



December 22, 2023

Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-9895-P
P.O. Box 8016
Baltimore, MD 21244-8016

Via [Regulations.gov](https://www.regulations.gov)

To Whom It May Concern:

The following comments on the proposed Notice of Benefit and Payment Parameters for 2025 (Notice), as published in the Federal Register on November 24, 2023, are submitted on behalf of the members of the National Association of Insurance Commissioners (NAIC), which represents the chief insurance regulators in the 50 states, the District of Columbia, and five United States territories.

Additional Required Benefits (Defrayal of State- Mandated Benefits)

The Notice would change Department of Health and Human Services (HHS) policy regarding the requirement for states to defray the cost of state -mandated benefits. Rather than requiring defrayal for state mandates enacted after 2011, it would clarify that no defrayal is necessary for benefits that are included in a state's Essential Health Benefits (EHB)-benchmark plan, regardless of when the mandate was enacted or added to the benchmark . State regulators strongly support this change. While state policymakers must be cognizant of the impact any new mandates could have on premiums and federal tax credits, to arbitrarily limit EHB -benchmark benefits to those enacted before 2011 limits the ability of states to ensure plans meet the current needs of consumers.

In addition to the proposed change, state regulators request written guidance from CMS/CCIIO – in the Payment Notice or other method – on whether a state mandate that refines the definition of an existing EHB benefit is a “new mandate” that must be defrayed by the state.

For example, if a state EHB benchmark covers diagnostic imaging , would a new mandate that requires coverage of breast MRI or ultrasound, in addition to mammograms , be considered a benefit in addition to the EHB ? Or, if the EHB

There are valid operational and consumer protection reasons for states choosing an Open Enrollment period that varies from the Federal dates . While we understand the benefits of having a consistent starting date and a minimum time period, we are not sure these outweigh the benefits of the state-based dates. State regulators encourage CMS to reconsider this proposal and continue to allow SBMs to set the appropriate Open Enrollment dates that best meet the needs of their consumers and markets.

Additional SBM and SBM-Federal Platform (SBM -FP) Requirements

The draft Notice proposes many new minimum standards for SBMs and SBM-FPs. These include: Network Adequacy; new SBMs; centralized eligibility and enrollment platforms; call centers; enrollment entity websites; failure-to-reconcile checks; special enrollment period effective dates (and Open Enrollment dates, as discussed above); incarceration verifications; re-enrollment hierarchies; and data hub fees.

While the proposed Notice discusses the benefits of these standards, it does not provide evidence of why these additional requirements are needed . SBMs are doing an excellent job enrolling and protecting consumers using standards and processes that best meet the needs of their residents . Before adding additional requirements, CMS should provide a clear explanation of why they think current SBM standards and practices are insufficient. State flexibility is the hallmark of the SBM and SBM -FP option and if it is the goal of Federal officials to have more states implement these Marketplaces the implementation of unnecessary requirements should be avoided.

The network adequacy standards, in particular, may be challenging for SBMs and SBM-FPs to develop in time for the proposed effective date of January 1, 2025. Plans for 2025 will be submitted to state and federal regulators for review soon after the 2025 Notice is finalized. States that do not already have them will have little time to promulgate regulations to establish enforceable quantitative network adequacy standards. If this proposal is finalized, we recommend a later effective date.

We support the exceptions process for SBMs and SBM-FPs proposed in the Notice. States should have the opportunity to demonstrate that their

