HANYS®
Always There for Healthcare
SINCE 1925

Headquarters
One Empire Drive, Rensselaer, NY 12144
518.431.7600

Washington, DC Office
499 South Capitol Street SW, Suite 410
Washington, D.C. 20003
202.488.1272

April 11, 2025

Robert F. Kennedy Jr.
Secretary
U.S Department of Health and Human Services
Attention: CMS-9884-P
P.O. Box 8016
Baltimore, MD 21244-8016

Submitted electronically: www.regulations.gov

RE: CMS-9884-P: Patient Protection and Affordable Care Act; Marketplace Integrity and Affordability

Dear Secretary Kennedy:

The Healthcare Association of New York State, on behalf of our member nonprofit and public hospitals, nursing homes, home health agencies and other healthcare providers, welcomes the opportunity to comment on the proposed rule focused on marketplace integrity and affordability.

While we understand that the stated intent of this proposed rule is to combat fraud and abuse in the federal and state exchanges through targeted changes to eligibility and enrollment policies and procedures, we strenuously oppose many of the proposals as they will have significant adverse impacts on both patients and providers. We also urge HHS to continue its deference to the experience and role of the states, particularly those that have created and run successful state marketplaces, such as New York.

HANYS is extremely concerned that if finalized, this proposed rule would severely restrict marketplace eligibility, enrollment and affordability, negatively impacting and reversing improvement in health insurance coverage for the state of New York, and negatively impacting the health of patients, communities and the hospitals and health systems that care for them.

Recommendation: HANYS urges HHS to withdraw this rule in its entirety.

HANYS and our members are committed to ensuring all New Yorkers, regardless of age, race, ethnicity, gender, income level or geographical location, have access to the care they deserve. This includes supporting policies that build affordable, high-quality and comprehensive health insurance coverage through federal and state marketplaces.

HANYS is proud to support our marketplace, the New York State of Health, and its 6.7 million enrollees, of which well over 200,000 are enrolled in qualified health plans (QHPs). The expansion of the Essential Plan, in conjunction with enhanced

federal QHP premium tax credits and cost sharing reductions, has established more robust health insurance coverage options for New Yorkers.

Additionally, in response to reports of fraudulent activities by certain insurance brokers to enroll low-income people in zero-dollar premium plans without their knowledge, HANYS supports recent CMS and HHS rulemaking and proposals to prevent unauthorized marketplace activity among agents and brokers.

This includes recently finalized policies to strengthen oversight and enforcement actions, expand CMS authority to suspend marketplace agents and brokers who violate the rules, and strengthen the model consent form used to assist consumers with enrollment activities. However, reports of unauthorized coverage changes in New York are few, and the NYSOH already has a variety of safeguards in place to ensure that agents have consumers' consent prior to making any coverage changes.

Open enrollment

HHS proposes to shorten the open enrollment period to Nov. 1 - Dec. 15 for all individual market coverage, on and off the marketplaces, including those marketplaces operated by individual states, beginning in 2025 for the 2026 coverage year. Currently, New York's open enrollment period runs from Nov. 1 until Jan. 31.

The proposed shortened enrollment period would create operational challenges in New York and may also force healthy enrollees to miss the enrollment period and go without coverage, causing an unintended adverse impact on the remaining risk pool. Later enrollees tend to be younger and healthier; thus, we are concerned that eliminating the mid-December through January enrollment window may result in the loss of these important insured lives.

Operationally, shortening the enrollment window as proposed in the rule will make it much harder to provide timely consumer assistance. HANYS members serve as assistors and navigators for the NYSOH and have expressed concerns about their ability to manage enrollment volumes in the proposed abbreviated timeframe. The adverse impact of significantly shortening the enrollment period far outweighs any value to the marketplace and to the health plan industry.

> Recommendation: **HHS must maintain the current open enrollment dates. Should HHS finalize the proposed changes to shorten the 2026 open enrollment period, we urge HHS to continue to allow state-based marketplaces the flexibility to set their own open enrollment period.**

Premium adjustment percentage methodology

HHS proposes to revert to the premium adjustment percentage methodology finalized in the 2020 Notice of Benefit and Payment Parameters, which uses private health insurance premiums to estimate future premium growth. HHS uses this calculation to determine individuals' cost-sharing parameters. Based on the proposed methodology, the maximum annual limitation on cost-sharing for plan year 2026 would be $10,600 for self-only coverage and $21,200 for family coverage. These amounts are roughly 15% higher than the plan year 2025 cost-sharing limits.

HANYS vigorously disagrees with HHS' belief that it no longer needs to inform its methodology selection with policy objectives such as making coverage more accessible and affordable. HANYS opposes the revised approach to calculating the premium adjustment percentage because it will result in reduced enrollment levels among younger, healthier enrollees, and represents yet another

federal proposal that would weaken the stability of the individual market. Furthermore, the marketplaces have demonstrated stability and this change could undo this progress by imposing a significant cost barrier for consumers.

Recommendation: HANYS strongly urges HHS to reject this proposed change.

Low-income monthly special enrollment period (SEP)

HHS proposes to end the monthly special enrollment period for those with projected household incomes at or below 150% of the federal poverty level. For a single adult, that's an income of $22,590 for 2025. If finalized, this proposal would be effective on the date of the final rule and apply to all exchanges.

HANYS supported the creation of this special enrollment period when it was originally proposed in 2021. We have consistently advocated for policies that decrease the uninsured population. Offering more opportunities to enroll in coverage, especially for populations that experience high enrollment instability, supports the goal of protecting patients and increasing insurance coverage. This SEP acts as an additional safety net for consumers transitioning from Medicaid or the Children's Health Insurance Program into other coverage and has had a lower-than-anticipated risk of adverse selection.

The NYSOH continuously and consistently ensures the integrity of the SEP application process. HHS has not presented any evidence of fraudulent enrollment in state-based exchanges. HANYS opposes the elimination of this SEP and strongly supports continued state flexibility with respect to all SEPs.

Recommendation: HHS should not finalize this proposal.

DACA recipients

HHS proposes to change the definition of "lawfully present" so that Deferred Action for Childhood Arrivals recipients would no longer be eligible to enroll in marketplace or basic health plans or receive premium tax credits or cost-sharing reductions. DACA recipients recently gained eligibility for coverage. About 8,000 DACA individuals are covered in New York state either with a QHP or by the Essential Plan.

New York has always prioritized coverage for this population by enrolling income-eligible enrollees in either fully state-funded Medicaid or Child Health Plus. However, before the 2024 change, there had been a gap for many in need of health insurance coverage. Reversing this recently enacted coverage will impair access to healthcare, increase the number of uninsured and drive up emergency medical expenditures. HANYS opposes HHS' proposal to again change the definition of "lawfully present."

Recommendation: We strongly urge HHS not to finalize this proposal.

Essential health benefits

HHS proposes prohibiting classifying gender-affirming care as an essential health benefit beginning in plan year 2026. Under this proposal, states would no longer be able to require marketplace individual and small-group insurance plans to cover puberty blockers, hormone therapy or gender-affirming surgeries as essential benefits. Individual plans, consistent with state laws that require nondiscrimination, would still be able to cover gender-affirming care. However, this proposed change would severely limit access to medically necessary care for transgender people, potentially creating

barriers to coverage and treatment. Access to gender-affirming care has been shown to significantly reduce suicide risk and improve mental health outcomes.

The proposed changes would strip protections from a large swath of New Yorkers who are not covered and protected by our state's insurance laws that prohibit discrimination based on sexual orientation or gender identity or expression, including transgender status, in healthcare services and coverage. New York-regulated health plans must cover medically necessary treatment for gender dysphoria and cannot refuse coverage, terminate coverage or charge higher premiums.

HANYS and our members are committed to systematically and intentionally closing health gaps in every New York community. Hospitals and health systems value every individual they have the opportunity to serve and oppose discrimination against patients based on characteristics such as race, national origin, religion or sex, including gender identity or sexual orientation. This proposal undermines those efforts.

Recommendation: HANYS urges HHS not to finalize this proposal.

Eligibility verification for SEP

HHS proposes to require pre-enrollment eligibility verification for all types of SEPs across all marketplaces, including state-based exchanges. Currently, pre-enrollment verification is limited to the loss of minimum essential coverage SEP. In addition, HHS proposes to require all marketplaces to conduct pre-enrollment eligibility verification for at least 75% of all new enrollees.

HANYS supports program integrity efforts; however, this proposal is unnecessary as the NYSOH currently verifies over 75% of requested SEPs electronically without the need for consumers to provide documentation. In addition, pre-enrollment verification poses barriers to enrollment that may deter consumers, especially younger people, from enrolling in coverage.

Recommendation: HANYS requests that HHS not finalize this proposal.

Program integrity and other policies

HHS proposes requiring all enrollees who attest to a projected household income between 100% and 400% of the federal poverty level but whose income verification results in a household income below 100% FPL to answer additional verification questions and provide supporting documentation.

Although this policy was finalized in the 2019 Notice of Benefit and Payment Parameters, it was vacated by the U.S. District Court for the District of Maryland on March 4, 2021. The court found that the provision effectively eliminated coverage for low-income consumers without any evidence that it would prevent fraud or abuse.

Nothing has changed since the 2021 decision, particularly for state-based exchanges, such as New York's. Once again, it appears that HHS is trying to make it more difficult for individuals who need health insurance to access coverage. New York has strong processes in place to ensure the accuracy and integrity of eligibility determinations. This proposal would result in a significant unfunded cost for the NYSOH.

HHS also proposes reinstating a policy deeming an individual ineligible for future premium tax credits if they fail to file their federal income tax and reconcile premium tax credits for one year. This policy had previously been changed to two consecutive tax years in the 2024 Notice of Benefit and

Payment Parameters. HANYS supported the prior change to two consecutive tax years as it offered a method for both ensuring that consumers are correctly filing and recording APTCs for tax purposes and maintaining affordable coverage for the greatest number of people. The punitive result of denying APTCs to consumers who fail to file and reconcile on their taxes is detrimental to the goal of ensuring healthcare coverage.

HHS offers no specific data to support its assertion that "a large number of people with FTR status are ineligible for APTC and that pausing removal of APTC due to an FTR status allows ineligible enrollees to accumulate tax liabilities."

HHS proposes to reinstate a rule allowing issuers to require that enrollees pay past-due premiums before enrolling in new coverage. This proposal, which had previously been eliminated, is inconsistent with the ACA's guaranteed issue requirement barring an insurer from requiring payment for past-due premiums before effectuating new coverage in a different product.

Often, nonpayment of premiums is not intentional and could result instead from financial hardships, hospitalization, an environmental disaster or a general lack of awareness. Furthermore, HHS proposes to go well beyond the prior 2017 policy by allowing repayment for past-due premiums from any period, not just the prior 12 months. This is unduly draconian and punitive.

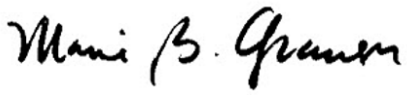
> Recommendation: **HANYS urges HHS not to finalize these proposals.**

If finalized, this proposed rule would significantly restrict marketplace eligibility, enrollment and affordability. HHS proposes measures that would increase premiums, reduce APTCs and increase the administrative burden of applying for and verifying enrollment. All of these together will discourage enrollment and decrease the number of individuals eligible for coverage.

> Recommendation: **Considering our comments, we ask HHS to withdraw this proposed rule in its entirety.**
>
> **In the alternative, given the significant effects the proposed rules would have on state health insurance markets, HANYS respectfully requests an extension of the comment period from 30 days to at least 60 days and a delay in implementation. This includes a phase-in approach for any finalized changes beginning no sooner than 2027.**

If you have questions, please contact Victoria Aufiero, vice president, insurance, managed care and behavioral health, at 518.431.7889 or vaufiero@hanys.org.

Sincerely,



Marie B. Grause, RN, JD
President