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The Official Health Plan Marketplace

NY State of Health Comments on 89 FR 82308: Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2026; and Basic Health Program

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 2026; and Basic Health Program.

III. Provisions of the Proposed Regulations

A. 42 CFR Part 600 BHP Methodology Regarding the Value of the Premium Adjustment Factor (PAF)

2. *Technical Clarification for Calculation of BHP Payment Rates in Cases of Multiple Second Lowest Cost Silver Plan Premiums in an Area*

- Proposed Rule
  The proposed rule seeks to clarify that in cases where there are more than one second lowest cost silver plans ("SLCSP") in a county, the Basic Health Program ("BHP") payment would be based on the premium of the second lowest cost silver plan applicable to the largest portion of the county as measured by total population.

- NY State of Health Comments
  In cases where there is more than one SLCSP in a county, New York currently selects the third lowest silver plan in its BHP payment methodology. The proposed methodology would present various operational challenges, including enrollment not being static throughout the year, and would represent a meaningful change from New York's current practice. New York has appreciated previous flexibility in this area and supports continued state flexibility in the methodology for how the state chooses an SLCSP in counties with more than one applicable plan.

C. Part 155—Exchange Establishment Standards and Other Related Standards

1. *Solicitation of Comments—Navigator, Non-Navigator Assistance Personnel, and Certified Application Counselor Program Standards (§§155.210, 155.215, and 155.225)*

- Proposed Rule
  The proposed rule seeks comment on how assisters who perform their assister duties in a hospital and hospital system may, within the bounds of the statute, refer consumers to programs designed to reduce medical debt.

- NY State of Health Comments
  New York supports the proposal to increase access to programs designed to reduce medical debt. We understand the gravity of the burden that medical debt places on consumers, including lower-income individuals who primarily comprise our membership, and welcome any programs that could reduce its impact on New Yorkers.

  New York sees a role for assistors in increasing consumer knowledge and access to consumer debt relief programs. New York has a robust application assistor program that includes staff from hospitals, health care providers, and medical billing agencies who operate as Certified Application Counselors (CACs). Assistors provide a direct pathway to uninsured or underinsured consumers who need help applying for health insurance coverage through NY State of Health, New York's Official Health Plan Marketplace. Our integrated marketplace includes Medicaid, Essential Plan, Child Health Plus and Qualified Health Plans with and without financial assistance.

  NY State of Health's assistors currently do refer consumers to a program that can assist with medical debt. New York also administers a statewide contract for a Community Healthcare Advocate (CHA) program. The CHA program is comprised of a network of organizations from around New York State that help individuals, families and small businesses with post-enrollment health insurance issues. They operate a helpline and offer in-person assistance. New York educates our assistors and call center staff regarding when they should refer consumers to this program. One reason consumers are referred to CHA is if they need assistance resolving a medical debt. New York would be interested in further discussing current practices and the CHA program with CMS in support of this endeavor.

2. *Ability of States to Permit Agents and Brokers and Web-Brokers To Assist Qualified Individuals, Qualified Employers, or Qualified Employees Enrolling in QHPs (§ 155.220)*

- Proposed Rule
  The proposed rule clarifies that CMS can pursue enforcement action against lead agents, as well as both the individual broker and the agency where that broker works in certain cases. The rule also proposes to amend § 155.220(k)(3) to include language that a system suspension may be imposed upon brokers if circumstances pose an unacceptable risk. Lastly, CMS proposes to update the Model Consent Notices that brokers use to better document consumer consent.

- NY State of Health Comments
  New York agrees with and shares CMS's commitment to fraud prevention measures and transparency in this area. New York already has measures in place to monitor and take action when there is suspected noncompliance by agents and brokers.

3. *Requirement for Notification of Tax Filers and Consumers Who Have Failed To File and Reconcile APTC for Two Consecutive Tax Years (§ 155.305)*

- Proposed Rule
  The proposed rule seeks to amend § 155.305(f)(4) to require Exchanges to provide notice to consumers and tax filers who have failed to file and reconcile ("FTR") their APTC for 2 consecutive years.

- NY State of Health Comments
  New York supports the proposal to send notices to enrollees / tax filers for the second consecutive year in which they have failed to reconcile ("FTR") to remind them of the requirement to file and reconcile premium tax credits, as it supports continued enrollment in QHP coverage. New York plans to send enrollees / tax filers a non-FTI notice and appreciates continued state flexibility for this requirement.

5. *Establishment of Optional Fixed-Dollar Premium Payment Threshold and Total Premium Threshold (§ 155.400(g))*

- Proposed Rule

The proposed rule seeks to revise § 155.400(g) to allow issuers to either (1) adopt a fixed-dollar payment threshold of $5 or less (adjusted for inflation), or (2) one of the two percentage-based thresholds, specifically 95% of total premium and 99% of gross premium after APTC (which would replace the current 'reasonableness' standard); under which issuers would not be required to trigger a grace period or terminate enrollment for enrollees who fail to pay the full amount of their portion of premium owed.

- NY State of Health Comments

New York supports efforts to clarify, offer further flexibility, and standardize options for issuers to use to avoid triggering grace periods or disenrollments for consumers who have paid most of their premium. New York supports the 95% percent threshold as opposed to the current 'reasonableness' standard.

In response to whether issuers should be required to choose one option or whether they should be allowed to use both, New York supports requiring issuers to choose the option that is most numerically beneficial to consumers. As an example, New York would be in favor of allowing the member to continue without termination if they have paid at least 95% of their member responsibility OR if the amount remaining is less than $5.

Most issuers in New York have a premium payment threshold percentage of 95%, while a few issuers utilize a fixed-dollar payment threshold. Only one Issuer has reported that they currently have no payment premium threshold.

9. General Program Integrity and Oversight Requirements (§155.1200)

- Proposed Rule

The proposed rule seeks to publicly release additional reporting information to increase transparency into Exchange operations and promote program improvements. This includes publicly releasing the Exchanges annual State-based Marketplace Annual Reporting Tools (SMART), programmatic and financial audits, Blueprint applications, State exchange spending on outreach, eligibility and enrollment policies and processes, plan certification requirements, operational performance, data, website visits and visitors and additional data points in the Open Enrollment (OE) Data Reports. CMS is seeking input on how to best display these data points and how to best develop a performance measurement tool to assess Exchange quality and consumer experience.

- NY State of Health Comments

While New York appreciates the importance of transparency, we believe the standards should be consistent across Federally-Facilitated and State-based marketplaces. New York notes that our blueprint applications, programmatic and financial audit results, and several other data points mentioned in the rule are already made publicly available. New York looks forward to working in collaboration with CMS to determine a way to appropriately increase transparency into exchange operations.

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

3. Silver Loading (§ 156.80)

- Proposed Rule

The proposed rule seeks comment on whether CMS should codify the guidance that affirms certain CSR loading practices at § 156.80(d).

- NY State of Health Comments

New York supports codifying guidance that silver loading practices are allowable when the adjustments are reasonable and actuarially justified.

5. AV Calculation for Determining Level of Coverage (§156.135)

- Proposed Rule

The proposed rule seeks to revise the method for updating the AV Calculator, starting with the 2026 AV Calculator. Under this approach, for a plan year, CMS would only release a single, final version of the AV Calculator. CMS would also solicit public comments on the AV Calculator for a plan year generally but would only plan to incorporate this feedback into the next AV Calculator.

- NY State of Health Comments

New York does not support only releasing a final AV calculator. Given that rate development begins early in the year for most states, having at least a draft version early guides health plan product development, including for standard plans. New York recommends CMS codify in regulation that the draft or final AV calculator will be released by the last quarter two years before the effective plan year (example: release the AV calculator by December 2024 for plan year 2026). Without this lead time it is difficult for states to stay on schedule for key milestones.

9. Quality Improvement Strategy (§ 156.1130)

- Proposed Rule

The proposed rule seeks to share aggregated, summary-level Quality Improvement Strategy (QIS) information publicly on an annual basis beginning on January 1, 2026.

- NY State of Health Comments

New York supports this proposal and agrees that sharing Quality Improvement Strategies more broadly promotes transparency, improves engagement of best practices, and provides consumers with useful information about quality improvement. New York intends to align its practices with this proposal.