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November 12, 2024

Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-9888-P
7500 Security Boulevard, Mail Stop C4-26-05
Baltimore, MD 21244-1850

RE: CITIZ3N Government Solutions' comments on the Proposed Notice of Benefit and Payment Parameters for 2026

To whom it may concern,

We are writing to provide comments on the Proposed 2026 Notice of Benefit and Payment Parameters (Draft Payment Notice) recently released by the Centers for Medicare and Medicaid Services (CMS). CITIZ3N Government Solutions provides exchange operations and support services to multiple state-based exchanges (SBEs), and our parent company, Softheon Inc., facilitates connections to and sales of plans in every ACA marketplace by over 100 top-tier carriers. We appreciate the opportunity to offer feedback on these proposed changes.

Silver Loading
The proposal to codify silver loading into law could provide clearer, forward-looking guidance to issuers and help ensure market stability during a potentially transitional period. Silver loading, which emerged as a state-level response to the cessation of cost-sharing reduction payments in 2017, has had the intended benefit of increasing the value of premium tax credit subsidies, thereby enabling more subsidized individuals and families to qualify for greater subsidy amounts.

This practice has been tacitly accepted by Congress, as evidenced by the placement of American Rescue Plan (ARP) and Inflation Reduction Act (IRA) enhanced subsidies directly over silver loading. Codifying this practice would provide clarity and predictability for both issuers and consumers. We support this proposal, as it will potentially bolster the subsidy amounts marketplaces can offer during a period of administration change – promoting coverage options for SBEs and consumers.

Agent and Broker Oversight
The proposed expansion of oversight for agents and brokers, particularly focusing on lead agents, is a good development that largely codifies current CMS practices into regulation. The proposed new authority for investigating and enforcing compliance actions will help enhance the integrity of marketplace operations and reduce fraud, waste, abuse, as well as unexpected enrollments.

While we support these measures, we urge CMS to provide clear guidance on the factors that would determine whether agent/broker activities present a risk to program integrity. We also encourage CMS to actively seek and consider input from states, SBEs, and other stakeholders regarding these determining factors to ensure a balanced and effective approach to oversight. This collaborative approach would help strike a balance between necessary oversight and avoiding undue burdens on agents and brokers who play a crucial role in helping consumers navigate the complexities of insurance enrollment.

Tax Filer Notification

The proposed rule expanding on the requirement for additional notifications for tax filers who have "failed to reconcile" their Advance Premium Tax Credit (APTC) for two consecutive years is a positive step. By mandating either a "direct" or "indirect" notice for two consecutive years prior to terminating APTC, this change will help enhance understanding and compliance among consumers regarding their tax obligations.
This additional safeguard, applicable to both SBEs and Federally-facilitated Exchanges (FFEs), will provide consumers with more opportunities to rectify their tax situation before losing their subsidies. We support this proposal and suggest that CMS consider providing educational resources alongside these notifications to further assist consumers in understanding the reconciliation process.

Qualified Health Plan (QHP) Certification Standards

The codification of exchange authority to deny QHP certification, including on the basis of the "best interests of consumers" test, is a significant development. While we support this enhanced authority for exchanges, we urge CMS to provide a clear definition or guidelines for the "best interests of consumers" test to ensure consistent and fair application. Without such guidance, there is a risk of inconsistent or subjective application of this standard.

User Fee Rates

Regarding the proposed adjustment of user fee rates to 2.5% for FFEs and 2.0% for State-Based Exchanges on the Federal Platform if the enhanced subsidies initially enacted as part of the ARP are not extended through the 2026 benefit year by March 31, 2025, we oppose this increase. The expiration of the enhanced subsidies would bring market uncertainty for issuers, SBEs, and consumers, which could be worsened by political and administration changes. CMS should instead use all policy levers available to bring down the cost of the FFE for all stakeholders. One option could be allowing states using HealthCare.gov to take a piecemeal approach to FFE participation, using and paying for some but not all services as needed to meet state policy objectives.

Conclusion
In conclusion, while many of the proposed changes in the Draft Payment Notice for 2026 are positive steps towards improving the functioning of the ACA marketplaces, we encourage CMS to carefully consider the potential impacts on SBEs, issuers, consumers, and other stakeholders. Given that this may be the first major regulatory action of the incoming presidential administration affecting the ACA marketplaces, it is crucial to ensure these changes enable Qualified Health Plans to be offered in a way that strikes the right balance between affordability, price, access, and quality.

Please don’t hesitate to contact me at the email or phone number below with any questions about this submission.

Sincerely,

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