

New York appreciates the opportunity to comment on the proposed regulations for 45CFR 144, 147 and 150; Patient Protection and Affordable Care Act; Health Insurance Market Rules; Rate Review; Proposed Rule [CMS-9972-P].

New York would like to offer the following comments:

Part 144 – Requirements Relating to Health Insurance Coverage

- §144.102(c) Scope and applicability
§144.102(c) of the proposed rules state that coverage offered to an association member other than in connection with a group health plan or offered to a member with fewer than two participants, is considered individual coverage, regardless of whether it is considered group coverage under state law. Can you please clarify whether this rule is intended to preempt state law regarding groups eligible to purchase coverage outside the SHOP Exchange?

Part 147 – Health Insurance Reform Requirements for the Group and Individual Health Insurance Markets

- §147.102(b) Rating area
Section 147.102(b)(3)(ii) presumes that a state’s rating areas are “presumed adequate” if there are no more than seven areas based on specific factors. While subparagraph (4) allows states to propose greater than seven areas to CMS, a state is not given the same deference as under subparagraph (3). We encourage CMS to allow a state to establish more than seven rating areas if the state determines it is necessary for the integrity of its markets without having to propose more regions to CMS. Due to severely restrictive time periods to make this decision, States do not have the luxury to request CMS approve more than seven regions and will be tied to seven or less regions even if they are detrimental to their markets.
- §147.102(d) Uniform age bands
It is our understanding the states with community rating, or pure community rating such as New York, are permitted to keep their current rating rules. In New York, rating for age is impermissible. The proposed regulations appear to require insurers to offer a child-only product with a child-only rate even in a community rated state. The regulations should clearly state whether the child-only product would be subject to the age band of 0-20 in §147.102(d)(1) even if the other age bands would not apply due to a state’s option to retain community rating.
- Preamble, III, Subpart B - §147.104(b) Enrollment periods
Section 147.104(b)(ii) states that issuers in the individual market “must permit” an individual to purchase coverage during the initial and open enrollment periods in §155.401(b) and (e). Page 70597 of the Preamble states that these standards are intended to set consistent open enrollment periods for both inside and outside the Exchange. New York has continuous open enrollment and guaranteed issuance meaning individuals may

secure coverage year-round. Please clarify whether the rule is intended to preempt States' enrollment rules for the non-exchange market.

- Preamble, III, Subpart C - §147.106 Guaranteed renewability of coverage
As stated on page 70599 in the Preamble, §147.106 is generally based on corresponding HIPAA rule §146.152. If a state has more protective rules relating to guaranteed renewability, would those state rules be preempted?
- Preamble, III, Subpart D (Applicability of the Proposed Rules under PHS Sections 2701, 2702, and 2703 and Section 1312(c) if the Affordable Care Act to Student Health Insurance Coverage)
Page 70600 of the Preamble requests comments on whether any modifications to the individual market should be applicable to student health insurance coverage. We encourage HHS to allow student health insurance to be rated with its own pool or allow an index rate factor to be applied similar to that allowed for catastrophic plans under §156.80(d)(2).

Part 156 – Health Insurance Issuer Standards under the Affordable Care Act, Including Standards Relating to Exchanges

- §156.155(a) General Rule (Enrollment in Catastrophic Plans)
Section 156.155(a)(2) states that catastrophic plans cannot provide coverage that has an actuarial value within a metal tier set in ACA §1302(d). Does this mean that a plan may have an actuarial value between metal tiers (e.g. 75%)?
- §156.155(a) General Rule (Enrollment in Catastrophic Plans)
§156.155(a)(3) states that catastrophic plans must offer coverage for EHBs once the annual IRS out-of-pocket maximum for HSA eligible plans is met. May plans have a deductible amount higher than the IRS out-of-pocket maximum if it is not an HSA eligible plan?
- §156.155(a) Application for family coverage (Enrollment in Catastrophic Plans)
Section 156.155(c) appears to have an error. It appears that it should reference paragraph (a)(5) and not (a)(4).

General Comments

- New York allows sole proprietors to purchase group contracts. Sole proprietors are either the sole owner and employee of the business or the sole owner with only immediate family members as employees. The proposed rules appear to imply that sole proprietors must be included in the individual market both inside and outside the Exchange. If this is the intention, we encourage CMS/HHS to codify such for clarity.