



## NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS

July 28, 2021

Centers for Medicare & Medicaid Services  
U.S. Department of Health and Human Services  
Attention: CMS-9906-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 *Updating Payment Parameters, Section 1332 Waiver Implementing Regulations, and Improving Health Insurance Markets for 2022 and Beyond Proposed Rule*, as published in the *Federal Register* on July 1, 2021. The NAIC represents the chief insurance regulators in the 50 states, the District of Columbia, and the United States territories.

We write in support of those proposed changes that would provide greater flexibility to states and several of the other proposed enhancements to health insurance markets. However, we raise concerns about a few proposals that would limit flexibility for states, and we urge the Departments to reconsider these suggested changes.

### **Navigator Program Standards (§ 155.210)**

The Proposed Rule intends to reinstitute the requirement that Navigators in the Federally-Facilitated Exchanges (FfEs) provide information and assistance with regard to certain post-enrollment topics. Some state regulators are concerned about such a requirement and the NAIC expressed similar concerns when this was suggested for the 2017 Payment Notice.

While post-enrollment assistance can be beneficial to consumers, we question whether there are sufficient federal resources and training for Navigators to perform these functions and whether there are sufficient protections for consumers from under-trained navigators. Agents and brokers who provide post-enrollment assistance are subject to a background check, must have Errors and Omissions insurance, and are under the oversight of state regulators who have methods for protecting consumers and punishing bad actors. Individual Navigators are not subject to such requirements or oversight.

Before expanding the role of Navigators, we encourage greater assurances that consumers will be protected.

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**Open Enrollment Period Extension (§ 155.410(e))**

The Proposed Rule would alter the open enrollment period for the 2022 coverage year and beyond so that it begins on November 1 and runs through January 15 of the applicable benefit year. HHS anticipates that this period would apply in all exchanges, including State-Based Exchanges (SBEs).

We request that the proposal be changed to give SBEs the option of whether to extend open enrollment beyond December of the year prior to the benefit year. Extending the Open Enrollment Period into January provides consumers more time to choose a plan and provides the opportunity for plan switching for a brief period after the benefit year begins, giving consumers a valuable “free look” at their plan. At the same time, this OEP timing increases burden and costs for regulators, exchanges, and issuers because of these opportunities for late enrollments and plan switching. The Proposed Rule accurately notes that a majority of SBEs have used their authority to extend open enrollment beyond December 15 but not all have chosen to do so. Some have chosen to extend later in December, but not into January. Three SBEs used Open Enrollment Periods for 2021 that ended before January 15; this current proposal would remove SBEs’ flexibility to use similar dates for 2022 and beyond. To avoid disruption in these states and preserve state flexibility, we urge this change to be made optional for SBEs.

**Monthly Special Enrollment Period for Certain Individuals (§ 155.420(d)(16))**

The Proposed Rule would establish a new monthly special enrollment period (SEP) for qualified individuals, and their dependents, who are eligible for APTC and whose household income is no greater than 150 percent of the federal poverty level.

First, we support the proposal to give SBEs the option of implementing this monthly SEP. The proposed SEP offers flexibility and more opportunities for coverage among low-income individuals, but it comes with some risk of adverse selection and increased premiums. In addition, state-based exchanges may face burden in making the technical changes needed to implement this change during 2022. Therefore, we recommend maximum flexibility for states in choosing whether and how to implement this SEP.

HHS seeks comment on whether plans should be permitted or required to re-submit their rates due to this proposed change in policy. The process for developing, submitting, reviewing, and approving rates for 2022 is well underway. The Proposed Rule discusses the limited options for mitigating adverse selection resulting from this policy and estimates that it will increase rates by a small but measurable amount. The premium impact is likely to vary significantly by state, depending on Medicaid expansion status, income distribution, and other factors, so some states may have impacts higher or lower than the nationwide estimate HHS provided. Many state regulators would find it infeasible to collect and re-review



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individual market rates once this policy is finalized, but before the deadlines expected for Open Enrollment for 2022. Thus, we do not recommend a requirement for re-rating.

### **Provision of EHB (§ 156.115)**

We support the proposed change to §156.115 to tie EHB requirements to mental health parity provisions in statute, rather than only to parity requirements in regulation. The Consolidated Appropriations Act established important new authority for states to request comparative analyses of mental health and substance use disorder services with medical and surgical services. Including the reference to statutory requirements will help clarify the standards applicable to plans required to provide EHBs.

### **Section 1332 Waiver Requirements and Procedures**

State regulators appreciate efforts by the Departments to use the Proposed Rule preamble to clarify the requirements related to applications for section 1332 waivers. States benefit from the detailed information on actuarial and economic analyses, implementation timelines and operational considerations, and public input. We encourage the Departments to provide states with maximum flexibility, consistent with statute, under these requirements. It would also be helpful to provide examples of varying ways a state could meet the established requirements.

Regulators support the extension of modified public notice requirements for emergent situations other than the COVID-19 pandemic. We ask that the Departments provide guidance through better definitions or examples of situations the Departments will consider unforeseeably and urgently to threaten consumers' access to health insurance coverage, consumers' access to health care, or human life. For instance, can the process be used due to an unforeseen economic downturn that reduces access to health insurance coverage? This would help states better understand when the modified public notice requirements may be available.

We appreciate the Departments' codification of waiver amendment and extension procedures. While the regulatory language is minimal, the Proposed Rule preamble lays out more specifically the documentation states must submit to amend or extend their waivers. We encourage the Departments to request the minimum documentation necessary to review amendment requests. For instance, actuarial and economic analyses should be required to be updated only to the extent that an amendment is reasonably expected to have a material impact on one of the guardrails.

The preamble and proposed regulatory text envision amendment and extension of waivers as two separate processes. A state, however, may wish to extend its existing waiver plan with a modification. We encourage the Departments to clarify that a waiver could be extended



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with one or more amendments through one submission, rather than by making separate requests under sections 156.1330 and 156.1332.

Thank you for this opportunity to comment. As state regulators continue to review the draft Updated Notice and its potential impact on market competition, premiums, and consumer protections, we will continue to provide comments. We are available to discuss these or other issues as the Notice is finalized.

Sincerely,

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