



December 21, 2015

Center for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-9937-P
P.O. Box 8016
Baltimore, MD 21244-8016

Re: RIN 0938-AS57 “HHS Notice of Benefit and Payment Parameters for 2017”.

Dear Secretary Burwell:

Thank you for the opportunity to provide comments on the proposed rulemaking “*Patient Protection and Affordable Care Act: HHS Notice of Benefit and Payment Parameters for 2017*”. As a state-based Exchange MNSure administers Minnesota’s health insurance marketplace, allowing access to coverage and care for hundreds of thousands of Minnesotans. Below we provide comments to the proposed Rule for areas in which we support proposed changes, have concerns, or request additional clarification.

Navigator and Non-Navigator Assistance Personnel

Requirement to target assistance to underserved and/or vulnerable populations: §155.210(e)

MNSure fully supports ensuring Navigators provide the targeted assistance needed to serve underserved and/or vulnerable populations. The requirements as proposed by HHS are consistent with current Navigator requirements in Minnesota. We also think that the individual Exchanges are in the best position to identify the underserved and vulnerable populations in their respective service area most in need of targeted assistance and who would most benefit from targeted support. MNSure agrees with the HHS proposal to not define these populations for Exchanges, but allow each Exchange to define and identify those populations.

Expand Navigator duties to include other assistance, including post-enrollment: §155.210(e)(9)

MNSure agrees that awareness of the topics listed by HHS as additional Navigator duties are important – the process for filing an appeal; process for understanding and filing an exemption; access to and better understanding of the 1095-A form and advance premium tax credit reconciliation process; and basic concepts on how to use benefits and coverage. MNSure views it as our role as the Exchange to train and prepare navigators to have a basic understanding of these concepts, but not to require them as duties of all Navigators. In many cases, there are other organizations (which may or may not be Navigator organizations) that may be better suited to provide the level of assistance reflected in the proposed Rule. For example, a Navigator in one organization might refer a consumer requesting assistance in filing an appeal to a Navigator in a legal aid organization with specific and applicable expertise. MNSure encourages this type of referral and collaboration. While we agree that awareness and understanding of the types of assistance noted by HHS is an important component of consumer assistance, we do not agree that these should be required duties.

Furthermore, the addition of these requirements may limit our ability to continue to work directly with those communities and/or organizations best able to provide application and enrollment assistance services to the hardest to reach uninsured. It would potentially then conflict with the proposed requirement to target assistance to the underserved and vulnerable populations as discussed above. The Navigators we partner with include a diverse array of organizations. Requiring these specific additional duties would presumably deter some of these organizations from taking on the Navigator role because the additional time commitment and staff training would exceed their resource capacity. Our comments on this topic are in support of allowing the Exchange and their respective states to have flexibility in determining the different levels of service that consumer assistance partners provide.

MNSure also agrees that Navigators should refer consumers needing tax advice to a tax professional. This is currently a MNSure requirement and fully covered in our Navigator training.

Other Navigator duties to consider, including specific language in the Rule:

In response to HHS request for comments on whether to make interpretations on Navigators education of consumer rights with respect to coverage available through an Exchange, assistance of consumers with questions on premium payment, and/or requirement to provide referrals for certain post-enrollment issues including assistance with coverage claims denials explicit as either required or permitted duties: MNSure believes that Navigators should be permitted, but not required to educate consumers about their rights with respect to coverage available through an Exchange and also assist consumers with questions about paying premiums. We believe that Navigators may be permitted to help consumers obtain assistance with coverage claims denials, but this should not be required. Helping Minnesota consumers obtain assistance with coverage claims denials is more commonly provided by specific state agencies required to be available to consumers seeking this assistance or by the broker working with these consumers. Adding any of these duties as a requirement could discourage organizations best able to reach underserved populations from partnering with an Exchange as a Navigator organization. MNSure supports ensuring consumers have access to this assistance by training Navigators on how to refer consumers to the most appropriate resources.

Navigators to complete training prior to performing outreach and education: §§155.205(d) & 155.215(b)(1)(i)

Navigators in Minnesota must complete all certification requirements before identifying themselves as Navigators, whether conducting outreach or assisting consumers with the application and enrollment process. MNSure recognizes the intent of this proposed requirement, but we do not see how the component on not conducting outreach until certification is complete could reasonably be enforced.

Promotional items and gifts: §§155.210(d)(6) & 155.225(g)(4)

MNSure requests further clarification on how HHS will define “products or services of a third party”. We believe this could potentially prevent Navigators from providing beneficial information on other services for low-income enrollees. For example, a Navigator organization may not be allowed to share information on free tax preparation services offered by another non-profit organization or free health services available to individuals not eligible for coverage through MNSure.

MNSure agrees that Navigator organizations should be prohibited from providing gifts and other promotional items to applicants or potential enrollees to induce enrollment. However, current Minnesota law allows incentives upon enrollment. (Minnesota Statute 256.96). MNSure agrees that Navigator organizations be allowed to provide small gifts as part of creative outreach and education strategies, providing these items are of nominal value. We agree that reimbursement of legitimate expenses such as travel and postage, as needed to provide application assistance to the consumer, should not be considered gifts.

Certified Application Counselors – Report performance data to the Exchange: §155.225(b)(1)

MNSure trains and certifies all Certified Application Counselors (CACs), and maintains data on the number of CAC organizations and certified CACs. MNSure requires CACs to enter their CAC certification ID when assisting a consumer with an application. Therefore, the proposed requirement for CAC organizations to report this data is seemingly not feasible or required in Minnesota. Most CAC organizations in Minnesota are hospital providers or organizations assisting their own consumer base. They are not compensated by MNSure and not listed in our public assister directory.

New Exchange Standards for Web Brokers

Web brokers and issuers direct enrollment into QHPs: 155.220(c)(1)

MNSure does not support HHS proposed change to allow direct enrollment and eligibility determination by web brokers or issuers through their own websites. It is our belief that this proposed change has the potential to negatively impact the overall quality of the enrollment process and undermine the role of the Exchange as an objective venue for consumer shopping and decision support across all available plan options. MNSure has no financial incentive in which plans consumers select as they shop on our site, or in the decision support information we provide to shoppers. Our concern with this proposed change is that both web brokers and issuers may not be fully impartial, but will have financial incentives that impact and/or limit the information and guidance they provide to consumers.

MNSure has positive and strong partnerships with the local brokers we work with. Those broker partners provide high quality services to MNSure enrollees and work closely with us to address issues and educate the consumers they assist. Our reliance on the high quality services provided by those partners within the current application and enrollment structure is key to MNSure's success in our marketplace. Our experience is that our broker partners provide pertinent and comprehensive consultation, with a focus on helping consumers select the plan most appropriate for both their health care coverage needs and their budget. We are very concerned about the loss of objectivity in allowing potentially biased web brokers and/or issuers to directly enroll and determine consumer eligibility for a QHP, and the additional confusion and potential health care costs that could present for consumers.

We look forward to the important discussion of required quality and performance standards related to the consumer decision support and plan detail guidance that would be required of web brokers and/or issuers if allowed to offer direct enrollment services. We believe clarity on what the standards include, and strict monitoring of those consumer service requirements will be critical in determining the value of HHS proposed change and in minimizing the risk of consumers unknowingly directed away from the Exchange entirely. If HHS does choose to move forward with this proposed change, we urge HHS standards to also support integrating web broker enrollment into the Exchange's education, enrollment, and consumer support initiatives.

Our broker partners also have access to MNSure's network of navigators who are highly trained to provide support for those Minnesota consumers determined eligible for state public programs. Allowing web brokers and issuers to directly determine eligibility and enroll consumers has a strong potential to undermine the network of brokers and navigators that MNSure trains to offer program-specific assistance and facilitate the "no wrong door" approach to supporting consumers across both commercial plans and public program eligibility.

Specific to HHS proposed option to allow consumers to remain on the web broker or issuer's website to complete the eligibility and enrollment process, MNSure seeks clarification of whether HHS anticipates eligibility information would then be provided to the web broker or issuer from the Exchange or from the

federal hub. We believe the latter option would be especially problematic as the FFM system does not include eligibility rules to correctly calculate Minnesota-specific eligibility factors. Minnesota has enacted the Basic Health Plan (BHP). As a result, individuals at up to 200%FPL are ineligible for a QHP, but are instead eligible for Minnesota BHP enrollment. MNsure offers consumers a single application for all health coverage programs, including Medicaid, BHP, and QHP. If HHS is proposing that eligibility information would be provided to the web broker or issuer from MNsure (versus federal hub), we would anticipate not only the need for extensive training of those enrolling entities, but also significant operational barriers. The complexity of integrating the MNsure multi-program application as needed to support eligibility information sharing for direct enrollment would be not only costly but seriously delay existing technology infrastructure development of critical functionality.

Eligibility Determinations for Exchange Participation and Insurance Affordability Programs

Notice of employee's eligibility for APTC and CSR to an employer: §155.310(h)

MNsure agrees that while this approach makes good sense from a policy perspective, the Exchange will need adequate time to operationalize this change and update the Employer Notice trigger in our IT and enrollment systems. MNsure recommends making this optional for SBMs to allow development and testing time needed to make these operational changes.

Verification process for eligibility for insurance affordability programs: §§155.320(c)(3)(vi) & 155.320(d)

MNsure supports HHS proposed flexibility for the Exchange to implement a "reasonable standard" to determine when projected annual income (PAI) is reasonably compatible with electronic evidence. This would lessen the burden on consumers to provide additional documentation and also lessen the Exchange's operational burden to process verification documentation.

MNsure also supports HHS proposed changes to random sampling requirements, affording a delay in implementation of this requirement for those SBMs not having at least one electronic source. MNsure does not currently have a system of electronic verification of ESI eligibility and coverage and we have no plans in place for development and implementation of that system. We anticipate this will be an extremely difficult service to develop and implement. Due to the complexity of implementing ESI verification for the consumer, employer, and SBM, MNsure requests additional flexibility and time to develop and implement alternative verification procedures. Because of the burdensome process of verification of a statistically significant random sample, one approach could be to limit verification to those enrollees receiving APTC/CSR and at risk to incorrectly receive the subsidy.

Medicare Notices:

In response to HHS request for comments, MNsure has a strong preference to continue to rely on our SHIP (State Health Insurance Assistance Program) agency to advise enrollees and applicants of their health coverage options in light of existing or upcoming Medicare eligibility. Currently, the MNsure online application and public website direct applicants and consumers to our state's SHIP if they have questions about Medicare or are looking for a Medicare-gap plan. Our SHIP agency directs consumers back to MNsure/the SBM if, after consultation, coverage through MNsure is the most appropriate option for them.

Exchange Functions in the Individual Market: Enrollment in QHPs

Annual eligibility redetermination: §155.335(j)

In response to HHS request for comments on FFM offering enrollees the choice of an alternative re-enrollment hierarchy at the time of initial enrollment: Minnesota supports maintaining this alternative hierarchy as optional for implementation by a SBM. SBMs would be able to offer this option depending on factors specific to the Exchange – including consumer base, consumer demand, carrier changes, and any applicable state laws. Extensive consumer and assister education would be necessary to ensure understanding of the option and implications of selecting the hierarchy, including changes in plans, benefits, and provider networks. This option would also require considerable IT functionality changes and new development.

Enrollment of qualified individuals into QHPs – Binder and Premium payments: §155.400

In response to HHS request for comments, MNsure supports proposed changes allow SBMs to follow FFM policy and proposed changes to binder payments for prospective coverage, as well as proposed deadline for premium payments, and premium payment threshold policies only if they are optional and not a requirement.

Annual Open Enrollment Period: §155.410

MNsure supports proposed dates for 2017 open enrollment time period and coverage effective dates to remain consistent with the 2016 open enrollment period and effective dates. For 2018 and beyond, we support HHS continued consideration of the option to establish open enrollment time periods contained in the same calendar year, and ending before the end of the year prior to the pending benefit year, especially if that would support ongoing consistency for all stakeholders. We recognize the need for additional analysis and input on length and start/end dates for future open enrollment period options, and our primary concern looking forward is that Exchanges, issuers, and consumers have predictable and consistent timing from year to year.

Termination of Coverage: §155.430

MNsure has concerns specific to operationalizing retroactive termination requests:

As provided in the proposed 155.430(b)(1)(iv)(A), when the consumer or SBM can document that the enrollee attempted to terminate coverage, MNsure currently works with the carrier to terminate the coverage retroactively based on the date the consumer attempted to terminate.

For all provisions, we agree that if enrollees are allowed to request retroactive termination or cancellation of their coverage, there must be a time limit for such a request. But the proposed 60-day period after the enrollee discovers the error may be too broad and result in requests to retroactively terminate or cancel enrollments going back many months. Another option may be 60-days from the date the enrollee should have reasonably discovered the error. However, with either time limit the SBM and enrollees will be then required to review and assess these cases on a case-by-case basis. Applying this guidance consistently for all consumers would be challenging given the SBM must determine intent on whether they would have terminated or cancelled QHP coverage.

With regard to assessing fraudulent activity under the proposed 155.430(b)(1)(iv)(C), if an enrollee did not wish to enroll, they could fail to pay the binder payment. We question what types of scenarios HHS has in mind that would give rise to the need for this provision.

And with regard to erroneous enrollments, MNsure has worked with carriers offering coverage in Minnesota and interprets the SEP for Exchange error and inaction as permitting us to retroactively terminate the QHP, and allow for a retroactive plan change in order to remedy the effects of Exchange

error. Therefore, MNsure does not see a need for these proposed requirements to allow enrollees to request retroactive termination dates.

Employer appeals process: §155.555

MNsure supports HHS proposal to amend implementation of the employer appeal decision by adding an additional option to “promptly notify” the employee of the requirement to report changes only if it is optional for SBMs and not a requirement.

Exchange Functions in the Individual Market: Eligibility Determinations for Exemptions

Eligibility standards for exemptions: §155.605

MNsure supports proposed streamlining of the exemption determination process for members of health care sharing ministries, members of Indian tribes, and incarcerated individuals. MNsure supports the maximum time covered by the general hardship and agrees the 3-year timeline is reasonable for submitting new evidence with a request to continue the exemption. MNsure finds the list of hardship guidance helpful and supports it being an illustrative, rather than exclusive, list.

Eligibility process for exemptions: §155.610

MNsure supports HHS proposed process for handling incomplete exemption applications submitted to the Exchange as similar to handling of incomplete applications for coverage.

Verification process related to eligibility for exemptions: §155.615

MNsure supports verifying continuation of hardship if it is required only to continue the general hardship past the maximum exemption period for minimum burden to applicant.

Options for conducting eligibility determinations for exemptions: §155.625

MNsure is in full support of the HHS proposed option to remove the deadline for SBMs to process exemption applications and rely on FFM exemption determinations indefinitely.

Thank you for the opportunity to provide comments on the proposed Rule, and for your consideration of our comments. As a state-based Exchange, MNsure looks forward to ongoing partnership with you as the implementation of the Affordable Care Act continues.

Sincerely,



Allison O'Toole
MNsure Chief Executive Officer