



NY State of Health Comments on 88 FR 82510: Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2025

NY State of Health, the State’s Official Health Plan Marketplace, submits the following comments as a response to the proposed regulations contained in the Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2025; Updating Section 1332 Waiver Public Notice Procedures; Medicaid; Consumer Operated and Oriented Plan (CO-OP) Program; and Basic Health Program. New York is in support of the changes intended to improve the consumer experience. In particular, New York supports the proposed changes surrounding the process of updating and selecting Essential Health Benefits and would encourage CMS to expedite the process for adding routine non-pediatric dental services.

II. Provisions of the Proposed Regulation

A. 31 CFR part 33 and 45 CFR Part 155—Section 1332 Waivers

2. Proposed Amendments to Normal Public Notice Requirements (31 CFR 33.112, 31 CFR 33.120, 45 CFR 155.1312, and 45 CFR 155.1320)

- Proposed Rule

The proposed rule seeks to allow virtual or hybrid public hearings or forums to be considered the equivalent of holding an in-person meeting.

- NY State of Health Comments

New York supports measures that increase the accessibility of public participation. Virtual options for hearings in decision-making processes help equitably increase the participation of individuals for whom in-person-only options may prove to be a barrier.

B. 42 CFR Parts 435 and 600

2. Changes to the Basic Health Program Regulations (42 CFR 600.320)

- Proposed Rule

The proposed rule revises § 600.320(c) to allow a State operating a Basic Health Program (“BHP”) to follow an effective date of eligibility for all enrollees on the first day of the month following the month in which BHP eligibility is determined.

- NY State of Health Comments

New York supports the proposal to allow states operating a BHP to follow an effective date of eligibility for all enrollees on the first day of the month following the determination of BHP-eligibility. This proposal will help eligible individuals access coverage as soon as possible.

D. 45 CFR Part 155—Exchange Establishment Standards and Other Related Standards

3. Additional Required Benefits (§ 155.170)

- Proposed Rule

The rule proposes to amend § 155.170(a)(2) so that benefits covered in a State's Essential Health Benefits (“EHB”)-benchmark plan would be an EHB as opposed to being considered as “in addition to EHB”. The state would not need to defray the costs of a benefit mandate enacted after December 31, 2011, so long as it is in the EHB-benchmark plan at the time the mandate was enacted, starting in PY 2025.

- NY State of Health Comments

New York supports the change in interpretation of EHB-benchmark plan benefits concerning defrayal policies. Allowing States to require QHPs to cover additional benefits without State defrayal of costs provides the State needed flexibility over plan benefits to optimize affordability and health benefit comprehensiveness.

4. Consumer Assistance Tools and Programs of an Exchange (§ 155.205)

- Proposed Rule

The rule proposes to amend § 155.205(a) to include additional minimum standards for Exchange call center operations.

- NY State of Health Comments

New York supports efforts to establish minimum standards for Exchange call center operations to ensure consumers have access to help when they need it. The standards proposed align with New York’s current practices.

10. Failure To Reconcile (FTR) Process (§ 155.305(f)(4))

- Proposed Rule

The proposed rule requires all Exchanges to send notices to tax filers for the first year in which they failed to reconcile APTC starting in PY 2025 as an initial warning.

- NY State of Health Comments

New York supports the proposal to send notices to enrollees / tax filers for the year in which they have failed to reconcile to remind them of the requirement to file and reconcile to maintain premium tax credits, as it supports continued enrollment in QHP coverage. However, as failure to reconcile or “FTR” status constitutes Federal Tax Information (“FTI”), we agree that transmitting notices to individual tax filers regarding a failure to file and reconcile is complex and would require significant resources to comply with IRS safeguard requirements (i.e. double envelopes sent directly to the tax filer, with the inner envelope marked “confidential”). New York supports a combined notice that does not



contain FTI, but still serves to educate and remind enrollees of their ongoing obligations to maintain tax credits and coverage. We further support administrative guidance with suggested model language for combined notices that do not contain FTI.

11. Verification Process Related to Eligibility for Enrollment in a QHP Through the Exchange (§ 155.315(e))

- Proposed Rule

The proposed rule seeks to amend § 155.315(e) to permit all Exchanges to accept an applicant's attestation of incarceration status and allow Exchanges to electronically verify a consumer's current incarceration status using an HHS-approved verification data source.

- NY State of Health Comments

New York supports the suggested improvements to the incarceration status verification process that allow exchanges to accept self-attestation of incarceration status or electronically verify incarceration status using an HHS-approved verification data source. New York currently leverages an HHS-approved state data source to verify incarceration status.

14. Incorporation of Catastrophic Coverage Into the Auto Re-Enrollment Hierarchy (§ 155.335(j))

- Proposed Rule

The proposed rule seeks to amend § 155.335(j) to require Exchanges to re-enroll individuals enrolled in catastrophic coverage into a new QHP, effective January 1, 2025.

- NY State of Health Comments

New York supports the proposal to incorporate catastrophic coverage into the auto re-enrollment hierarchy such that individuals enrolled in catastrophic coverage would be re-enrolled into a bronze metal level QHP in the same product or into a bronze plan offered by the same issuer through the Exchange that has the most similar network. Given the 9-12 month lead time needed to implement most IT system changes, New York encourages implementation flexibility on the timing of this proposal.

16. Initial and Annual Open Enrollment Periods (§ 155.410)

- Proposed Rule

The proposed rule seeks to amend paragraph § 155.410 (e)(4)(ii) to require adoption of an open enrollment period that begins on November 1st of the calendar year preceding the benefit year and ends no earlier than January 15th of the applicable benefit year, with the option to extend the open enrollment period beyond January 15th.

- NY State of Health Comments

New York supports a standard minimum length for an open enrollment period and appreciates that state-based exchanges would have discretion to extend the open enrollment period beyond January 15th.

17. Special Enrollment Periods

A. Effective Dates of Coverage (§ 155.420(b))

- Proposed Rule

The proposed rule seeks to amend § 155.420(b)(1) to align the effective dates of coverage after selecting a plan during certain special enrollment periods (“SEPs”) across all Exchanges. Coverage for consumers who enroll in Qualified Health Plans during certain SEPs will start the first of the month after the consumer’s plan selection.

- NY State of Health Comments

New York supports the proposal to minimize gaps in coverage by aligning coverage effective dates across all Exchanges to ensure that coverage will start the first of the month following plan selection.

B. Monthly Special Enrollment Period for APTC-Eligible Qualified Individuals With a Household Income At or Below 150 Percent of the Federal Poverty Level

- Proposed Rule

The proposed rule also seeks to amend § 155.420(d)(16) to revise the parameters for APTC-eligible individuals to “at or below” 150 percent of the FPL and removes the limitation that this SEP be only available when APTC is available such that the taxpayer’s applicable premium contribution percentage is zero. This change allows these SEPs to be available after Inflation Reduction Act subsidies expire.

- NY State of Health Comments

New York supports the proposal to remove the limitation regarding the availability of this special enrollment period to expand opportunities for enrollment in affordable health insurance.

19. Establishment of Exchange Network Adequacy Standards (§ 155.1050)

- Proposed Rule

The proposed rule seeks to require State Exchanges to establish and impose quantitative time and distance QHP network adequacy standards that are at least as stringent as those for FFEs.

- NY State of Health Comments

New York supports the use of network adequacy standards to ensure consumer access to a sufficient choice of providers. However, New York, like many other states, has already implemented robust network adequacy criteria for QHP issuers including time and distance standards as well as information on the availability of telehealth. Given the complexities that differ state to state and the potential burden to issuers and States resulting from a change in these standards, New York requests that any FFE network standards that would apply to state-based marketplaces be open to public comment prior to finalization, and New York supports a process to allow reasonable deviations from those standards to provide the flexibility to account for local conditions.

E. 45 CFR Part 156—Health Insurance Issuer Standards Under the Affordable Care Act, Including Standards Related to Exchanges

2. State Selection of EHB-Benchmark Plans for Plan Years Beginning on or After January 1, 2027 (§ 156.111)

- Proposed Rule

The proposed rule includes several revisions for state selection of EHB-benchmark plans. The rule proposes to consolidate options for states to change such plans at § 156.111(a), removes the generosity standard at § 156.111(b)(2)(ii), revises the typicality standard at § 156.111(b)(2), revises § 156.111(e)(3) to only require states to submit a formulary drug list if a state is seeking to change its prescription drug EHB.

- NY State of Health Comments

New York strongly supports the proposed revisions to improve the process for states to update their EHB-benchmark plan.

3. Provision of EHB (§ 156.115)

- Proposed Rule

The proposed rule removes the regulatory prohibition at § 156.115(d) on issuers from including routine non-pediatric dental services as an Essential Health Benefit (“EHB”). States electing to add this benefit would be required to update their EHB-benchmark plans to include those services.

- NY State of Health Comments

New York supports the removal of the regulatory prohibition on issuers including routine non-pediatric dental services as an EHB. Removing this provision, as well making similar changes with regard to routine non-pediatric eye exam services, will allow states the option to add benefits that can help improve overall health outcomes. Research shows that access to dental and vision coverage can help to reduce disparities in access to care, decrease



emergency department utilization, and reduce serious health problems through early diagnosis or prevention.

Currently in New York, enrollment in Stand-Alone Dental Plans (“SADP”) for consumers who have chosen a health plan without dental care is low.¹ One reason for this is that the overall premium costs for individuals purchasing a SADP are greater than for individuals that have pediatric dental benefits embedded in their qualified health plan. Additionally, SADPs can be difficult for consumers to navigate (separate from their health insurance coverage) due to choice overload, and lack of standardization of benefits, and hurdles like waiting periods.

New York appreciates HHS’s attention to this matter but would advocate for an expedited path to adding routine non-pediatric dental services that allows for an earlier implementation. The two-year waiting period associated with adding such services as an EHB means that consumers would not be able to access this benefit until plan year 2027. New York understands that the waiting period ensures a thorough review process and minimizes disruptions for insurers. However, New York has already added adult dental services in its Basic Health Program (the Essential Plan). Eleven of the twelve QHP issuers in New York also participate in our Essential Plan program. This would mitigate HHS’s concerns about insurers adopting a new coverage requirement and developing a network of providers.

We also suggest CMS provide definitions of, or a benchmark for, what constitutes routine adult dentals services, as was done for states that had to supplement their benchmark plans to include pediatric dental care. Doing so would help states that opt to require this new coverage and facilitate expedited approval.

¹ See *NY State of Health 2020 Open Enrollment Report*, NY STATE OF HEALTH, Apr. 12, 2021, <https://info.nystateofhealth.ny.gov/2020-open-enrollment-report>. “Through February 7, 2020, 26,260 enrolled in a SADP; 10 percent of all QHP enrollees, which is the same as the share in 2019.”