



December 21, 2012

Centers for Medicare & Medicaid Services  
Department of Health and Human Services  
Attention: CMS-9980-P  
P.O. Box 8010  
Baltimore, MD 21244-8010

Submitted Electronically: <http://www.regulations.gov>

**Re: CMS-9980-P, Patient Protection and Affordable Care Act; Standards Related to Essential Health Benefits, Actuarial Value, and Accreditation**

These comments are submitted to the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS), pursuant to CMS-9980-P, Patient Protection and Affordable Care Act; Standards Related to Essential Health Benefits, Actuarial Value, and Accreditation; published in the Federal Register on November 26, 2012, on behalf of the Small Business Coalition for Affordable Healthcare (the Coalition).

Representing more than 150 of the country's largest, oldest, and most respected small business associations, the Coalition has spent more than a decade working to increase access to and affordability of private health insurance. The Coalition's membership is diverse and includes small business organizations in the agricultural, automotive, construction, food services, floral, lodging, manufacturing, wholesale, retail, rental, entertainment, and houseware communities. As part of the nation's leading small business coalition, our members actively participated in the healthcare debate and advocated for solutions that would promote choice, enhance competition for private insurance, and increase the overall affordability of health insurance for our country's job creators: America's small businesses.

The Coalition appreciates the opportunity to comment on the proposed rule. While the short timeline for comment and timing of the release of the proposed rule are concerning, it is important to garner input from key stakeholders like the small employer community. Because the Essential Health Benefits (EHB) package only impacts health insurance

products in the individual and small group health insurance markets, it significantly impacts self-employed individuals and small employers.

Health insurance affordability means access to healthcare services for small business owners, their employees, and self-employed individuals. Health insurance costs for small businesses have risen 96 percent in the last decade, an increase outpacing wages and inflation.<sup>1</sup> Rising health insurance costs hurt both small business owners and their employees. Higher health insurance premiums mean fewer resources for business expansion, investment, and hiring for employers. For employees, wage increases must instead be devoted to increased benefit costs.

The Coalition recommends that the Secretary of Health and Human Services (the Secretary) maintain and expand statutory authority in the final rule relating to reasonably adjusting deductible limits and allowing employer contributions to certain consumer-driven health insurance arrangements to be counted toward actuarial and minimum values. Additionally, the Coalition recommends the Secretary estimate the premium impact the proposed rule will have on products offered in the individual and small group markets and update the regulatory impact and flexibility analyses to reflect the increase in health insurance costs for small businesses and self-employed individuals. Finally, the Coalition recommends the Secretary provide at least 60 days to comment on this proposed rule and future proposed rules in order to allow sufficient time for thorough analysis by the small business community.

### **§ 156.130 Cost-sharing requirements.**

#### *Background*

Section 156.130 of the proposed rule interprets that the annual limitation on deductibles for plans in the small group market may be adjusted if that plan may not reasonably reach the actuarial value of a given level of coverage without exceeding the annual deductible limit. Initially, it may be difficult for some bronze tier plans to meet their actuarial value target and the annual deductible limits. This will certainly occur in future years as health inflation continues to increase and the deductible limits remain at the statutory levels.

#### *Recommendation*

The Coalition appreciates the Secretary complying with §1302(c)(2)(C) of the law dealing with limits on deductibles for employer-sponsored plans offered in the small group market that reads, “the limitation under this paragraph shall be applied in such a manner so as to not affect the actuarial value of any health plan, including a plan in the bronze level.” The Coalition recommends that this language, as written in the statute, be maintained in the final rule.

The Coalition also recommends that a specific variation threshold not be identified in order to maintain flexibility in the “reasonableness” definition. The more limitations placed on a “reasonableness” definition, the fewer opportunities to purchase and provide

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<sup>1</sup> <http://ehbs.kff.org/pdf/2012/8345.pdf>

affordable small group health plans to employees that comply with the actuarial value thresholds.

**§ 156.135 AV calculation for determining level of coverage.**

*Background*

Section 156.135 of the proposed rule interprets employer contributions to health savings accounts (HSAs) and amounts made available under health reimbursement arrangements (HRAs) for the current year in the small group market are (1) counted towards the total anticipated medical spending of the standard population that is paid by the health plan; and (2) adjusted to reflect the expected spending for health care costs in a benefit year so that (i) any current year HSA contributions are accounted for; and (ii) the amounts newly made available under an HRA for the current year are accounted for. While nearly all small group health plans meet the 60 percent actuarial value threshold, allowing employer contributions to consumer-driven health insurance products will permit these innovative products to continue to exist.

*Recommendation*

The Coalition appreciates the Secretary's allowance of employer contributions to be taken into account in determining the level of coverage for a plan of the employer, as provided by §1302(d)(2)(B) of the law. The Coalition supports counting amounts made available under HRAs, in addition to employer contributions to HSAs, toward actuarial value.

The proposed rule recognizes that employer contributions to HSAs and amounts made available under HRAs are the equivalent of first dollar coverage toward a deductible as these funds will be used toward meeting the deductible. The Coalition recommends that the final rule explicitly state that the full amount of employer contributions to HSAs and amounts made available under HRAs have the effect of increasing by like amounts the deductible limits in the small group market under §156.130 relating to cost-sharing requirements.

The Coalition also supports the proposal that the AV calculator would include any current year HSA contributions or amounts newly made available under an HRA for the current year as an input into the calculator that can be used to determine the actuarial value of an employer health benefit plan.

Finally, the Coalition supports allowing HSA contributions and amounts made newly available under an HRA to be counted toward actuarial value for self-employed individuals. In the proposed rule, individual and employee contributions would not be counted towards actuarial value. In order to maintain parity, flexibility, and choice for self-employed individuals, the Coalition recommends allowing self-employed individuals' contributions to be counted towards actuarial value and plan design. HHS could work with the Internal Revenue Service (IRS) to allow for this safe-harbor to occur.

## **Regulatory Impact Analysis and Regulatory Flexibility Act.**

### *Background*

The Coalition is very concerned that the regulatory analyses provided in the proposed rule substantially underestimate the impact the proposed rule will have on the premiums of health insurance products purchased by small businesses. These analyses state that the benefits of the EHB justify the costs, but do not recognize that individuals and small employers will face additional costs. HHS concludes, “Therefore, the Secretary certifies that this proposed rule will not have a significant impact on a substantial number of small entities.” While the direct cost of regulation will impact insurers, these costs will be passed along to small business indirectly.

The Secretary estimates the only entities that will see increased costs – due to increased administrative costs, increased enrollment and utilization of services, and supplemented benefits – are health insurance issuers. However, the small business community knows very well that increased mandated benefits, fees, and administrative costs on the small group market are all passed along to customers – small businesses – in the form of higher health insurance premiums. For example, the nonpartisan Joint Committee on Taxation (JCT) has quantified and the nonpartisan Congressional Budget Office (CBO) has also reported that increased fees on the health insurance industry will be passed along in the form of higher premiums.<sup>2 3</sup> The increased costs from supplemental mandated benefits will be passed along in a similar manner.

While many small group health plans will meet the minimum actuarial value threshold, they will not meet the EHB-benchmark threshold. Section 156.110 related to EHB-benchmark plan standards exhaustively describes the necessary supplementation process required to turn a base-benchmark plan into a compliant EHB-benchmark plan. While many small group health insurance products may comply with the base-benchmark plan standards, they will not be compliant with the EHB-benchmark standards.

CBO has revised its estimate on EHB as the package has become more comprehensive over time. In November 2009, CBO wrote, “the greater actuarial value and broader scope of benefits in the legislation would increase the average premium per person in the small group market by zero to three percent.”<sup>4</sup> In March of 2012, after the EHB Bulletin was released, CBO wrote, “CBO and JCT now expect that the scope of benefits that will qualify as allowable health insurance expenses for the purpose of exchange subsidies will be slightly broader than previously estimated.”<sup>5</sup> It is clear that EHB-benchmark plans established under this proposed rule will only become more comprehensive, generous, and expensive with increased state mandated benefits such as coverage for habilitative

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<sup>2</sup> <http://www.cbo.gov/sites/default/files/cbofiles/ftpdocs/107xx/doc10781/11-30-premiums.pdf>

<sup>3</sup> <http://www.slideshare.net/StopTheHit/health-care-analysis>

<sup>4</sup> <http://www.cbo.gov/sites/default/files/cbofiles/ftpdocs/107xx/doc10781/11-30-premiums.pdf>

<sup>5</sup> <http://www.cbo.gov/sites/default/files/cbofiles/attachments/03-13-Coverage%20Estimates.pdf>

services that can be selected and added by states beyond the December 31, 2011 state mandated benefit deadline.

*Recommendation*

The Coalition recommends updating the regulatory analyses to better reflect the impact of the proposed rule on small business. While the direct costs of regulation will fall on the issuers of insurance coverage, HHS should recognize, as nonpartisan scorekeepers have recognized, that these costs will be passed along to small business.

Unfortunately, in the proposed rule, HHS wrote, “we cannot estimate an effect on premiums with precision prior to final state selection of benchmarks.” The Coalition recommends that HHS release a state-by-state premium impact analysis in order to clear up uncertainty about future health insurance costs for small businesses.

Respectfully submitted,

American Council of Engineering Companies  
American Foundry Society  
American Hotel & Lodging Association  
Associated Builders and Contractors, Inc.  
International Housewares Association  
Metals Service Center Institute  
National Association of Wholesaler-Distributors  
National Club Association  
National Federation of Independent Business  
National Restaurant Association  
National Roofing Contractors Association  
Professional Photographers of America