



The Colorado
Health Foundation™

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DEPARTMENT OF HEALTH AND HUMAN SERVICES 45 CFR Parts 147, 153, 154, 155, 156, 157, and 158 [CMS-9930-P] RIN 0938-AT12

RE: Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2019

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

Thank you for the opportunity to comment on the HHS Notice of Benefit and Payment Parameters for 2019 proposed rule. The Colorado Health Foundation is the state's largest private foundation and works to bring health in reach to all Coloradans. Our vision is that across Colorado each of us can say: "We have all we need to live healthy lives." We work to achieve this vision by engaging closely with communities across the state through grantmaking, policy and advocacy, and private sector partnerships.

First, we applaud the Department of Health and Human Services for recognizing and taking steps to enhance the role of states within the health benefit exchanges established under the Patient Protection and Affordable Care Act (ACA). However, we do not believe these changes should reduce the protections afforded consumers within the ACA, and we fear that many of the proposed changes would do just that.

Two areas of concern are the proposed changes to Essential Health Benefits (EHB) Benchmark selection and Qualified Health Plan (QHP) Certification Standards. Allowing states to select EHB Benchmarks from any other state's benchmark plans would mean that important policies impacting the lives of consumers could be made by policymakers and institutions with no direct accountability to those consumers. We believe there are important differences across states. The policymakers and institutions making decisions about a state's insurance market should represent and understand the residents of that state, their needs and the infrastructure for healthcare delivery in that state. We encourage HHS not to implement these proposed rule changes to avoid eroding the important accountability between consumers and the policymakers making decisions about their health coverage options.

The proposal to not specify standardized options or provide differential display of standardized options on the federal marketplace is also concerning. Those have proven to be useful tools for consumers in understanding which insurance options might be best for them. Removing the differential display of standardized options may increase confusion among consumers and could increase burdens on agents, brokers and issuers in responding to questions from consumers. We encourage HHS not to implement this proposed change.

The proposal to remove the requirement that each Exchange must have at least two Navigator entities, and that one of those entities must be a community and consumer-focused nonprofit group, is concerning. Navigators, and in particular independent, nonprofit navigators, have proven to be a tremendous resource for consumers in previous enrollment periods. These entities have been a critical component of Colorado's success in enrolling more people into coverage that is appropriate for an individual's or family's needs, and we urge you not to remove requirements that these resources continue to be available to consumers.

While many of the provisions in this proposed rule relate specifically to the federal marketplace, we believe they represent a broader erosion of consumer protections that can negatively impact states, even if they operate their own state-based exchanges. Regarding state-based exchanges, we believe federal regulations should serve as a floor rather than a preemptive ceiling for state policies to ensure consumer





protections in health insurance markets. Colorado has a history of ensuring insurance products are useful to consumers, and we want all states to be able to continue to do so.

Further, in regards to flexibility for State-Based Exchanges, we encourage HHS to:

- Allow for greater flexibility for state-specific design and operation of eligibility systems
- Allow exchanges to use more tailored commercial platform services to connect to FDSH
- Simplify regulations around the use of electronic data sources and income checks to allow for more accurate and timely determinations
- Add a way to administratively resolve an appeal other than by withdrawal or formal hearing to address nonresponsive appellants
- Add the ability for Exchanges to close an aged appeal by deeming it moot, and
- Allow more state flexibility to amend the reasonable opportunity period process to help ensure that certain individuals are given sufficient time to respond to verification requests.

We appreciate your consideration of these comments on this proposed rule. If you have any questions, please do not hesitate to contact Dustin Moyer, policy officer at the Colorado Health Foundation, at dmoyer@coloradohealth.org or 303-953-3600.

Sincerely,

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The Colorado Health Foundation