



Summary of Select Provisions of HHS' Final 2022 Notice of Benefit and Payment Parameters and Other Key Regulations

Michael Cohen, PhD

202.568.0633 • michael.cohen@wakely.com

Adam Rudin, FSA, MAAA

727.259.7483 • adam.rudin@wakely.com

On January 14, 2021, the Department of Health and Human Services (HHS) released the final Notice of Benefit and Payment Parameters for 2022 in the Federal Register.¹ The notice includes important rules and parameters for the operation of the individual and small group health insurance markets in 2022 and beyond. This paper summarizes key provisions of the final notice and other related information recently released by HHS. Not all of the topics raised in the proposed 2022 Payment Notice were included in the final Payment Notice released in January. Forthcoming regulations are expected to address the remaining topics that were not addressed in this rule. The Appendix includes a table that lists which topics were finalized in the current Final Rule and which are expected to be finalized by the new Administration. Additionally, with the change in Administrations happening, some of the provisions finalized could be altered in future regulations before they go into effect.

Overview

The following highlights the key changes included in the 2022 final Payment Notice. More information on these and other changes follow.

- 1. Direct-Enrollment Flexibilities:** HHS finalized allowing states to end state-sponsored online enrollment portals (e.g., opt out of Healthcare.gov) and allow for enrollees to only have the ability to enroll into an on-Exchange plan through direct enrollment (DE) entities. HHS will also allow DE entities more flexibility as to what information they share with potential enrollees.
- 2. User Fees:** HHS lowered user fees to issuers to 2.25% for issuers in the Federally-facilitated Exchanges (FFE) and 1.75% in State-based Exchanged that utilize the Federal Platform (SBE-FPs).

¹ Department of Health and Human Services, "The Final Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2022", <https://www.federalregister.gov/public-inspection/2021-01175/patient-protection-and-affordable-care-act-benefit-and-payment-parameters-for-2022-updates-to-state>

3. 1332 Waiver Regulation: HHS incorporated its 2018 guidance on 1332 Waiver into regulation.

[Exchange Establishment Standards \(Direct Enrollment\)](#)

HHS finalized two major changes to increase the importance of direct enrollment for the Exchanges. First, HHS will allow states to elect not to have a state-sponsored online portal (i.e., Healthcare.gov or a state exchange portal) for enrollment and instead only have enrollment via DE. If a state selects this type of Exchange model individuals could only enroll in Exchange coverage through a DE entity (for example a web-broker or an issuer). This option will be available for State-Based Exchanges (SBE) in 2022 and for Healthcare.gov states in 2023. These new exchange types will have “-DE” appended to the end of their current acronym (SBE-DE, FFE-DE, and SBE-FP-DE).

The other major change would allow for greater flexibility in how DE entities display information on QHPs. The regulation would allow DE entities to exclude some information on QHPs that it cannot sell. For example, if a web-broker does not have a relationship with a particular issuer, it would not have to display certain information about that issuer’s plans.

The prior regulations required that product choices be separated across three different web pages by product type as follows:

- QHPs On-Exchange
- Off Exchange QHPs and non-QHPs other than excepted benefits (such as vision plans or specific disease plans)

- All other products, including excepted benefits

HHS relaxed this requirement under certain circumstances. In particular, On and Off Exchange plans (other than excepted benefits) can be on the same page to accommodate HRA arrangements where an employee would need to compare On and Off Exchange options. This is because a prior an employee may not know if they a better net premium will be found Off Exchange (where the employee may be eligible to have premium subsidies via HRA) or On Exchange (where the employee may be eligible for Federal Premium Tax Credits). Despite being the policy being finalized, comments were generally negative from the public on this topic.

[User Fees](#)

HHS reduced user fees for issuers in states that utilize Healthcare.Gov. In particular, HHS will charge issuers in FFE 2.25% (down from 3.0%) and 1.75% in SBE-FP states (down from 2.5%). If a state selects the Exchange-DE option, HHS will only charge a user fee of 1.50%.

[1332 Regulations](#)

HHS codified the existing guidance issued in October 2018 regarding 1332 waiver applications into regulation (no modifications from current guidance). In particular, this would codify the current Administration’s interpretation of the 1332 guardrails (for example loosening the coverage and affordability requirements). It would also would require notice and comment for the new Biden Administration to change the 1332 waiver rules.

If you have any questions or to follow up on any of the concepts presented here, please contact any of the following authors:

Michael Cohen at michael.cohen@wakely.com

Adam Rudin at adam.rudin@wakely.com

Appendix: Breakdown of Policies Included in Final Rule

Policy Issue	Included in Final Payment Notice	In Proposed Rule but Excluded in Final Payment Notice
Direct-Enrollment Flexibilities	X	
Risk Adjustment		X
User Fees	X	
PBM Reporting		X
MLR		X
1332 Waivers	X	
Cost-Sharing Requirements (e.g., MOOP)		X
Eligibility Requirements		X