



July 5, 2016

Andy Slavitt  
Acting Administrator  
Centers for Medicare and Medicaid Services  
Department of Health and Human Services  
200 Independence Avenue, S.W.  
Washington, D.C. 20201

RE: CMS-9933-IFR - Submitted electronically via [www.regulations.gov](http://www.regulations.gov)

Dear Mr. Slavitt:

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 benefit specialists nationally. The members of NAHU work on a daily basis to help both individuals and employer groups purchase, administer and utilize health insurance coverage. NAHU members frequently work with individual health insurance consumers to help them assess their eligibility for special enrollment periods and then enroll in coverage. NAHU members also have placed hundreds of thousands of individuals and employer groups in coverage options offered by Consumer Operated and Oriented Plan (CO-OP) issuers. As such, we are pleased to have the opportunity to provide comments on the interim final rule titled "Patient Protection and Affordable Care Act: Amendments to Special Enrollment Periods and the Consumer Operated and Oriented Plan Program."

### **Special Enrollment Period (SEP) Changes (§ 155.420)**

NAHU supports the changes to special enrollment period requirements outlined in the interim final rule establishing that to qualify for a permanent-move SEP, an individual will have to document that he or she had minimum essential coverage (MEC) for at least one day out of the 60 days prior to the move. NAHU also supports the proposed exceptions for formerly incarcerated individuals, for those who were previously living in a non-Medicaid-expansion state and were in an income-based coverage gap, and those who become newly eligible for a QHP by becoming a United States citizen, national or lawfully present non-citizen. Making these changes will help better provide for the stability of the individual market. The individual health insurance market is naturally more prone to adverse selection than perhaps any other insurance market because individuals typically bear the price of coverage themselves and because people have unique knowledge of their health status and can seek coverage only when they feel they truly need to use medical care services. However, for this market to function properly and maintain both price and risk stability, as many participants as possible need to enter the market because they want the financial protection health insurance coverage provides, not because they are in ill health. Furthermore, to provide both national health security and market stability, as many people as possible



need to maintain their coverage year-round and from year to year. Given that the Patient Protection and Affordable Care Act mandates an open-enrollment period/special enrollment period for the entire individual insurance marketplace, it is critical that individuals who are seeking coverage outside of the annual open-enrollment period have a legitimate reason for doing so, including those who are claiming eligibility as a result of a permanent move.

In addition to supporting these changes to the qualifications for a permanent move SEP, NAHU has several suggestions to make the permanent-move SEP verification process smoother for consumers, more economical for exchanges to implement and more protective of the balance of risk in the individual market. Given that establishing the existence of prior MEC is both complicated and ACA-specific, NAHU believes that the best and most cost-effective means of documenting SEP eligibility/prior coverage would be through the completion of a CMS-developed document. Rather than consumers being required to procure documents that may or may not truly indicate their eligibility, for consistency purposes, NAHU members suggest that CMS develop an official template letter/form that individuals could provide to their former source of MEC eligibility to certify their current SEP eligibility status. Furthermore, NAHU would suggest that such a form include clear notification of the consequences of a false certification and that CMS reserves the right to contact the source of prior MEC eligibility to verify prior coverage. In order to obtain SEP rights for a permanent move and purchase coverage, an individual should have to present this form for verification at the time of enrollment.

Finally, with regard to the proposed changes to eliminate requirements that state-based exchanges offer various special enrollment periods by January 1, 2017, NAHU also supports these provisions that provide state-based exchanges with greater flexibility.

### **CO-OP Program Changes**

In § 156.505, the interim final rule makes definitional changes to permit CO-OPs increased flexibility to explore and advance business opportunities and increase the pool of eligible candidates for their boards of directors, including allowing employees of certain health insurance issuers that do not compete in the individual or group health insurance markets. Changes to § 156.515 expand the structural requirements for CO-OP boards of directors to give the organizations more flexibility. NAHU believes it is very important to give CO-OPs the opportunity to include individuals with greater practical experience in the areas of health insurance administration on their boards. Further, we believe that all individuals and entities that meet the experience requirements specified as necessary for CO-OP board participation could also have inherent conflicts of interest. For that reason, we propose lifting all of the restrictions on who may participate on CO-OP boards but still specifying that CO-OP governing boards may not be comprised of a majority of voting representatives serving the interests of any one particular group rather than singling out groups of stakeholders. It is our recommendation that the final rule require CO-OPs to include proportional board representation from all stakeholders with strict requirements about the public disclosure of any potential conflicts of interest, financial or otherwise. Additionally, when the



changes to § 156.505 are finalized, we request explicit clarification that licensed and appointed health insurance agents and brokers who have been previously appointed by pre-existing issuers may participate on CO-OP boards. These individuals are not employees of such entities; they are independent business people with valuable health insurance market expertise that could benefit CO-OP boards.

NAHU also supports the proposed clarification to § 156.515(c)(1) that gives CO-OPs greater flexibility in meeting the requirement that two-thirds of the policies issued by a CO-OP must be QHPs issued in the individual and small-group markets in states in which a CO-OP is licensed, given that exact standard is almost impossible to prospectively predict on an annual basis.

Finally, comments were requested about whether, under appropriate circumstances, restrictions should be loosened to allow for-profit or non-consumer-operated entities that are non-CO-OP issuers to buy or convert policies in connection with the wind-down of a CO-OP. In the preamble to this interim final rule, CMS notes that in the appropriate circumstances to preserve coverage for enrollees upon the insolvency of the issuer, it could be appropriate for a CO-OP to elect to enter into such a transaction. Over the past few years, NAHU members have helped hundreds of thousands of consumers from failed CO-OPs obtain new coverage options. The market disruption and consumer disservice the failure of so many CO-OPs has created cannot be understated. There have been severe financial and choice consequences for consumers, and the health insurance agents and brokers that have led consumers through these challenging times have suffered financial consequences as well. It is NAHU's view that anything CMS can do to help preserve coverage choices and financial stability for CO-OP enrollees when they are facing the financial insolvency of their issuer would be beneficial and that CMS should investigate all such options in future rule-making.

NAHU sincerely appreciates the opportunity to provide comments on the interim final rule and we look forward to working with you and your staff on the implementation of its provisions. If you have any questions or need more information, 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 Trautwein". The signature is written in a cursive style with a large, looping initial "J".

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