



January 8, 2019

The Honorable Seema Verma  
Administrator, Centers for Medicare and Medicaid Services  
200 Independence Ave, SW  
Washington, DC 20201

RE: Patient Protection and Affordable Care Act; Exchange Program Integrity CMS-9922-P

*Submitted Electronically via [www.regulations.gov](http://www.regulations.gov)*

Dear Ms. Verma:

I am writing on behalf of the National Association of Health Underwriters (NAHU), a professional association representing more than 100,000 licensed health insurance agents, brokers, general agents, consultants, and employee benefits specialists. The members of NAHU work on a daily basis to help millions of individuals and employers purchase, administer and utilize health insurance coverage. Over the past eight years since the passage of the Patient Protection and Affordable Care Act (ACA), our members have worked directly and tirelessly with millions of individuals to help them obtain new coverage, including millions of subsidized policies sold through the health insurance exchange marketplaces. As such, NAHU is pleased to have the opportunity to provide comments in response to the proposed rule titled "Patient Protection and Affordable Care Act; Exchange Program Integrity," that was published in the *Federal Register* on November 9, 2018.

NAHU appreciates the intent of the proposed rule and our membership agrees that many of the actions it suggests are necessary to both improve health insurance exchange operations and also to fully support consumers who are recipients of health insurance premium tax credits. We fully support the proposed changes to §155.200 to explicitly require all health insurance exchange marketplaces to fully cooperate with federal and state oversight and financial integrity mechanisms designed to reduce fraud, abuse, privacy violations and other intentional or unintentional errors made in the course of exchange operations or by certified health insurance agents and brokers, exchange navigators or other assisters.

Our membership also believes in the proposed changes to §155.320 that would allow modification of the streamlined health insurance exchange enrollment application and information-sharing processes to give consumers in 2020 and beyond the option of allowing an exchange to terminate their qualified health insurance coverage offered through the exchange if they enroll in Medicare. NAHU members who work directly with private Medicare health coverage consumers frequently encounter people enrolled in both Medicare and a qualified health plan due to their lack of understanding of exchange and Medicare procedures and requirements. Additionally, it is not uncommon for a newly Medicare-eligible individual



to delay his or her Part B enrollment until the end of the individual coverage plan year due to a lack of education about program rules. Both of these scenarios can result in personal income tax consequences for the consumer, and in the case of a delayed Part B enrollment, the person can also be subject to a lifetime of late enrollment penalties. By ensuring more frequent opportunities for these consumers to be disenrolled from coverage and tax credit programs for which they are no longer eligible, the Administration will be doing consumers a significant service and also improving the efficiency of the health insurance exchange marketplaces.

NAHU members endorse the proposed clarifications to §155.330 regarding periodic data matching procedures to help redetermine subsidy eligibility during a benefit year. Currently, if an individual is eligible for other qualified coverage or is dually enrolled in exchange-based coverage and another source of minimum essential coverage, that individual is not eligible for an exchange-based premium tax credit, regardless of their income. If such an individual is a tax credit recipient, he or she incurs an enormous personal income tax liability. In the course of their health insurance enrollment and outreach efforts, licensed health insurance producers frequently encounter consumers who do not fully understand the tax credit eligibility rules, and are inappropriately receiving advance premium tax credits, in most cases entirely unintentionally. By modifying §155.330 to specify that exchange-based data-matching must occur at least two times during each calendar year in 2020 and beyond, NAHU believes that the Administration will do much to ensure exchanges disenroll ineligible individuals from the advance premium tax credit mechanism, thereby saving them from significant income tax consequences.

However, NAHU is concerned that the proposed rule merely would require exchanges to verify a consumer's social security number and eligibility for Medicare, Medicaid, Children's Health Insurance Program, or Basic Health Program. Beyond the changes already proposed to §155.330, NAHU strongly recommends that the Centers for Medicare and Medicaid Services consider further modifying this section to improve its efforts and data sources for verifying offers of employer coverage for exchange subsidy-eligibility purposes.

As we have commented many times previously, NAHU remains concerned about the workability and effectiveness of the employer coverage verification, notice and appeals processes as they currently stand with health insurance exchanges. We continue to believe that in the absence of a comprehensive electronic data source available for exchanges to verify the availability of employer-sponsored coverage, the Administration should allow for a voluntary certification system that complements the ACA's information reporting requirements under IRC §§6055 and 6056. This way, employers could prospectively report to the Internal Revenue Service (IRS) that they are offering ACA-compliant coverage to full-time employees. Under such a system, employers could confidentially attest that they offer coverage that meets the ACA's employer shared responsibility provisions and could certify that they offer at least one plan that meets one of the affordability safe harbors that the Treasury Department provided in the final rules under IRC §4980H. HHS could amend its data-sharing agreement with the IRS to allow



state-based exchanges and the federally facilitated marketplace to access such information at the time of an individual's exchange enrollment, to promote more accurate eligibility determinations for tax credits and cost-sharing reductions. NAHU believes that the implementation of these policy changes would not only prevent many individuals from receiving subsidies inappropriately, it would also reduce the ultimate employer mandate enforcement burden for both the IRS and employers nationally.

With regard to the proposed changes to §156.280, NAHU fully appreciates the Administration's intent to ensure full compliance with both the Hyde Act and Section 1303 of the ACA, both of which require segregation of federal premium tax credit funds so that no federal monies go to pay for certain abortion services that may be part of qualified health plan coverage. However, our membership believes that the changes included in the proposed rule to would do little to improve fund segregation and instead would harm and confuse consumers and contribute significantly to health insurance coverage costs and administrative burdens.

The proposed rule would reverse existing guidance that allows qualified health plan (QHP) issuers to aggregate the premium costs for both qualified abortion services and all other health care service costs into a single bill, sent in a single transaction or envelope. Instead, under the proposed rule, insurers would need to send consumers two monthly bills, and require two separate premium payments every month. This proposed change would even apply to individuals who currently pay no or very low premiums directly, due to the cost of their coverage and their advance premium tax credit eligibility level. Furthermore, if an individual failed to pay one or both of the separately billed premiums each month, he or she could trigger the premium payment grace period and ultimately face coverage termination for nonpayment of a minimum amount of a partial premium.

Since our members work with both business and individual consumers of health insurance on a daily basis on issues related to the administration and utilization of their health benefit plans, we know that what consumers need when it comes premium billing. Invoices or premium statements should be as simple and clear as possible, with easily accessible payment mechanisms. Requiring the separate delivery and payment of two health insurance premium bills each month is an enormous, costly and nonproductive burden to put on both health insurance consumers and qualified health plan issuers.

For individual health insurance purchasers, the additional bill each month will be very confusing, especially since the two billed amounts could be very different. Consumers could easily discard what they think is an extra bill or disregard one or more of the statements assuming that it was sent in error. NAHU has long advocated for a reduction in the 90-day grace period for nonpayment of premiums to the off exchange standard of 30 days. If this new policy goes into effect, the likelihood of consumers lapsing and having their coverage canceled with either a 90-day or shorter grace period, will be very high. NAHU strongly encourages the Administration to rethink the current proposed changes to §156.280, as they will increase the number of uninsured.



The administrative burden the proposed changes to §156.280 will create will also be enormous. Requiring separate billing and payments of the two segments of each premium will create billing system strain, increase the likelihood of errors on the part of the issuer and increase both human capital and real technology, postage, printing, and processing expenses. This action seems contrary to Executive Order 13765, which directs “the heads of all other executive departments and agencies (agencies) with authorities and responsibilities under the [ACA] shall exercise all authority and discretion available to them to waive, defer, grant exemptions from, or delay the implementation of any provision or requirement of the Act that would impose a fiscal burden on any State or a cost, fee, tax, penalty, or regulatory burden on individuals, families, healthcare providers, health insurers, patients, recipients of healthcare services, purchasers of health insurance, or makers of medical devices, products, or medications.” Furthermore, all of the increased cost will ultimately fall on individual consumers and American taxpayers in the form of high health insurance premiums.

Instead of the proposed actions contained in §156.280, NAHU urges the administration to focus its efforts on ensuring qualified health plan compliance with Section 1303 and the Hyde Act through greater enforcement of existing requirements and codification of just the enforcement sections of the proposed rule. For example, the proposed rule would require that QHPs document Section 1303 compliance specifics as part of their annual QHP approval process. State-based exchanges would also have to request and enforce documentation with issuers, or if they failed to do so, issuers would face federal oversight and enforcement even in state-based exchange states. Merely requiring that same level of documentation and federal enforcement concerning compliance with existing standards would be a far more efficient and fiscally prudent way of ensuring consistent fund segregation, and no consumers would be harmed or burdened in the process.

We sincerely appreciate the opportunity to voice our viewpoint on the proposed rule, as well as your commitments to gathering the views of all stakeholders about these critical topics. If you have any questions about our comments, or if NAHU can be of assistance as you move forward, please do not hesitate to contact me at either (202) 595-0787 or [jtrautwein@nahu.org](mailto:jtrautwein@nahu.org).

Sincerely,

A handwritten signature in black ink, reading "Janet Stokes Trautwein". The signature is written in a cursive style.

Janet Stokes Trautwein  
Executive Vice President and CEO  
National Association of Health Underwriters