondiscrimination, Plan Year 2023 Standard Plans will cover medical care for diabetes including physician visits, blood tests, vision and foot exams, prescription medications, and supplies with no cost-sharing – no deductibles, no copays, and no co-insurance. We expect to move forward with similar treatment of other chronic health conditions that disproportionately affect communities of color in DC, including pediatric behavioral and mental health, HIV, cardiovascular disease, and several types of cancer, including breast and lung.

Our actuaries ran our current 2022 standard plans, plus the diabetes \$0 cost-sharing described above, through the draft 2023 calculator. The results are concerning and pose very real challenges for our ongoing equity work:

Marketplace QHP AV

| Metal Level - AV | Allowed Range for 2022 | Base for 2022 | + \$0 Diabetes | Proposed Allowed Range for 2023 | Base for 2023 (run against proposed AV calculator) | + \$0 Diabetes |
|-------------------------|-------------------------------|----------------------|-----------------------|--|---|-----------------------|
| Platinum – 90% | +2/-4 | 88.99% | 89.04% | +2/-2 | 89.85% | 89.89% |
| Gold – 80% | +2/-4 | 81.95% | 81.98% | +2/-2 | 82.92% | 82.96% |
| Silver – 70% | +2/-4 | 71.95% | 71.99% | +2/0 | 73.72% | 73.76% |
| Bronze – 60% | +5/-4 | 64.95% | 64.99% | +5/-2 | 64.84% | 64.88% |

Our standard gold and silver plans will require substantial increases in cost-sharing to consumers to get them within the proposed 2023 allowable range. Note that eliminating cost-sharing for diabetes care only adds .03-.05 to AV. However, the proposed 2023 AV would necessitate dramatic changes to our standard plan design and would make it nearly impossible to use plan design to address health disparities.

Furthermore, the only way to comply with the CMS proposed 2023 AV changes would be to increase out-of-pocket costs dramatically for enrollees in standard plans. Our standard plans cover physician visits, specialist visits including mental health and behavioral health, urgent care and generic Rx without deductibles. And there are no limits on how many times you can see your doctors. This standard plan design means that everyone has access to essential care without the financial burden of a high deductible. Access to essential care without deductibles is how we eliminate financial barriers to care and ensure that residents can access essential care. Also, only 3.02% of our individual market

enrollees (2.79% in 2020) qualify for cost-sharing reductions. Increasing cost-sharing is likely to result in some residents delaying or foregoing care, or even dropping their insurance because of higher out-of-pocket costs and less value. In the alternative, not covering benefits pre-deductible – pre-deductible essential care makes coverage very valuable to many enrollees -- is likely to result in some residents dropping their insurance. For us, further increasing out-of-pocket costs in standard plans is not a viable option especially because of the unintended effect of causing some people to drop their coverage, becoming uninsured.

Additionally, even if we shifted costs to patients by having higher out-of-pocket costs, the proposed 2023 AV calculator would foreclose our ability to add conditions disproportionately impacting communities of color for coverage at zero-dollar cost-sharing. CMS's proposed AV calculator changes have an unintended impact of halting our efforts to use plan design to address health disparities.

President Biden's Executive Order calls on the entire government to act to address disparities. It states:

Entrenched disparities in our laws and public policies, and in our public and private institutions, have often denied that equal opportunity to individuals and communities. Our country faces converging economic, health, and climate crises that have exposed and exacerbated inequities, while a historic movement for justice has highlighted the unbearable human costs of systemic racism. Our Nation deserves an ambitious whole-of-government equity agenda that matches the scale of the opportunities and challenges that we face.²

By accepting our recommended approach, allowing for a +3 de minimis variation for Gold and a +4 de minimis variation for Silver, CMS would promote the Administration's goal of eliminating health inequities and using the whole-of-government to do so. Importantly, it will allow us and other SBMs to use coverage design as an important way to address health disparities.

Conclusion

Thank you for considering our comments on issues that will directly impact District residents and the continued operations of our marketplace. We appreciate CMS's continued support for state flexibility, consumer protections, and working to ensure a more equitable future. We look forward to working with you on these issues.

Sincerely,

Mila Kofman, J.D.
Executive Director
DC Health Benefit Exchange Authority

² See Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, No. 13985, Jan. 20, 2021. 86 Fed. Reg. 7009 (Jan. 25, 2021).