Updating Payment Parameters, Section 1332 Waiver Implementing Regulations, and Improving Health Insurance Markets for 2022 and Beyond Rule

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On June 28, 2021, the Department of Health and Human Services (HHS) released a proposed regulation that is a third installment to the 2022 Payment Notice.[1] The notice includes important final rules and parameters for the operation of the individual and small group health insurance markets in 2022 and beyond. This paper summarizes key provisions of the proposed regulations notice and other related information. Comments are due to HHS by July 28, 2021.

Overview

The following highlights the key changes and information included in the proposed updated 2022 Payment Notice regulation:

1. **Longer Open Enrollment:** HHS proposes to extend open enrollment for all individual market plans (both on and off-Exchange) from November 1, 2021 to January 15, 2022 (i.e., extend it by 30 days). This change would apply to all Open Enrollments going forward. State-based Exchange or state laws could have longer open enrollments but nothing shorter.
2. **Special Enrollment Period (SEP) for Consumers Below 150% FPL:** HHS also proposes to provide a permanent SEP to individuals eligible for advanced premium tax credits (APTCs) and have an income below 150%federal poverty limit (FPL). Individuals who meet these criteria would have access to a 94% cost sharing reduction plan if they enroll in a silver plan. Additionally, the effective date of enrollment if first of the next effective month (i.e., if someone signs up June 30th their coverage would start July 1st).There is potential for risk selection and the rule estimates this provision is estimated to increase premiums 0.5% to 2.0%.
3. **Increase in FFE/SBE-FP User Fees:** HHS proposes to increase the 2022 Federally facilitated Exchanges (FFE) user fee to 2.75% (up from 2.25% in the initial 2022 Payment Notice) and

[1] Department of Health and Human Services, “Patient Protection and Affordable Care Act; Updating Payment Parameters, Section 1332 Waiver Implementing Regulations, and Improving Health Insurance Markets”, https://www.federalregister.gov/public-inspection/2021-13993/patient-protection-and-affordable-care-act-updating-payment-parameters-section-1332-waiver

2.25% for State-based Exchanges that used the Healthcare.gov (SBE-FPs) (up from 1.75% in the 2022 Payment Notice).

4. **Separate Billing:** HHS also proposes to repeal the separate billing regulation, which currently requires QHP issuers that offer abortion services to send two separate bills (one for for non-abortion related premiums and one for abortion services related premiums) and receive two separate payments from their consumers. This change could reduce member attrition for issuers that offer abortion services.

5. **Exchange Direct Enrollment:** HHS proposes to repeal the Exchange Direct Enrollment option. The Direct Enrollment option allows Exchanges to work with private sector entities only to operate an enrollment website. Under the Exchange Direct Enrollment states would be able to opt of operating a public exchange (i.e., could opt out of allowing consumers signing up through Healthcare.gov for coverage) and instead only have exchange through direct enrollment. The new regulation proposes to remove this option.

6. **1332 Waivers:** HHS proposes to repeal the President Trump-era regulations and guidance on 1332 waivers (i.e., a return to the 2015 guidance world) as well set forth regulations for 1332 waiver amendments and extensions. The repeal of the previous guidance and regulations would theoretically allow for more types of waiver applications (i.e., public options) and waivers that address health equity issues would be viewed more favorably by HHS.

If you have any questions or to follow up on any of the concepts presented here, please contact any of the following authors:

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