Health Reform WK-EDGE Wrap Up, HEALTH CARE REIMBURSEMENT AND COMPLIANCE TOP STORY—2019 ACA proposal would enhance states’ role, grant flexibility, (Nov. 1, 2017)

Health Reform WK-EDGE Wrap Up

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The exiting of health care insurers and increasing insurance premiums have threatened the stability of the individual and small group exchanges in many geographic areas. In previous rulemaking, HHS established provisions and parameters to implement many Patient Protection and Affordable Care Act (ACA) (P.L. 111-148) provisions and programs. As provided in its advance release and fact sheet for the Notice of Benefit and Payment Parameters for 2019 Proposed rule, HHS is now proposing to amend these provisions and parameters, with a focus on enhancing the role of states in these programs, providing states with additional flexibilities, reducing unnecessary regulatory burden on stakeholders, empowering consumers, and improving the affordability of health insurance.

Expansion of state role. The Proposed rule would expand the state role in the administration of the ACA in several areas:

- **Essential health benefits.** HHS proposes to provide states with additional flexibility in the definition of essential health benefits (EHBs) and outlines potential future directions for defining EHBs. In addition to providing more market flexibility, HHS believes this would permit states to increase affordability in the individual and small group markets. To assist actuaries in determining whether a state’s selected EHB-benchmark plan is equal in scope to the benefits provided under a typical employer plan, as required by section 1302(b)(2) of the ACA, CMS has provided a draft example of an acceptable methodology for comparing benefits of a state’s EHB-benchmark plan to benefits of a typical employer plan.
- **Exchange innovation.** HHS proposes exploring additional ways to support state-based exchanges (SBEs) in adopting innovative approaches to operating and sustaining their exchanges, and to make the SBEs on the federal platform (SBE-FP) model a more appealing and viable model for states.
- **QHP certification process.** HHS proposes that states assume a larger role in the certification process of qualified health plans (QHPs), as defined under section 1301 of the ACA, for the federally-facilitated exchanges (FFEs). This would confirm states’ traditional role in overseeing their health insurance markets, and eliminate duplicative state and federal reviews.
- **SHOP operation.** As provided by section 1321 of the ACA, HHS proposes to provide states more flexibility in how they operate a Small Business Health Options Program (SHOP). The changes would allow employers and employees to enroll in SHOP coverage by working with a QHP issuer or SHOP-registered agent or broker.
- **MLR adjustments.** HHS would make it easier for states to apply for and be granted an adjustment to the individual market medical loss ratio (MLR) standard set by section 1331(b)(3) of the ACA. HHS also seeks comment on the inclusion of federal and state taxes in MLR and rebate calculation.

Additional updates. The Proposed rule also proposes updates to risk adjustment parameters, user fee rates, the premium adjustment percentage, cost-sharing, rate reviews, and Navigators, as follows:

- **Risk adjustment parameters.** HHS proposes recalibrated parameters for the HHS risk adjustment methodology. It also proposes several changes related to the risk adjustment data validation program that are intended to ensure the integrity of the results of risk adjustment, while alleviating issuer burden associated with participating in risk adjustment data validation.
• **User fee rates.** HHS proposes that the user fee rate, as allowed by section 1311(d)(5)(A) of the ACA, for issuers participating on FFEs and SBE-FPs for 2019 to be 3.5 and 3.0 percent of premiums, respectively.

• **Premium adjustment percentage.** HHS would update the premium adjustment percentage for 2019, which is used to set the rate of increase for several parameters detailed in the ACA, including the maximum annual limitation on cost sharing for 2019, the required contribution percentage used to determine eligibility for certain exemptions under section 5000A of the Internal Revenue Code (IRC), and the assessable payment amounts under section 4980H(a) and (b) of the IRC.

• **Cost-sharing.** HHS proposes to update the maximum annual limitations on cost sharing for the 2019 benefit year for cost-sharing reduction plan variations. It also proposes changes to the cost-sharing reduction reconciliation process.

• **Rate review.** HHS proposes to exempt student health insurance coverage from federal rate review requirements, and to provide states with more flexibility regarding timing of the rate review process established under 45 C.F.R. part 154. It also proposes to modify the 10 percent threshold for reasonableness review to a 15 percent default threshold, with states continuing to have the flexibility to establish a different threshold.

• **Navigators.** HHS proposes changes to the requirements regarding Navigators, and the requirements regarding non-Navigator assistance personnel subject to 45 C.F.R. sec. 155.215, to enable exchanges to more easily operate these programs with limited resources. HHS also proposes to allow an agent, broker or issuer participating in direct enrollment to have its selected third-party entity conduct operational readiness reviews, rather than requiring those reviews to be conducted by entities approved by HHS.

**Comments sought.** The Proposed rule seeks industry comment on a variety of topics. These include:

• **Exchange program integrity.** HHS seeks comment on a number of program integrity items, including whether it should consider shortening the length of time the exchanges are authorized to obtain enrollee tax information, as well as ways to prompt timely consumer reporting of changes in circumstances during the benefit year that may impact their eligibility for coverage.

• **Drug costs.** HHS seeks comments on how to reduce drug costs and promote drug price transparency.

• **Exchange eligibility.** HHS announced that it intends to provide guidance on exchange eligibility in the near future. It intends to reconsider the appropriate thresholds for changes in income that will trigger a data matching inconsistency; processes for denying eligibility for advance subsidies for individuals who fail to reconcile advance payments of the premium tax credit (APTC), available under section 1401 of the ACA, on their federal income tax return; processes for matching enrollment data with the Medicare and Medicaid programs; and the appropriate manner of recalculating APTC following a midyear change in eligibility. It seeks comments on each of these issues.

• **Program safeguards.** HHS continues to be interested in exploring ways to further safeguard federal tax dollars flowing through exchanges, and seeks comments on the topic. This includes safeguards to ensure that only individuals who are eligible are enrolled in exchange coverage, and that they are only receiving the amount of financial assistance they are eligible for.

The final version of the Proposed rule formally publishes in the *Federal Register* on November 2, 2017. Comments on the Proposed rule must be received no later than November 27, 2017.