



March 7, 2017

VIA ELECTRONIC SUBMISSION

Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-9929-P
P.O. Box 8016
Baltimore, MD 21244-8016

RE: Patient Protection and Affordable Care Act; Market Stabilization [CMS-9929-P]

The Medicare Rights Center (Medicare Rights) is pleased to submit comments in response to the proposed rule entitled, "Patient Protection and Affordable Care Act; Market Stabilization." Medicare Rights is a national, nonprofit organization that works to ensure access to affordable health care for older adults and people with disabilities through counseling and advocacy, educational programs, and public policy initiatives. We provide services and resources to nearly three million people with Medicare, family caregivers, and professionals each year.

Please note that we are extremely disappointed in the truncated timeline for comment on the proposed rule. We are submitting limited comments at this time; however, given a full comment period, we expect that we could have submitted more complete comments on these important issues.

For additional information, please contact Stacy Sanders, Federal Policy Director at SSanders@medicarerights.org or 202-637-0961 and Julie Carter, Federal Policy Associate at JCarter@medicarerights.org or 202-637-0962.

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

Guaranteed availability of coverage: CMS proposes allowing issuers to require individuals who owe issuers for past-due premiums to pay those premiums before gaining coverage. While we understand the logic behind this change, it creates significant problems for enrollees, especially those who are low income and in rural areas with little plan competition. This proposal appears likely to curtail enrollment instead of stabilizing the market, and it appears likely to run afoul of the underlying Affordable Care Act (ACA) statute which guarantees availability of coverage. If it must be implemented, we urge strong consumer protections such as assurances that marketplace enrollees will be fully educated and informed on this issue, will have the chance to appeal any issuer action, and will have the opportunity to request waivers for special circumstances, hardship, and lack of competition.

Open Enrollment Periods: CMS proposes to shorten the open enrollment period one year earlier than initially planned. We believe this proposal will serve to under-enroll younger people, thus creating precisely the market conditions this rule aims to alleviate. In addition, past experience shows that when there is high volume on the

exchanges, many people encounter congestion on the sites, or cannot get the personalized help they need from Navigators and brokers. We are also concerned that the current ambiguity and confusion in the market could lead to more people missing the opportunity to enroll, which will lead to weakened markets. Because of these issues, we oppose this change and encourage CMS to continue to use a longer enrollment period for at least several years.

Special Enrollment Periods (SEPs): CMS proposes changes to several SEPs which we believe will work in opposition to the purpose of the rule. These changes create additional burdens for potential enrollees, and may result in diminished uptake of marketplace coverage. Recent SEP changes impacted younger consumers disproportionately¹, which means a further degradation of the risk pool. In general, the SEP changes unreasonably restrict people who lack coverage from gaining coverage—which runs counter to the goals of the ACA. Because of these issues, we oppose these changes, and we encourage CMS to make available clear data on SEP usage.

Continuous Coverage: CMS is considering new proposals to promote continuous enrollment. We consider these proposals to be a return to pre-ACA rules, which were inadequate to create markets where individuals could get sufficient health care coverage. As such, we oppose these changes. As with the past-due premiums, we expect these rules would run afoul of the guaranteed availability statute. They also appear to run counter to the overarching purpose of the proposed rule, namely to stabilize the individual market.

Actuarial Value: CMS proposes extending the permitted *de minimis* variation in actuarial value. This change would lead to millions of Americans who do not qualify for cost-sharing reductions seeing higher premiums to keep the same coverage. If they could not afford the higher premium, they would have lower quality coverage with higher out-of-pocket expenditures. We oppose proposals that shift costs in this way. We are also concerned that such a change no longer qualifies as a *de minimis* variation. The purpose of the metal tiers was to create apples-to-apples comparisons of plan coverage and quality and the proposed variation runs counter to that purpose.

Network Adequacy: CMS proposes putting states into the position of assessing network adequacy. Yet, by reducing federal oversight, this rule is likely to result in even narrower networks. We are very concerned about the impact of narrow networks on consumers. When consumers have few options, they will likely have to endure longer travel and wait times to access care. Because of this risk, we oppose this proposal.

Essential Community Providers: CMS proposes to reduce the requirement for issuers to contract with Essential Community Providers in their service areas from 30% to 20%. This is a concerning change. The 30% threshold was already quite low, and reducing the requirement would likely allow a narrowing of networks. As with changes to the network adequacy requirement, this proposal would lead to shifting costs to consumers who will have fewer options and will likely have to endure longer travel and wait times to access care. We oppose proposals that will lead to narrower networks and higher costs and burdens on consumers.

¹ Centers for Medicare and Medicaid Services, *Pre-Enrollment Verification for Special Enrollment Periods* (December 2016), available online at: <https://www.cms.gov/ccio/resources/fact-sheets-and-faqs/downloads/pre-enrollment-sep-fact-sheet-final.pdf>.