January 30, 2023

Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS–9899–P
P.O. Box 8016
Baltimore, MD 21244–8016

Filed electronically at https://www.regulations.gov

Re: Comments on Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2024; CMS-9899-P

Dear Administrator Chiquita Brooks-LaSure:

MNsure, Minnesota's state-based health insurance exchange (SBE), greatly appreciates the opportunity to comment on the proposed Notice of Benefit and Payment Parameters for 2024. MNsure's mission is to ensure that all Minnesotans have the security of health insurance, and as an SBE, MNsure connects hundreds of thousands of Minnesotans with access to affordable, comprehensive health insurance coverage each year, contributing to the overall health and well-being of communities across the state.

Generally, we support CMS' efforts in the proposed rule to provide quality, affordable coverage to consumers and opportunity for greater flexibility for state-based exchanges. Also, while we support CMS' intent to ensure program integrity, we reiterate previously expressed concerns that the proposed improper payments assessments would be duplicative of oversight activities to which exchanges are currently subject, such as the annual programmatic audits required by 45 Code of Federal Regulations §155. 1200 (c). We urge CMS to consider making the programs complementary by, for example, removing the requirement for the programmatic audit to examine eligibility determinations and the calculation of APTC which are also reviewed during the improper payment assessments. Such a change would remove duplicative testing and reduce programmatic audit costs for state-based exchanges.

Improper Payment Pre-testing and Assessment

If CMS plans to move forward with proposals in §§ 155.1500-155.1515, Improper Payment Pre-Testing and Assessment (IPPTA) for State Exchanges, MNsure offers recommendations to streamline the data used in the audit. Specifically, it is unclear why SBEs need to submit system business rules for the calculation of eligibility and APTC. Although the various SBEs operate different eligibility platforms, we apply the same eligibility rules. Rather than review the system business rules, we recommend CMS compare the output of these platforms (i.e., eligibility

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determinations and APTC amounts related to specific applicant data) to independently generated eligibility results using the same applicant data and have the SBM explain any discrepancies in the results.

Additionally, we request clarification of the term “Entity Relationship Diagram.” The definition that follows this term appears to describe data elements of a QHP application and it is unclear what an entity relationship diagram would have to do with such data elements.

Lastly, regarding §155.1510 section C-(Data Submission), certain plan data, such as the second lowest cost silver plan premium available in the household’s zip code, will be critical to reviewing the calculation of APTC. Please clarify how these plan data will be collected by CMS for the sample set being tested.

Eligibility standards

MNsure supports the policy change that would restrict loss of APTC eligibility to enrollees who fail to reconcile (FTR) on federal tax returns for two consecutive years. This policy helps consumers within the current context of ongoing IRS capacity issues in processing tax returns timely and providing up-to-date and accurate FTR codes to exchanges, which can result in consumers losing APTC erroneously.

MNsure also supports the continued suspension of FTR processing until the IRS can make system changes to provide exchanges with both a single year FTR and a 2-year consecutive FTR code, allowing exchanges to continue to provide reminder notices for receipt of a single year's FTR code vs. eligibility change for a 2-year consecutive FTR. Providing consumers a reminder notice that reinforces the requirement to reconcile and associated consequences of failing to file taxes will minimize the consumers risk of incurring a large tax liability. To effectively implement these code changes, MNsure requests state flexibility to accommodate needed IT system deploy timelines

Lastly, we request clarification regarding the proposed January 1, 2024, effective date of this change within context of IRS not reconciling 2020 PTC, and suspension of FTR processing for plan years 2021, 2022 and 2023. It is our understanding that the first plan year in which a consumer could lose FTR under this proposal would be for plan year 2025, which would represent a failure to reconcile for tax years 2022 and 2023.

Eligibility verification

MNsure supports the proposal to provide an automatic 60-day extension when the current reasonable opportunity period (ROP) expires. However, we will need flexibility for state-based

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exchanges to implement this IT functionality as either a single 150-day ROP or a 90-day ROP followed by a 60-day period.

MNsure supports the proposal to allow exchanges to accept a consumer's attestation of projected annual income (PAI) when tax return data is not available.

The proposed rule states that under § 1411(c)(3) of the ACA, only data from IRS is required as reference to determining income inconsistency and that there are no reliable and accurate income data sources legally available to an Exchange that provide quality data for purpose of triggering an income data matching issue (DMI). It continues by saying that income data from other electronic data sources can continue to be used by Exchanges to verify income when attested PAI is more than a reasonable threshold below the income amount provided by the IRS, or when IRS data cannot be requested. Please clarify how exchanges can use an electronic data source other than IRS to verify income, but not to generate an income DMI.

Enrollment renewals and special enrollment periods

MNsure is generally supportive of the proposal for re-enrollment of enrollees who are eligible for cost-sharing reductions (CSR) from a bronze plan to a silver-CSR plan. However, we must continue to have state flexibility when determining reenrollment options to implement based on our state's IT system capability and state-specific marketplace dynamics.

We would like to request clarity from CMS on downstream impacts of the proposed re-enrollment hierarchical changes. For example, will issuers be allowed more flexibility in populating or the timing for mailing the Federal Standard Renewal and Product Discontinuation Notices to account for proposed re-enrollment changes?

MNsure supports the proposed changes related to special enrollment periods but continues to request state flexibility to implement these provisions as consistent with experiences in the state's individual market. Specifically, we support permitting exchanges to offer early effective dates for mid-month prospective loss of minimum essential coverage (MEC); and an extended SEP window for consumers who lose Medicaid to align with the Medicaid reconsideration period. MNsure asks for specific authority to allow for a SEP window beyond 90-days to support states where the Medicaid reconsideration period goes beyond 90-days. In Minnesota the Medicaid reconsideration period is four months. MNsure supports CMS review of all appropriate regulations defining a coverage month and associated eligibility rules for advanced premium tax credits.

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Enrollment termination

MNsure supports the proposal to prohibit issuers from terminating dependent coverage during the plan year when the dependent turns 26-years of age. This is consistent with our current voluntary agreement with issuers who offer plans through MNsure.

Issuer Standards

Regarding offering standardized plan options and non-standardized plan limits, Minnesota has not yet implemented standardized plans, but it is an area of interest we are considering for future years. We are in favor of the direction of CMS' proposal support simplifying and enhancing the shopping experience for all consumers. Finally, MNsure supports the proposals in § 156.210 related to stand-alone dental plans use of enrollee age on the effective date and guaranteed rates. These are consistent with our current approach and would ensure uniformity.

Thank you for your consideration of our comments on these important issues effecting health insurance options for Minnesotans.

Sincerely,

Nate Clark
CEO

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