



NATIONAL HEALTH COUNCIL

National Health Council  
1730 M St NW, Suite 500  
Washington, DC 20036-4561  
(202) 785-3910

## Board of Directors

### **Chairperson**

**Diana Gray, MA**  
Hydrocephalus Association

### **Chairperson-Elect**

**LaVarne A. Burton**  
American Kidney Fund

### **Vice Chairperson**

**Stevan W. Gibson**  
Lupus Foundation of America

### **Secretary**

**Matt Eyles**  
America's Health Insurance Plans

### **Treasurer**

**Lisa Simpson, MB, BCh, MPH, FAAP**  
AcademyHealth

### **Immediate Past Chairperson**

**Ann Palmer**  
Arthritis Foundation

### **Nancy Brown**

American Heart Association

### **Tracey D. Brown, MBA, BChE**

American Diabetes Association

### **Tanisha Carino, PhD**

Alexion Pharmaceuticals, Inc.

### **Patricia Furlong**

Parent Project Muscular Dystrophy

### **Rod Mackenzie, PhD**

Pfizer

### **Cassandra McCullough, MBA**

Association of Black Cardiologists

### **Michelle McMurry-Heath, MD**

Biotechnology Innovation Organization

### **Kenneth Mendez**

Asthma & Allergy Foundation of America

### **Steve Miller, MD**

Cigna

### **Gary A. Puckrein, PhD**

National Minority Quality Forum

### **Susan Sherman, MHA**

The LAM Foundation

### **Stephen J. Ubl**

Pharmaceutical Research  
and Manufacturers of America

### **Harold Wimmer**

American Lung Association

### **Ex Officio Member**

#### **Randall L. Rutta**

Chief Executive Officer  
National Health Council

July 28, 2021

Chiquita Brooks-LaSure

Administrator

Centers for Medicare & Medicaid Services

Department of Health and Human Services

P.O. Box 8013

Baltimore, MD 21244-1850

Dear Administrator Brooks-LaSure

## **Re: CMS-9906-P - Patient Protection and Affordable Care Act; Updating Payment Parameters, Section 1332 Waiver Implementing Regulations, and Improving Health Insurance Markets for 2022 and Beyond Proposed Rule**

On behalf of the National Health Council, I am happy to offer the following comments on the Patient Protection and Affordable Care Act; Updating Payment Parameters, Section 1332 Waiver Implementing Regulations, and Improving Health Insurance Markets for 2022 and Beyond Proposed Rule (NBPP).

Created by and for patient organizations 100 years ago, the National Health Council (NHC) brings diverse organizations together to forge consensus and drive patient-centered health policy. We promote increased access to affordable, high-value, sustainable health care. Made up of more than 140 national health-related organizations and businesses, the NHC's core membership includes the nation's leading patient organizations. Other members include health-related associations and nonprofit organizations including the provider, research, and family caregiver communities; and businesses representing biopharmaceutical, device, diagnostic, generic drug, and payer organizations.

The NHC appreciates that CMS has issued this rule to improve Affordable Care Act (ACA) marketplace policy. We are particularly pleased to see that the proposed rule reverses various regulatory approaches that the NHC [opposed](#) when first presented. We also appreciate that the proposed rule codifies policies that will benefit patients. Our specific comments are below.

## **Strengthening Navigation Assistance**

The NHC supports the aspects of the proposed rule that strengthen assistance for patients seeking assistance enrolling or transferring plan selection. Navigators are a vital resource in helping patients make good decisions in a highly complex system. The increased scope of navigator services and the increased training and support that Navigators receive will ensure patients have the information they need. We believe there is a need for continued consumer education about the need for coverage, the mechanics of the exchanges and subsidies, and how plan choices impact the care they receive and the costs they pay. We encourage CMS to work with community partners to continue increasing education about the need for health coverage and assistance available.

## **Section 1332 Waivers and Direct Enrollment**

In our previous 2022 NBPP comments, we “Strongly urged CMS to withdraw its proposal to permit states to implement Direct Enrollment mechanisms without submitting an application for a Section 1332 waiver.” We appreciate that the current proposed rule does precisely that. Moving away from a centralized marketplace toward enrollment through insurers and web-brokers would adversely impact potential enrollees seeking information and enrolling in health coverage that fits their needs and goals. By withdrawing this previous approach, the proposed rule will help make sure patients have the support and information they need.

## **Open Enrollment Extension**

The NHC generally supports any proposal to allow more people to seek coverage in the exchanges. The COVID-19 pandemic has increased the awareness of the need for health insurance, and we have seen significant growth in enrollment in the ACA Marketplaces. We agree that extending the open enrollment period to bring it more in line with the open enrollment periods before the 2018 plan year will allow potential enrollees more time to decide which plan works best for them

## **Monthly Special Enrollment for APTC-Eligible Individuals**

In addition to the general extension of the special enrollment period, CMS proposes a monthly open enrollment period for people below 150 percent of the federal poverty level. The NHC concurs with CMS that this will help increase coverage for people and help them take advantage of subsidies to assist them without overburdening the system. While the proposed rule states that there have not been significant adverse effects on the risk pool from the current special enrollment period, we think that as enrollment is expanded, it is important to continuously gauge the impact on any potential increases in risk selection with access and affordability for consumers. The NHC feels strongly that efforts should continually be made to ensure more healthy individuals enroll to help them prevent diseases and to help keep premiums low for people in the Marketplaces. As such, it may be beneficial to connect this new policy to the continuation of enhanced subsidies that were also put in place during the public health emergency to avoid adverse selection. At the very least, the NHC recommends that HHS develop a process to regularly monitor and respond to any changes in access and affordability for individuals as a result of this policy.

### **Section 1332 Waiver Guardrails**

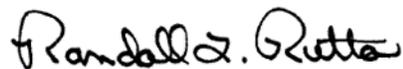
The proposed rule includes significant clarification of what a state would be required to have in place to ensure that coverage under a 1332 waiver would be equivalent to what would be offered absent that waiver. These crucial protections around comprehensiveness, affordability, number of people covered, and deficit neutrality help ensure that a 1332 waiver is designed to enhance coverage rather than to allow for the proliferation of inadequate coverage. Previous attempts to weaken these guardrails would put the quality of coverage that individuals can access at risk.

### **Conclusion**

In addition to the issues addressed above, the proposed rule enumerates some specific issues that are not addressed in this cycle but are planned for attention in the 2023 NBPP. These include pass through premiums, network adequacy standards, and standardized plans. These are all critical issues for patients. We thank CMS for its attention to these elements and look forward to working with you to help craft policy that supports patients.

We appreciate the opportunity to provide additional input on these critical issues. Please do not hesitate to contact Eric Gascho, Vice President of Policy and Government Affairs, if you or your staff would like to discuss these issues in greater detail. He is reachable by phone at 202-973-0545 or via e-mail at [egascho@nhcouncil.org](mailto:egascho@nhcouncil.org).

Sincerely,

A handwritten signature in black ink that reads "Randall L. Rutta". The signature is written in a cursive, slightly slanted style.

Randall L. Rutta  
Chief Executive Officer