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July 28, 2021

Centers for Medicare & Medicaid Services (CMS)
Department of Health and Human Services (HHS)
Attention: CMS-9906-P
P.O. Box 8016
Baltimore, MD 21244-8016

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

To Whom It May Concern:

On behalf of the Individual and Small Group Markets Committee and Risk Sharing Subcommittee of the American Academy of Actuaries,[1] we would like to provide the following comments on the proposed rule, *Updating Payment Parameters, Section 1332 Waiver Implementing Regulations, and Improving Health Insurance Markets for 2022 and Beyond*. In particular, we offer comments related to the proposal to revise the rules in CFR 45 § 155.420 related to special enrollment periods (SEPs).

The proposed rules would establish a monthly SEP for advanced premium tax credit (APTC)-qualified individuals with household income no greater than 150% of the federal poverty level (FPL). For state-based health insurance exchanges, the SEP would be at the option of the exchange. To be eligible, individuals or their dependents would need to be eligible for APTCs greater than zero. Income eligibility would be determined based on consumers' household income. If post-enrollment income verification later determined income exceeded 150% FPL, the individuals would not be forced to lose coverage, but could face reduced APTCs in accordance with their verified income. Issuers would not be required to extend the SEP to off-exchange insurance plans, because APTCs are not available for off-exchange plans.

The Centers for Medicare and Medicaid Services requested comments regarding the potential adverse selection effects of this proposal. During 2022, when the higher APTCs are available under the American Rescue Plan Act (ARPA), adverse selection could be limited. Prior to ARPA, the share of a consumer's income that they would be expected to pay for a benchmark

[1] The American Academy of Actuaries is a 19,500-member professional association whose mission is to serve the public and the U.S. actuarial profession. For more than 50 years, the Academy has assisted public policymakers on all levels by providing leadership, objective expertise, and actuarial advice on risk and financial security issues. The Academy also sets qualification, practice, and professionalism standards for actuaries in the United States.

plan ranged from 2.07% for those with incomes of 100% FPL to 4.14% for those with incomes of 150% FPL. ARPA reduced these percentages to zero, meaning the benchmark plan would be available for free. In addition, eligible individuals with incomes of 150% FPL or lower would have access to enhanced plans that lower their cost sharing, raising their actuarial values from 70% to 94%. The availability of enhanced plans at low or zero premiums could help reduce adverse selection. Combined with the increased outreach activities proposed in *§ 155.420*, the monthly SEP could act to enroll healthy individuals, not just those expected to need health care services. Indeed, it is likely that a large share of the subsidy-eligible uninsured with incomes below 150% FPL are healthy; those who have health care needs are more likely to have enrolled already. However, adverse selection becomes more likely for plans with broader provider networks, particularly where zero net premium silver plans for those under 150% FPL have more limited networks. Members could use the proposed SEP to choose a broader network to obtain services at a desired facility, and then switch back to the narrow network plan the next month after services are complete. This dynamic may be limited where this change would require the member to switch issuers, as all accumulators would reset, though some consumers may still decide that the additional expense is worthwhile.

Although the adverse selection risk increases as the net premium increases, extending the SEP further up the income scale could result in only relatively minor increases in adverse selection, as long as those eligible for the SEP are highly subsidized. ARPA increased subsidies not only for those with incomes below 150% FPL, but also those at higher incomes. For instance, people with incomes of 200% FPL would be expected to pay 2% of their income for a silver benchmark plan, compared to more than triple that prior to ARPA. At this subsidy level, the member likely has access to a zero-premium bronze plan or potentially even a zero-premium silver plan if the premium differential between the lowest-cost and second-lowest-cost silver plan is small enough. It is worth noting individuals with incomes between 150% and 200% FPL would lose significant cost-sharing subsidies by choosing a bronze plan rather than an enhanced silver plan. A monthly SEP could still create adverse selection by encouraging these individuals to enroll in a bronze plan by default and only switch to an enhanced silver plan if they anticipate large health care expenditures, although the overall risk to plans would be offset to a degree by the bronze premiums collected if members choose a silver plan with the same insurer in order to retain any amounts spent toward deductibles and maximum out-of-pocket limitations.

The monthly nature of the SEP is a key element in the practical presence of adverse selection. A significant portion of the adverse selection risk could be mitigated with appropriate limitations on the SEP. For example, limiting use of the SEP to once per year would prevent individuals from serial switching while permitting individuals to use the SEP to obtain coverage when needed. Adverse selection risk could also be limited by placing requirements on the plans in which a member could enroll via this pathway, such as a restriction to the lowest cost and second lowest cost silver plans would align with the policy of promoting availability of affordable coverage while limiting the potential for consumers to hop to a plan with a broader provider network. Another avenue to reduce adverse selection risk would be via eligibility restrictions such as only permitting those who have yet to receive any APTC for coverage in their current rating area to use the SEP.

Adverse selection concerns would be greater if the monthly SEP is extended beyond 2022 and the enhanced APTCs under ARPA are not extended. In this case, even enrollees with incomes of 100-150% FPL would be required to pay roughly 2-4% of their income for a benchmark plan. Given the higher price sensitivity of lower-income individuals, this may be sufficient incentive for many to try to game a monthly SEP.

We also note that individuals who experience a change in cost-sharing reduction (CSR) eligibility (such as by transitioning into the under 150% FPL eligibility group) are already permitted to switch to a silver plan via the existing SEP at 45 CFR 155.420(d)(6), so that individuals who become eligible for these enhanced cost-sharing subsidies have an avenue to enroll in coverage. This existing SEP increases the likelihood that the newly proposed SEP would result in adverse selection, particularly when members may not be able to obtain a zero-premium silver plan.

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We appreciate the opportunity to provide comments on the proposed 2022 health insurance market rules. We would welcome the opportunity to speak with you to provide more detail and answer any questions you might have regarding these comments. If you have any questions or would like to discuss further, please contact Matthew Williams, the Academy's senior health policy analyst, at williams@actuary.org.

Sincerely,

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