March 7, 2017

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

Attention: CMS-9929-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: Patient Protection and Affordable Care Act; Market Stabilization 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 Proposed Rule on Market Stabilization ("Proposed Rule"). This Proposed Rule would amend standards relating to special enrollment periods, guaranteed availability, and the timing of the annual open enrollment period in the individual market for the 2018 plan year; standards related to network adequacy and essential community providers for qualified health plans; and the rules around actuarial value requirements.

The Proposed Rule was published in the Federal Register on February 17, 2017 by the Department of Health and Human Services ("HHS" and "the Department").[1] The Proposed Rule offers possible changes intended to help stabilize the individual and small group markets which are subject to numerous provisions and different statutory sections of the Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act of 2010 (collectively referred to as "ACA").[2]

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

[1] Proposed Rule, 82 Fed. Reg. 10,980-10,998. (February 17, 2017) (to be codified at 45 C.F.R. pts. 147, 155 and 156) [hereinafter referred to as the "Proposed Rule"] https://www.gpo.gov/fdsys/pkg/FR-2017-02-17/pdf/2017-03027.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).

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.

The Chamber is committed to working with the Administration and members of Congress to strengthen and further reform our nation's health care system through regulatory and legislative action. With input from our members, we have identified a series of legislative and regulatory changes that could provide significant assistance to businesses that offer health insurance products in the individual and small group markets, as well as businesses that offer health coverage to their employees and their employees' families as an employment benefit. Attached is a chart containing our regulatory recommendations which we urge you to consider proposing and implementing as soon as possible. Several of the regulatory changes that we are recommending are included in this Proposed Rule. We are pleased that this administration is moving quickly to try to provide assistance to businesses that offer insurance products in the individual and small group market.

As the Proposed Rule acknowledges in several places, "the health and competitiveness of the exchanges, as well as the individual and small group markets in general, have…been threatened." While the Proposed Rule suggests some helpful and important changes, this Proposed Rule would take (in the words of the Department) "***steps***" to provide flexibility, improve risk pools and bring stability.[3] However, even if these important steps and proposed changes are finalized and implemented, additional relief and financial assistance is necessary. The need to provide additional funding to businesses selling coverage in the individual and small group market is paramount to offset the unbalanced risk pools which include many very sick individuals in need of very expensive services and treatments.

Proposed Changes Answer Repeated Requests

There are several changes included in the Proposed Rule that the Chamber has repeatedly urged the prior administration to implement. We appreciate *this* administration's quick action to correct several flawed processes and prevent individuals from improperly manipulating some of the consumer protections provisions in a way that has been detrimental to the individual market.

Dating back to a comment letter that we submitted to HHS in December of 2015, the Chamber has long decried: the extended open enrollment period which extended into the plan year; the improper and detrimental manipulation of special enrollment periods; and not only the inability to collect unpaid premiums from individuals but the additional requirement that coverage be offered to those individuals again the following year. Dating back to 2014, the Chamber has argued that network adequacy standards should be assessed and determined by the states.

[3] Proposed Rule at 10,981.

We support the proposal to change the dates for the open enrollment period in the individual market for the benefit year starting January 1, 2018 to a range of November 1 to December 15th. The Chamber appreciates the proposal to conduct 100 percent pre-enrollment verification of the eligibility for all categories of individual market special enrollment periods for all states served by healthcare.gov platform. We support the 30 day timeframe within which consumers must provide documentation. We believe the proposal to pend a consumer's plan enrollment until verification of special enrollment period eligibility is completed will reduce the improper manipulation of the special enrollment periods. Coupling this pre-enrollment verification with the proposal to allow consumers to start their coverage 1 month later when this pre-enrollment verification results in a delay that would require premium payments for 2 or more months of coverage that wasn't used is thoughtful and fair.

Positive Proposals

There are several other changes in the Proposed Rule that the Chamber supports. We support the de minimis variation in the actuarial valuation and share your belief that it will allow great flexibility and innovation in plan design. The various options discussed in the preamble to encourage continuous coverage such as requiring individuals to show evidence of prior coverage or penalizing those who cannot show evidence but who qualify for a special enrollment period to face a waiting period or a late enrollment penalty are interesting. We encourage the Department to adopt strong continuous coverage standards to encourage all eligible individuals to maintain health care coverage.

Additional Changes to Consider

As detailed in the attached chart, there are additional changes that could provide additional desperately needed assistance in the short term. There are several ways to provide funding assurances and modest assistance to carriers. We encourage the Department: to suspend or at least reduce the user fee amount of 3.5% for the federal exchange; and to reiterate a commitment to distribute the scheduled $4 billion payments in reinsurance to issuers for 2016. Additionally, the Department should consider incorporating drug utilization data into the risk adjustment calculation for carriers. This would provide additional financial assistance to carriers that enroll a disproportionate number of individuals that rely on high-cost prescriptions to maintain health and manage chronic conditions.

Finally, given the number of proposed changes that will likely have significant operational implications for issuers, we encourage the Department to revive the good faith enforcement safe harbor. The safe harbor protected issuers from civil monetary penalties and QHP decertification for non-compliance with Marketplace requirements if the QHP issuer made a good-faith effort to comply with applicable requirements. The uncertainty that issuers are facing is as tumultuous as the first year that QHPs were available. Accordingly, we believe that similar protections would be appropriate to ensure that issuers are not unfairly punished as a result of a rapidly evolving regulatory landscape.

Similarly, we encourage HHS to continue the safe harbor for issuers affected by a substantial increase in enrollment for 2017, as announced in the September 16, 2016 bulletin published by CMS. Many markets are experiencing changes in the number and identity of QHP issuers from one year to the next. To alleviate operational challenges that can arise and to recognize reasonable issuer efforts to comply with regulatory requirements during a dynamic period, it would be appropriate to extend the prior safe harbor.

Conclusion

The Chamber urges the Department to continue to explore additional changes that can help businesses offering insurance products in the individual and small group market. We hope that you will join us in calling on Congress to make additional legislative changes quickly to preserve the private markets and restore choice and plan variety for consumers.

Sincerely,

Randel K. Johnson
Senior Vice President
Labor, Immigration, & Employee Benefits
U.S. Chamber of Commerce

Katie Mahoney
Executive Director
Health Policy
U.S. Chamber of Commerce