



NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS

October 18, 2021

Centers for Medicare & Medicaid Services
U.S. Department of Health and Human Services
Attention: CMS-9907-P
P.O. Box 8016
Baltimore, MD 21244-8016

Via Regulations.gov

To Whom It May Concern:

The National Association of Insurance Commissioners (NAIC) submits the following comments on the *Requirements Related to Air Ambulance Services, Agent and Broker Disclosures, and Provider Enforcement* Proposed Rule, as posted for public review on September 16, 2021. The NAIC represents the chief insurance regulators in the 50 states, the District of Columbia, and the United States territories.

The proposed rule details a number of areas where the Department of Health and Human Services (HHS) or other federal agencies will collect information from health insurance issuers and providers of covered services, including air ambulance providers. In each of these areas, as outline below, state insurance regulators request that the final rule expressly require that HHS and other Departments share with state authorities the information they collect, and thus enable states to better fulfill their roles in enforcement of state and federal laws and regulations.

Air Ambulance Services

The No Surprises Act requires a public, comprehensive report summarizing the air ambulance data HHS and the Department of Transportation (DOT) collect. In addition to the public report, state regulators request that HHS and DOT share with states the full data they collect under these rules. Detailed information on air ambulance transports and bases in the state would give state regulators important insight into the dynamics of the air ambulance industry. As recognized by Congress and the Air Ambulance and Patient Billing Advisory Committee, many aspects of air ambulance billing and payments remain inaccessible to state regulators. Access to the full data collected under the rule would allow states to better fulfill their responsibilities under section 2799B-4(a) of the Public Health Service Act. Because the Airline Deregulation Act is interpreted to limit state authority to establish requirements on providers of air ambulance services, states would not be able to collect comparable data themselves and it is all the more important that federal regulators make available to states the information they collect on the industry.

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We particularly support the collection of information on air ambulance subscription programs. In addition to revenue amounts, we request that the Departments require reporting of subscription enrollment totals, state of residence of enrollees, and enrollment duration to give greater context to the revenue data.

Given the need for this air ambulance data, we are concerned, however, that the proposed penalty for noncompliance may not be adequate. We recommend HHS consider whether the maximum penalties it proposes for failure to report are sufficient to ensure complete reporting by providers. As recent experience with hospital price transparency requirements shows, fines set too low can delay access to important price data. Providers may have certain incentives to keep even de-identified data confidential; fines for failure to report must be significant enough to overcome such incentives. We urge HHS to judge whether air ambulance providers who frequently bill tens of thousands of dollars per transport will find a maximum \$10,000 annual fine large enough to ensure their compliance. The latest HHS approach to hospitals, where fines increase with provider capacity, may be a more effective model. We encourage HHS to examine whether fines would better promote compliance if their maximum amounts were tied to the number of aircraft or bases operated by a provider of air ambulance services.

Agent and Broker Commissions

States license and regulate insurance agents and brokers. Under the proposed rule, health insurance issuers would report to HHS on the direct and indirect compensation they pay to agents and brokers. This data, too, should be shared with states to inform and facilitate their regulation of agents and brokers. While states could collect this information on their own, making use of the data collected by the Departments would reduce duplicative reporting burdens and allow states to make consistent comparisons to other states.

No Surprises Act Compliance

State regulators are pleased to see that HHS proposes that it may negotiate to “ma[k]e available” to states transitioning to the primary enforcement role for the No Surprises Act certain records related to issuer, provider, and facility compliance “to the extent practicable, as permitted by law, and as applicable.” (Proposed 45 C.F.R. § 150.221(b)). However, other states could also make use of such records in their oversight efforts. We encourage HHS to complete negotiations and provide the records, as permitted by law, to all interested states.

Other Data Reporting

The information that the Departments anticipate collecting through the data reporting structures described throughout the Proposed Rule is extensive. NAIC and state regulators expect that it will be invaluable in informing states’ enforcement authority. Therefore, we



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encourage the Departments to make compliance and other implementation, enforcement, and reporting records available as expeditiously and robustly as possible, so that states may fully exercise their primary enforcement authority as contemplated by the Public Health Service Act for federal laws and as embodied in state law authority to regulate agents, brokers, issuers, and providers.

Thank you for this opportunity to comment. State regulators will continue to review regulations under the No Surprises Act and other authorities for their potential impact on market competition, premiums, and consumer protections and we will continue to provide comments. We are available to discuss these or other issues as the proposed rules are finalized.

Sincerely,

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