

Congress of the United States

Washington, DC 20515

November 8, 2024

The Honorable Xavier Becerra
Secretary
Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

The Honorable Janet Yellen
Secretary
Department of the Treasury
1500 Pennsylvania Ave. NW
Washington, D.C. 20220

The Honorable Julie A. Su
Acting Secretary
Department of Labor
200 Constitution Avenue, NW
Washington, D.C. 20210

Dear Secretary Becerra, Secretary Yellen, and Acting Secretary Su:

We write to urge you to quickly issue a promised regulation that will restore vital patient protections and align prescription drug coverage definitions across the individual, small group, large group, and self-funded health plan markets. This rule will rein in the harmful “non-essential health benefits” (non-EHB) deceptive scheme and ensure that all health plan enrollees benefit from statutory cost-sharing protections that were enacted to help them afford and access the treatments they need. We respectfully request that you release this rule as soon as possible to protect patients who will otherwise unwittingly be subject to these programs in 2025.

In recent years, some pharmacy benefit managers (PBMs), health insurers, and self-funded employer plans have started deeming some drugs – usually high-cost brand and specialty drugs – as “non-essential or non-covered EHBs.” PBMs and insurers then set separate maximum cost sharing amounts for these “non-EHB” drugs that are often much higher than the ACA-protected maximum out-of-pocket amounts and exclude the cost-sharing paid for these drugs from counting towards a person’s annual cost-sharing limits. This fabricated non-EHB designation has nothing to do with the medical value of the treatments at issue; rather, its two goals are to evade the ACA’s patient cost-sharing protections¹ and maximize the amount of cost-sharing that the plan or PBM can collect. Even worse, many of the drugs subject to this designation have no generic alternatives available.

In a recent rule, HHS and Treasury took some welcome first steps to address this problem. The *Notice of Benefit and Payment Parameters for 2025* (2025 NBPP) final rule affirms that all prescription drugs covered by an individual or small group health plan are considered EHB and are subject to ACA protections, including limits on patient cost-sharing.² Because the 2025 NBPP does not automatically extend to large group or self-insured health plans, the tri-agencies

¹ The ACA prohibits annual and lifetime limits on coverage of EHBs and, at the same time, caps annual patient cost-sharing for EHBs.

² <https://www.cms.gov/newsroom/fact-sheets/hhs-notice-benefit-and-payment-parameters-2025-final-rule>.

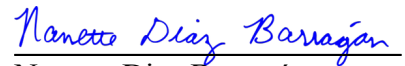
stated in April 2024 that they intend to issue a proposed rule requiring *all* non-grandfathered health plans “to treat prescription drugs covered by the plan or coverage in excess of the applicable EHB-Benchmark plan as EHB for the purposes of the prohibition of lifetime and annual limits and the annual limitation on cost sharing.”³ The proposed rule would not impose new coverage obligations: instead, it would clarify that the ACA’s cost-sharing protections apply to all prescription drugs that all non-grandfathered health plans choose to cover.

It is imperative to align and enforce EHB policies across the commercial markets by ensuring all covered drugs are considered EHB, and ensuring that any patient spending on medicines is counted towards their cost sharing limits. Issuance of this rule would protect vulnerable patients, increase adherence, reduce consumer confusion, and increase patient access to needed medications. The Administration said they were going to release this rule six months ago and patients cannot afford to wait any longer. We ask DOL, HHS, and Treasury to promptly issue the promised regulation.

Sincerely,




Earl L. "Buddy" Carter
Member of Congress



Nanette Diaz Barragán
Member of Congress



Mariannette Miller-Meeks,
M.D.
Member of Congress



Yvette D. Clarke
Member of Congress

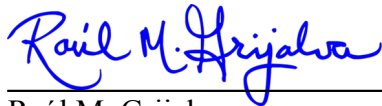


Rick W. Allen
Member of Congress

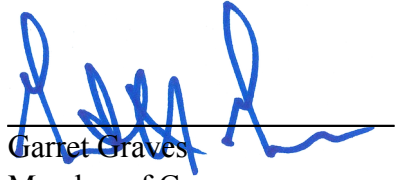


August Pfluger
Member of Congress

³ <https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/faqs/aca-part-66>.



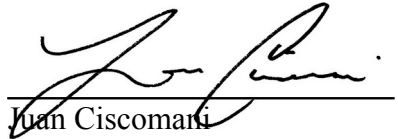
Raúl M. Grijalva
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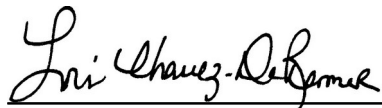
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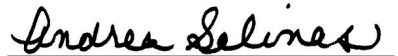
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Brian Fitzpatrick
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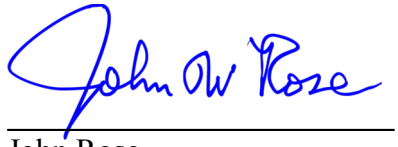
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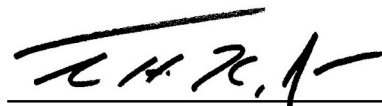
Andrea Salinas
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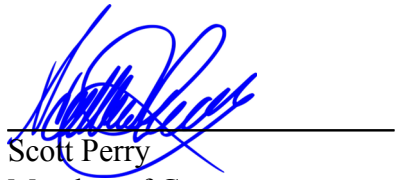
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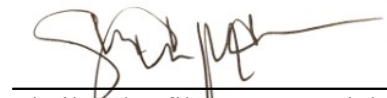
Robert Garcia
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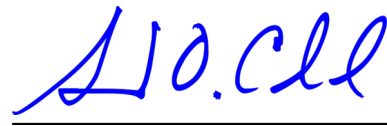
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