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December 29, 2020

Seema Verma
Administrator
Centers for Medicare & Medicaid Services
200 Independence Avenue S.W.
Mail Stop 314G
Washington, DC 20201

Re: Comments on Notice of Proposed Rulemaking, Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2022 and Pharmacy Benefit Manager Standards; Updates to State Innovation Waiver (Section 1332 Waiver) Implementing Regulations, CMS-9914-P

Dear Administrator Verma:

Thank you for the significant work that the Centers for Medicare & Medicaid Services (CMS) has taken, along with the Departments of Labor and the Treasury, in expanding health reimbursement arrangements (HRAs), and most importantly in the creation of individual coverage HRAs (ICHRAs). The health coverage preferences of American workers vary widely based upon many factors, including age, current and anticipated family status, financial circumstances, and expected health care needs. The creation of the ICHRA was a significant step to expand American workers choice and control over their health insurance and health care expenses. ICHRAs allow working Americans and their families to choose coverage that better meets their needs and potentially save the unused ICHRA to meet future needs. ICHRAs are already being used by many employers to offer coverage to employees. We estimate that that there will probably be a few hundred thousand people enrolled in the individual market using an ICHRA next year. The Treasury Department modeled the effect of the rule and expects that in about five years, 800,000 employers will offer an ICHRA and more than 11 million individual market enrollees will be utilizing an ICHRA.

The individuals who are jointly submitting this comment represent a variety of companies and other organizations working hard to create a vibrant ICHRA market by easing employers' ability to offer ICHRAs and employees' ability to use an ICHRA to enroll in coverage. In addition, we are in the process of forming a non-profit advocacy organization to promote education and awareness, as well the expansion of ICHRAs to improve the stability and affordability of individual health coverage. Toward that end, we are pleased to offer the following comments to CMS on the Proposed Notice of Benefit and Payment Parameters (NBPP) for 2022 (hereinafter, "the proposed rule").

The proposed rule contains changes described below that would help employees who have been offered an ICHRA as well as make it more likely that employers will offer ICHRAs by easing a key operational barrier. We support these proposals and encourage the Departments to adopt these changes as soon as practicable.

Direct Enrollment Entity Plan Display Requirements

CMS proposes to amend the display requirements for direct enrollment entities under §155.221(b)(1), (b)(3), and (c)(1) to improve the shopping experience for individuals, including those whose employers offer an ICHRA along with the opportunity to make salary reduction contributions through a cafeteria plan under section 125 of the Internal Revenue Code. The introduction of ICHRAs increases the importance of off-Exchange coverage since section 125 of the Internal Revenue Code currently allows employees to use cafeteria plan salary reduction contributions only for the purchase of an off-Exchange plan. The proposed rule would permit the website pages of direct enrollment entities to display both Exchange and off-Exchange qualified health plans (QHPs), so long as Exchange plans are clearly distinguished from off-Exchange plans through which the advance premium tax credit (APTC) and cost-sharing reduction (CSR) payments are not available. The proposed rule also requires that the displayed information make clear that the APTC and CSR payments are only available on-Exchange, that the APTC is not available for an employee who is offered an ICHRA that is affordable or who accepts an ICHRA even if it is not affordable, and that a salary reduction arrangement may only be used for coverage purchased off-Exchange. We believe that these proposals will help consumers purchasing individual coverage by making the choices as clear and understandable as possible. Moreover, these proposed changes will aid in the growth of, and affordability of, coverage in the individual market.

FFE, SBE-FP, and State Exchange Direct Enrollment Options

The Notice includes the proposed addition of §155.221(j) to establish a process for a State Exchange or a State with a Federally-facilitated Exchange or a State Exchange on the Federal Platform to elect a new Exchange Direct Enrollment option in which a state can request to allow private sector entities (including QHP issuers, web-brokers, agents, and brokers) to operate enrollment pathways through which consumers can apply, receive an eligibility determination from the Exchange, and purchase individual market QHPs offered through the Exchange with or without APTC and CSRs, if otherwise eligible. We support the general direction of this proposal as it will allow consumers more options for how to enroll in coverage although we are mindful that states that opt for this enrollment option will need to ensure that the additional options do not create undue complexity or make it more difficult for individuals, including those eligible for Medicaid and CHIP, to enroll in coverage that is best for them. Overall, we believe it will further the use of ICHRAs by employers as it will offer expanded pathways for employees who are offered an ICHRA to shop for and enroll in coverage and make more informed decisions regarding their insurance. Given the plan display requirements implemented under the proposed amendments to §155.221(b)(1), (b)(3), and (c)(1), we believe that program integrity will be preserved, while giving states much needed flexibility to enhance the coverage needs of their residents.

Enrollment process for Qualified Individuals (§ 156.1240)

The Notice proposes to add a new paragraph (c) under § 156.1240 that would require individual market QHPs to accept payments on behalf of enrollees who receive an ICHRA or Qualified Small Employer HRA (QSEHRA). QHP insurers would have to accept premium payment from an ICHRA or QSEHRA when made using a method described in §156.1240.¹ This could include employee-

¹ (a) **Premium payment.** A QHP issuer must -

(1) Follow the premium payment process established by the Exchange in accordance with § 155.240.

initiated payments made through pre-paid debit cards or direct payments from an employer or other plan sponsor (or from a third-party administrator who facilitates the payments on their behalf). CMS should finalize this proposal as doing so will make it easier for employers and employees to benefit from the expanded choice offered by the ICHRA. This would help overcome confusion from issuers about whether they must accept payment from the ICHRA or QSEHRA—an obstacle to the initial implementation thus far. We have observed that this is a particular problem if employees are offered an ICHRA or QSEHRA in the middle of the year. As you know, this offer opens a special enrollment period for employees to use their ICHRA to purchase coverage, yet some issuers have refused to accept payment from the ICHRA. By finalizing this aspect of the rule, CMS would clear up this issue and ensure that individuals offered an ICHRA are able to enroll in an individual market plan.

In addition, we agree with CMS that many “individual coverage HRAs and QSEHRAs prefer to make aggregate payments on behalf of multiple employees to a QHP issuer” and applaud CMS’ intention to “encourage QHP issuers to work with employers and administrators of individual coverage HRAs and QSEHRAs to facilitate this method of payment.” We encourage CMS to require QHP issuers to accept this method of payment through formal rulemaking, as the ability of ICHRAs and QSEHRAs to make aggregate payments in this way would be similar to employers’ and plan sponsors’ experience in the large and small group coverage market and would create efficiencies that would boost the growth of, and affordability of, individual market coverage.

In closing, we thank you for the opportunity to comment on the proposed rule and for your continued work to expand employers’ flexibility in offering coverage and employees’ control over their health insurance. We respectfully urge you to finalize the proposals discussed above.

Sincerely,

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CEO, Take Command Health

John Kelly
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General Counsel and Vice-President for Product Design, One Bridge Benefits

Eric Allen
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(2) At a minimum, for all payments in the individual market, accept paper checks, cashier's checks, money orders, EFT, and all general-purpose pre-paid debit cards as methods of payment and present all payment method options equally for a consumer to select their preferred payment method.

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