

**Washington State Health Care Authority Comments on the Proposed Rules:
*Patient Protection and Affordable Care Act; Standards Related to Reinsurance, Risk
Corridors, and Risk Adjustment***

The Washington State Health Care Authority (HCA) is pleased to submit comments to the U.S. Department of Health and Human Services (HHS) on the proposed rules for reinsurance, risk corridors, and risk adjustment. The HCA has found that sound development and implementation of highly technical programs necessitates building trust between all players in the health insurance market. These proposed rules take a step in that direction and the HCA looks forward to developing a strong, collaborative working relationship with HHS in the implementation of these three programs.

In past comments about proposed rules, the HCA has been concerned with states having the necessary flexibility to implement an exchange. The HCA's concerns are different in the arena of the three risk leveling methods. The HCA would like the final rules to promote the implementation of technically competent risk leveling programs that develop trust among all players in the market. At times, that means it is best for HHS to implement a national standard; other times, states will need maximum flexibility. More flexibility is likely needed during initial implementation. However, that flexibility should be based upon the necessity of implementing technically proficient risk leveling programs.

The HCA would also like to make a general comment about the many timeframes discussed in the proposed rule. For example, timeframes are specified for collecting, validating, or retaining data. Unless there is a strong technical reason to make a different decision, the HCA suggests that industry standards should be used to guide the establishment of timeframes.

Reinsurance

Notices: The timeline for the final notice published by HHS in January 2013 appears to provide enough advance communication to a state before initial implementation of the exchange in 2014. March 2013 has been proposed as an outer bound for a state to issue a final notice that modifies the federal parameters for 2014 implementation. HHS has asked for comments about using such an outer bound in the initial year of implementation. The HCA is concerned not about the outer bound but about the content of the notices: Federal notices might need to be quite detailed because of the technical nature of implementing a reinsurance program. The HCA believes that the notice for initial implementation needs to leave enough flexibility to modify methods or parameters throughout 2013.

Essential health benefits: HHS has proposed that reinsurance should cover only the payments of essential health benefits in non-grandfathered plans. The Washington State Health Care Authority (HCA) agrees that HHS needs to define the set of benefits in the individual market that reinsurance will cover. However, because states can establish mandated benefits that exceed the essential health benefits, the HCA proposes that the

combination of the essential health benefits and state-mandated benefits in an individual market comprise the benefits for reinsurance coverage. Each state's reinsurance program could find itself removing a small subset of benefit costs when administering collections and disbursements. HCA understands that HHS has a responsibility to coordinate funding on a national level. However, each state's collections and disbursements remain within that state. Because reinsurance is a temporary program, the administrative burden to exclude a small portion of benefits from each state's reinsurance program seems greater than any complications of the coordination of national funding.

Contribution rate: HHS makes a good case for establishing a national uniform contribution rate applied as a percent of premium. The flexibility to apply a state supplemental funding rate could be needed by any state and should also be retained as an option in the rules.

The proposed rules provide the reinsurance entity with the authority to subcontract administrative functions. The HCA interprets this to mean that the reinsurance entity would have the option to establish mutual agreements with other state agencies to collect and disburse reinsurance funds. The Washington State Office of Insurance Commissioner, Department of Revenue, and the State Treasurer currently collect and/or disburse funds. The reinsurance entity might want to consider state agencies as an efficient option compared to financial institutions. The HCA encourages HHS to include state agencies in the role of collecting and disbursing reinsurance funds.

Federal Basic Health Program: Washington State is currently examining whether there are feasible options for adopting the Federal Basic Health Program. The HCA is requesting that HHS provide guidance or direction about the Federal Basic Health Program participating in a state's reinsurance program as soon as possible. For example, HCA would suggest clarification on questions such as the following: To participate in the reinsurance program, would the standard plans that insure the Federal Basic Health enrollees need to achieve any additional criteria or designation? If the Federal Basic Health enrollees are merged into a risk pool with Medicaid enrollees, then could the Federal Basic Health Program participate in the reinsurance program?

Parameters: The HCA concurs with the American Academy of Actuaries that the reinsurance program should be based on medical costs. Individuals would then become eligible based upon covered medical costs. Establishing program parameters for the attachment point, coinsurance rate, and reinsurance cap has the potential to create an administratively efficient program with incentives to appropriately manage costs.

The HCA also concurs that the reinsurance program should not replace commercial reinsurance. Every effort should be made for this temporary reinsurance program to fill a gap between the regular health insurance market and the commercial reinsurance market. However, the HCA would like HHS to confirm whether commercial reinsurance predominantly serves the self-funded market in Washington State. If HHS's research confirms that a robust commercial reinsurance market does not now exist for fully-

insured health insurance plans, then HHS might need to take that result into account when establishing the initial set of reinsurance parameters for Washington State.

Risk Corridors

The HCA has fewer comments about the risk corridor program because it will be developed, implemented, and administered by HHS. The final rule, however, should continue to clarify that premium modifications for reinsurance and risk adjustment need to occur before risk corridor calculations are made. Also, unless additional information is presented to convince us otherwise, calculations in the risk corridor program should continue to mirror the calculations of the medical loss ratio rebates. The proposed rule seems to suggest that a scenario exists where the risk corridor payment could be large enough to reduce an insurer's medical loss ratio rebate. If that is the case, then the rules should define that scenario and clarify if it is an acceptable result for an insurer.

Risk Adjustment

Federal risk adjustment methodology: The ACA provides HHS with the authority to designate the methodology for risk adjustment. In the proposed rules, however, HHS provides states with the latitude to propose or select a revised federal methodology or an alternative methodology. Like most states, Washington State will likely consider whether to adopt the federal risk adjustment methodology without revisions. One key estimate in the federal methodology will likely influence this decision: the weights of the medical conditions estimated by the model. The weights represent the difference in costs between persons with different on-going medical conditions. The weights will be estimated from national data. An important consideration, then, is whether the weights are representative of Washington State. Washington State is requesting that HHS provide information that can help our state determine if the weights represent our state.

Implementing risk adjustment in a private market: The HCA is familiar with applying risk adjustment to a program such as coverage for public employees. The HCA is not familiar with using risk adjustment within private markets for individuals and small employers. We approve, consequently, of HHS examining how risk adjustment can be implemented within a dynamic, private-sector market. How to start that examination is contained in the proposed rules: possibly examining rate-setting rules within each state. However, rather than directing issuers to submit their rate-setting rules, HHS might be able to work with insurance departments to collect rate-setting documentation already in use.

The HCA is available and looks forward to responding to any questions about these comments. You may contact Ms. Molly Voris at 360.923.2740 or molly.voris@hca.wa.gov.