



November 27, 2017

Submitted Electronically Via Federal Rulemaking Portal: www.regulations.gov

Attention: CMS-9930-P
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Room 445-G
Hubert H. Humphrey Building
200 Independence Avenue, S.W.
Washington, DC 20201

RE: HHS Notice of Benefit and Payment Parameters for 2019; Proposed Rule

To Whom It May Concern:

The U.S. Chamber of Commerce (the “Chamber”) submits these comments to the Department of Health and Human Services in response to the Department’s Notice of Benefit and Payment Parameters for 2019 Proposed Rule (“Proposed Rule”). This Proposed Rule sets forth payment parameter provisions related to the risk adjustment and risk adjustment data validation programs; cost-sharing parameters and cost-sharing reductions; and user fees for Federally-facilitated Exchanges (“FFE”) and State-based Exchanges on the Federal platform. It also proposes changes that would enhance the role of States related to essential health benefits (“EHB”) and qualified health plan (“QHP”) certification; and would provide states with additional flexibility in the operation and establishment of Exchanges, including Small Business Health Options Program (“SHOP”) Exchanges. The Proposed Rule also includes proposed changes to standards related to Exchanges; the required functions of the SHOPS; actuarial value for stand-alone dental plans; the rate review process; the medical loss ratio program; eligibility and enrollment; exemptions; and other topics.

The Proposed Rule was published in the Federal Register on November 2, 2017, by the Department of Health and Human Services (“HHS” and “the Department”).¹ This Proposed Rule suggests amending the provisions and parameters previously offered to implement many provisions of the Patient Protection and Affordable Care Act, as amended and revised by the Health Care Education Reconciliation Act of 2010 (collectively referred to in the proposed rule as the “Patient Protection and Affordable Care Act” or “PPACA”).² In this Proposed Rule, HHS proposes to amend provisions and parameters with a focus on enhancing the role of states in

¹ Proposed Rule, 82 Fed. Reg. 51,052-51,148. (November 2, 2017) (to be codified at 45 C.F.R. pts. 147, 153, 154, 155, 156, 157, and 158) [hereinafter referred to as the “Proposed Rule”] <https://www.gpo.gov/fdsys/pkg/FR-2017-11-02/pdf/2017-23599.pdf>

² The Patient Protection and Affordable Care Act, Pub. L. No. 111-148, amended by Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152 (2010).

these programs and providing states with additional flexibilities, reducing unnecessary regulatory burdens on stakeholders, empowering consumers, and improving affordability. Several changes are proposed to reduce fiscal and regulatory burdens across different program areas and to support innovative health insurance models.

The Chamber is the world's largest business federation, representing the interests of more than three million businesses and organizations of every size, sector and region, with substantial membership in all 50 states. More than 96 percent of the Chamber's members are small businesses with 100 or fewer employees, 70 percent of which have 10 or fewer employees. Yet, virtually all of the nation's largest companies are also active members. Therefore, we are particularly cognizant of the problems of smaller businesses, as well as issues facing the business community at large. Besides representing a cross-section of the American business community in terms of number of employees, the Chamber represents a wide management spectrum by type of business and location. Each major classification of American business – manufacturing, retailing, services, construction, wholesaling, and finance – is represented. These comments have been developed with the input of member companies with an interest in improving the health care system.

Overview

Despite previous (and current) unfortunately abbreviated comment periods, the Chamber has been commenting on the annually proposed rule published by HHS regarding the Notice of Benefit and Payment Parameters for five years. We are encouraged by the more thorough economic analysis and appreciate the laudable new focus on choice, flexibility and affordability. The commitment to enhancing the role of the states in regulating the small group and individual market is one that the Chamber and our members share. These comments will briefly highlight areas where we support suggested modifications to reduce unnecessary burdens and streamline compliance with duplicative federal and state requirements.

We appreciate the Department's focus on flexibility and simplification as it reevaluates ways to modify: the verification of eligibility for employer sponsored coverage; the definition of reasonableness for purposes of rate review; the triggers for rate review, and; special enrollment period prior coverage requirements in certain instances. The Chamber and our members commend efforts to return authority; flexibility and discretion to the states by: relying on states for review of licensure, good standing, and network adequacy as well as oversight of accreditation requirements, compliance reviews, minimum geographic area reviews, and quality improvement strategy reporting. Further, we applaud the focus on developing policies that encourage innovation and choice in benefit and plan design which may be advanced by: eliminating standardized plans, removing the meaningful difference requirement imposed on carriers offering plans on the exchange, and; by encouraging value based insurance design within the individual and small group markets. We believe that in addition to improving flexibility and choice, many of these changes may improve the affordability of coverage options.

Unfortunately Abbreviated Comment Period

As in years past, this annual Proposed Rule which addresses multiple highly technical issues affords the public a mere twenty-five-day comment period. As with the prior five annual publications of the Proposed Rules for the Notices of Benefit and Payment Parameters in 2014, 2015, 2016, 2017, and 2018, the Chamber is disheartened by this Proposed Rule's woefully

inadequately comment period given the Proposed Rule's complexities and length. Combining so many items into a single regulatory notice with such a brief comment period undermines the public's right to participate in the rulemaking process as guaranteed by the Administrative Procedure Act.

More Thorough Economic Analysis

The Department has provided a more thorough assessment in this Proposed Rule of the likely paperwork costs, burdens, and general regulatory impact than it has in years passed. In addition to providing a more credible analysis, this Proposed Rule also appears to in fact reduce the associated paperwork burdens and general regulatory costs.

As HHS has noted, this is an economically significant rulemaking which means that the annual cost impact of the Proposed Rule is in excess of \$100 million per year. The Department has presented a monetized estimate of \$28 million per year in reduced costs associated with the rulemaking, which is clearly only a fraction of the total savings and regulatory compliance and paperwork burden. However, for the majority of the provisions covered by the Proposed Rule, the Department has provided only a quantitative assessment that the costs are less than previously proposed and implemented. It would be useful for the Department to invest time and resources to make monetary assessments for the Proposed Rule's elements. The Department should consider reassessing the cost baseline based on previous years' analysis in order to appropriately assess cost savings.

As pointed out in prior comments to previous annual NBPP proposed rules, the cost assessments in 2014, 2015, 2016, 2017 and 2018 were woefully underestimated. We encourage the Department to conduct surveys and use all available research based on the actual experiences of states, insurance issuers, and the public to better gauge the real costs of the prior parameter rules currently in place. Based on a more realistic estimate of the current costs, the Department may even find that the cost savings of its proposed new flexibility and revisions is even greater than the amount presented in this Proposed Rule.

To the extent that we were able to review and assess the nearly 100-page rule in the 25 days since it was published in the Federal Register, our comments here will focus on our support for some of the proposals that will increase flexibility for carriers and create more choices and options for consumers.

Focus on Flexibility and Simplification

While there are likely many more areas of interest, with the exceedingly brief comment period, we have received feedback to date on several issues. Our members and the Chamber support several proposals in the Proposed Rule to permit additional flexibility for insurers and to afford consumers additional choice. We believe it is important to advance and adopt policy changes that will promote a more stable market going forward.

There is a lengthy discussion in the preamble of the Proposed Rule on the verification of eligibility of employer-sponsored coverage as well as some discussion in the Proposed Rule.³ We appreciate the Department's recognition that a comprehensive database of information on employer sponsored coverage does not exist and that the sampling conducted by the Exchanges

³ Proposed Rule, 82 Fed. Reg. at 51,087 and 51,139.

is both burdensome for the Federally Facilitated Exchange (“FFE”) and employers. The Chamber continues to advocate in favor of permitting employers to voluntarily report prospectively on the affordable coverage offerings available and the employees (and dependents) to whom these offerings are extended. The reporting requirements imposed by Internal Revenue Code Sections 6055 and 6056 as created by the PPACA continue to be challenging for employers of all sizes. Flexibility and efforts to reduce these burdens are warranted.

The Chamber further supports a reassessment of the rate filing and rate review requirements. First, we agree with the Department’s logic that student health plans are not subject to guaranteed availability and guaranteed renewability requirements and are not subject to the single risk pool requirements. Given these facts, we support the decision to exempt such plans from federal rate review requirements.⁴ Finally, the Chamber agrees with the proposal to raise the default threshold for review of reasonableness in the rate review process from 10 to 15 percent.⁵

Additionally, the Proposed Rule includes an important proposal regarding the special enrollment period’s requirement that eligible individuals have prior coverage. While the Chamber supports enforcing the limitations as to when individuals can enroll through special enrollment periods, we appreciate the recognition by the Department that prior continuous coverage may be difficult in certain areas of the country.⁶ Due to previous abuses of the SEPs for marriage and permanent move, these SEPs should be carefully verified. CMS should collect documentation of the move and publish a list of bare counties so that all issuers have the same information.

Return Authority, Flexibility and Discretion to the States

The Chamber has long advocated in support of returning authority, flexibility and discretion to the states in regulating the small group and individual markets to the extent permitted by law. We agree that reliance on states’ reviews of network adequacy standards in states in which an FFE is operating is appropriate provided the state has a sufficient network adequacy review process.⁷ Further, we are intrigued by proposals to permit greater state discretion in compiling an essential health benefit benchmark plan in order to promote greater flexibility, consumer choice and plan innovation.⁸

While the Chamber has long advocated for fewer mandated benefits and originally argued that EHBs should prescribe the benefits covered but not the scope of the services that must be provided, we are also mindful that re-evaluating how and when these benchmarks may be updated given the perilousness of stability and coverage options in the exchanges should be done carefully and only after giving stakeholders opportunity to review and comment on any specific proposals to modify the selection process for benchmark plans.

Encourage Innovation, Affordability and Choice in Benefit and Plan Design

The Chamber supports efforts to encourage innovation, affordability and choice in benefit and plan design, and believes that reassessing many of the prior regulatory restrictions and mandates

⁴ Proposed Rule, 82 Fed. Reg. at 51078 and 51138.

⁵ Proposed Rule, 82 Fed. Reg. at 51058 and 51137.

⁶ Proposed Rule, 82 Fed. Reg. at 51,089.

⁷ Proposed Rule, 82 Fed. Reg. at 51,109.

⁸ Proposed Rule, 82 Fed. Reg. at 51,102.

in previous NBPP regulations regarding exchange offerings is appropriate. Given the limited participation on the part of issuers and the fewer options in plan offerings, we support the proposal to remove the “meaningful difference standard” and also believe that its removal will encourage greater plan design, innovation, plan offerings, and choice.⁹

The proliferation of value-based insurance design within the individual and small group market is critical as we look for ways to reward efficient consumer behavior and appropriate utilization, as well as to reward high-quality providers. We support the clear designation of plans that are High-Deductible Health Plans (“HDHPs”) in these markets and recommend that they also be clearly identified as Health Savings Account (“HSA”) compatible plans. Further, we would support efforts to permit plans to continue to be designated as HDHP HSA-compatible plans even if certain limited secondary preventive services are elected to be covered on a pre-deductible basis.

III. CONCLUSION

We urge HHS to continue to work carefully, pragmatically and cooperatively with the numerous stakeholders to minimize unnecessary costs for, and burdens on, employers and to provide flexibility as employers work to comply with the law. We appreciate the re-evaluation of prior standards for benefit and payment parameters given the current status of the exchanges and the experience the Department has gleaned during the past four years of implementation. We look forward to continuing to work together in the future.

Sincerely,



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⁹ Proposed Rule, 82 Fed. Reg. at 51,111.