

The Basic Health Program NPRM

CMS-2380-P

Required by section 1331 of the Affordable
Care Act

- NPRM published in the Federal Register September 25, 2013
- Comments accepted through November 25, 2013

The Basic Health Program (BHP)

- Background
 - The BHP is an insurance affordability program (IAP) available to all states on or after January 1, 2015.
 - States electing to operate BHP will provide health care choices to eligible individuals through the BHP.
 - BHP enrollees receive BHP coverage in lieu of premium tax credits and cost-sharing subsidies otherwise available to them to purchase coverage in the Marketplace.

The Basic Health Program (BHP)

- Approach
 - NPRM proposes state flexibility. States are often given the choice of following Marketplace or Medicaid rules. Rarely are new administrative structures required for BHP.
 - Coordination between the BHP and other IAPs is required.
 - The BHP will use the single eligibility service and the single streamlined application used for other IAPs.
 - The NPRM includes all essential elements of establishment and operation of a BHP except payment which will be issued in a separate notice.

The Basic Health Program (BHP)

- Scope and Definitions (600.1 and 600.5)
 - Section 1331(h) of ACA requires the adoption of definitions used in section 36B of the tax code. For this reason, BHP uses the same definitions of terms such as household income, MAGI, family and family size as those used to determine eligibility for premium tax credits under the Exchange. By keeping these definitions the same, the BHP remains aligned with the premium tax credit rules and eligible populations.
 - We have proposed that BHP meet the requirements for the individual mandate by recognizing BHP as minimum essential coverage under 26 CFR 1.5000A-2(f).
 - We have proposed other definitions as necessary.

The Basic Health Program (BHP)

- Establishment of a BHP (600.110)
 - Establishment and certification of a state's BHP will be through a BHP Blueprint.
 - The BHP Blueprint will be used by states to establish compliance with many of the program standards.
 - The Blueprint must be accompanied by a funding plan that provides for any non-federal funding that might be used to pay for benefits or services beyond the minimum required.
 - Certification of the Blueprint grants operational authority to a state to implement a BHP but it does not place an obligation on a state to operate the program.
 - We have proposed that a state submitted Blueprint will be posted on-line by HHS.

The Basic Health Program (BHP)

- Content of Blueprint (600.110)
 - The minimum benefits under the standard health plan ensuring provision of EHBs;
 - The competitive process for contracting with standard health plans and the contract requirements;
 - The premiums and cost-sharing;
 - The methods by which standard health plan availability will be ensured;
 - State's plan for coordination with other IAPs;
 - Eligibility standards;
 - State's policies regarding enrollment, disenrollment and verification; and
 - Identification (by position and title) of all BHP trust fund trustees and state administrative officers.

The Basic Health Program (BHP)

- Submission of a BHP Blueprint (600.115)
 - The Governor or the Governor's designee must submit the BHP Blueprint.
 - The state must seek public comment, including from federally recognized tribes in the state, prior to submitting the Blueprint to the Secretary.
 - The Secretary will certify a submitted Blueprint if it establishes compliance with the rule, demonstrates adequate planning for the integration of BHP with other insurance affordability programs, and provides evidence of sufficient planning to demonstrate operational readiness.
 - The date of signature by the Secretary will be the date of certification, before which no payments may be made.

The Basic Health Program (BHP)

- Revisions and Terminations to BHP (600.125-600.140)
 - Significant changes to an enrollee's experience in BHP or the program financing must be submitted to the Secretary for approval. The state must solicit public comment on changes.
 - If a state has not begun enrollment, the state may terminate the program by notifying the Secretary in writing.
 - If a state elects to end a program that is serving individuals, it must follow program termination procedures. These procedures include 120 day prior notification to the Secretary, 90 day notification to plans and enrollees, a transition plan to move people to other IAPs and the completion of financial reconciliation with the federal government and standard health plan offerors.

The Basic Health Program (BHP)

- Secretarial Termination (600.142)
 - The proposed rule includes the instances in which the Secretary may withdraw certification for a BHP-
 - The Blueprint is found to be out of compliance with standards at an annual review or after a program review authorized by sect. 600.200.
 - Evidence of beneficiary harm, financial malfeasance or fraud is presented to the state without an adequate response.
 - The proposed effective date for decertification is not earlier than 120 days following the finding of non-compliance.

The Basic Health Program (BHP)

- State Program Administration (600.145)
 - The state must operate its program in such a manner that individuals eligible to enroll are guaranteed coverage in the BHP because they are no longer eligible for coverage in the Marketplace. So:
 - The program must be statewide;
 - It must offer opportunities to enroll to every person found eligible;
 - Enrollment cannot be capped, or limited to a lower income threshold than in statute, and the state cannot establish a waiting list.
- Core Operations are proposed including:
 - Eligibility determinations and appeals, contracting with standard health plan offerors, oversight and financial integrity functions, providing consumer assistance, extending protections to AI/AN populations and ensuring civil rights, and collecting and reporting data.
 - Program termination if necessary.

The Basic Health Program (BHP)

- Enrollment Assistance and Information Requirements (600.150)
 - The state is required to make information available about the BHP coverage option along with other IAPs.
 - The state must describe benefits available and any coverage tiers that have been built into the program
 - The state must require standard health plans provide covered services including any service limitations, premiums and cost-sharing.
 - The state must require plans to make publicly available, and keep current, a list of participating providers.

The Basic Health Program (BHP)

- Tribal Consultation (600.155)
 - We have proposed that a state use the approved tribal consultation policy that the state has established with the Marketplace to consult with Indian tribes located within the state.
- Protections for American Indian and Alaska Native populations (600.160)
 - Indians will be allowed at least one opportunity a month to enroll or change enrollment.
 - Tribal organizations must be permitted to pay premiums on behalf of members.
 - No cost sharing will be charged under the standard health plan.

The Basic Health Program (BHP)

- Annual Report Content and Timing (600.170)
 - The state must submit an annual report 60 days prior to the end of each operational year.
 - The report will include:
 - Evidence of fraud, waste or abuse known to the state.
 - Compliance findings regarding:
 - Eligibility verification requirements
 - Limitations on the use of federal funds
 - The collection of quality and performance data form all participating standard health plans
 - Follow up from any other federal reviews of the program.

The Basic Health Program (BHP)

- Federal Program Reviews and Audits (600.200)
 - At least annually, HHS will review compliance with applicable law, regulations and guidance through means including reviews of case records, agency operations, and data.
 - The HHS Office of Inspector General (OIG) may periodically audit state program operations and standard health plan practice.
 - The state will be given the opportunity to address concerns from any findings.

The Basic Health Program (BHP)

- Eligible Individuals (600.305)
 - Generally, eligible individuals have income between 133% and 200% FPL and are otherwise eligible for premium tax credits in the Marketplace.
 - Specific eligibility standards:
 - Resident of the state ineligible for full-benefits Medicaid;
 - Citizen with household income between 133% and 200% FPL or lawfully present non-citizen with income below 200% FPL;
 - Ineligible for affordable minimum essential coverage;
 - Ineligible for affordable employer sponsored insurance;
 - Under 65 years of age;
 - Not incarcerated.

Basic Health Program (BHP)

- Application for BHP (600.310)
 - Single streamlined application in keeping with other IAPs.
 - Application assistance equal to what is provided under Medicaid is required of the state.
 - Authorized representatives are permitted at state option. If permitted, the state must choose to follow Marketplace or Medicaid standards.
- Certified Application Counselors (600.315)
 - Permitted at state option. If the state uses CACs, the state must follow Marketplace or Medicaid certification standards.

Basic Health Program (BHP)

- Eligibility determinations (600.320)
 - Must be done by a governmental entity.
 - Must be made within 45 days.
 - The effective date of eligibility for enrollment in a standard health plan must be determined using either the Marketplace or Medicaid process.
 - Eligibility determinations must be made continuously but enrollment may either be continuous following the Medicaid model or at open and special enrollment periods matching the Marketplace's.

Basic Health Program (BHP)

- Coordination with other Insurance Affordability Programs (IAPs) (600.330)
 - The state must be able to accept and transfer applications between IAPs and BHP, use the information transferred including findings related to eligibility standards, and notify the referring agency of any final determinations of eligibility.
 - The BHP agency must be able to participate in secure electronic exchange of information.
 - Notices, including electronic notices, must be coordinated with other IAPs.
 - The BHP must have written agreements with other IAPs regarding the operating responsibilities of each.

Basic Health Program (BHP)

- Appeals (600.335)
 - Applicants must be given right to appeal through the state's Medicaid appeals process exclusive of any federal level appeal.
- Redetermination (600.340)
 - The state must require enrollees to report changes in circumstances.
 - The state must re-determine the enrollees eligibility in response to those changes in circumstances or every 12 months.
 - Notice of redetermination must be provided to the enrollee.
- Verification (600.345)
 - The state may choose to follow either the Marketplace's or Medicaid's processes.

Basic Health Program (BHP)

- Standard Health Plan (600.405)
 - The minimum benefit package is the 10 essential health benefits.
 - Essential health benefits may be defined using more than one reference/base-benchmark plan.
 - State mandated benefits may be offered under the standard health plan using the same determinations as the Marketplace.
 - The state may choose to offer additional benefits within or outside of the standard health plan.

Basic Health Program (BHP)

- Competitive Contracting Process (600.410)
 - Full and open competition is required except for program year 2015 if the state is granted an exception;
 - The state must negotiate premiums, cost-sharing, benefits, and the inclusion of innovative features.
 - The state shall also give consideration to the health care needs of enrollees, availability and access to providers, quality improvement and performance, coordination between other IAPs, and the prevention of fraud, waste and abuse during the negotiation process.

Basic Health Program (BHP)

- Contracting qualifications and requirements (600.415)
 - The state must offer two or more standard health plans through:
 - Licensed HMOs
 - Licensed health insurance issuers offering plans with MLR of at least 85%
 - Networks of health care providers
 - Non-licensed HMOs participating in Medicaid/CHIP
 - The state must provide its standard set of contract requirements in the BHP Blueprint.

Basic Health Program (BHP)

- Enrollee Financial Responsibilities

- Premiums (600.505)

In the BHP Blueprint the state must:

- Assure that an enrollee's monthly premiums does not exceed what would have been paid if he or she had been enrolled in the Marketplace;
 - Identify the group or groups subject to premiums;
 - The procedure for the payment and collection method of premiums; and
 - Consequences for non-payment of premiums.

- Cost-sharing (600.510)

In the BHP Blueprint the state must:

- Assure compliance with the cost-sharing protections of lower income enrollees and Indians as well as other applicable cost-sharing standards.
 - Demonstrate that it has an effective system for monitoring compliance with cost sharing reduction standards.
 - Prohibit cost sharing for preventive health services.

Basic Health Program (BHP)

- Consequences of nonpayment of premiums (600.525)
 - A state electing to have continuous enrollment must allow a 30 day grace period prior to disenrollment.
 - A state electing to follow the Marketplace's open and special enrollment periods must also follow the Marketplace's policy on disenrollment, and may not restrict reenrollment beyond the next open (or special) enrollment period.

Basic Health Program (BHP)

- BHP Payment Methodology (600.605)
- Annually adjusted – no “mid-year” adjustments
- Premium tax credit component—95% of:
 - Reference premium broken down by age, geography, and self/family coverage
 - Trend factor to update premium rates to current year
 - Adjusted to account for health status and income reconciliation
- Cost-sharing reduction component –95%

Basic Health Program (BHP)

- Secretarial determination of BHP payment amount (600.610)
 - Proposed payment notice
 - Published annually in October with proposed methodology and data sources certified by the Chief Actuary of CMS. May include a request for any state data needed to calculate the BHP payment rates.
 - Final payment notice
 - Published annually in February with final methodology and payment rates for all states.
 - Variation for 2015
 - Propose payment notice will be published in the fall of 2013.
 - Final payment notice will be published in March 2014 with the final BHP rule.

Basic Health Program (BHP)

- Secretarial determination of BHP payment amount (600.610)
 - Quarterly calculation of state specific aggregate payment amounts
 - Product of the final payment rates and the states quarterly projections for numbers of enrollees.
 - Retrospective adjustments will be made to quarterly amounts 60 days after the end of each FY quarter using actual enrollment figures.
 - Quarterly deposits will be made to each state's BHP trust fund.

Basic Health Program (BHP)

- BHP Trust Fund Fiscal Policies (600.705)
 - The state must establish a BHP trust fund and identify trustees responsible for oversight of the fund.
 - Trustees must identify individuals with the power to authorize withdrawal of funds for allowable expenditures.
 - Non-federal deposits may be made into the trust fund but all standards of allowable expenses apply.
- Allowable Expenditures include:
 - Reducing premiums and/or cost sharing for eligible individuals enrolled in standard health plans under BHP;
 - Provide additional benefits for eligible individuals enrolled in BHP.
- Any other expenditures are prohibited.
- Carry-over of unspent funds is permitted year to year.

Basic Health Program (BHP)

- Fiscal policies and accountability (600.710)
 - The state must:
 - Maintain an accounting system and fiscal records fully compliant with OMB Circulars A-87 and A-133.
 - Provide annual certification that BHP trust funds are being expended consistent with applicable federal requirements for the provision and administration of the state's BHP.
 - Conduct an independent audit on a three year cycle in compliance with GAO auditing standards.
 - Publish annual reports within 10 days of their approval by the BHP Trustees.
 - Establish and maintain trust fund restitution procedures.
 - Retain records associated with expenditures for three years or longer if needed for resolution of audit findings or other claimant reconciliation.

Basic Health Program (BHP)

- Questioned BHP Transactions (600.715)
 - Questioned transactions must be responded to in writing by the state or BHP trustees no later than 60 days after the issue is reported.
 - The state and the BHP trustees are liable for ensuring restitution to the BHP trust fund following findings of improper payment. Restitution may be made in lump sum or installments but must be completed within 2 years.
 - The state shall return to HHS any federal funding subject to disallowance (from findings by HHS) if there is no provision for restitution.
 - BHP Trustees or the State may request reconsideration of disallowances within 60 days of written notification of the disallowance.
 - Repayment must be made within 60 days of the final reconsideration upholding the disallowance.

Basic Health Program (BHP)

- Comments (including any discussed today) must be submitted in writing by November 25, 2013 to:
 - <http://www.regulations.gov>. Follow the “submit a comment” instructions and reference file code CMS-2380-P.
- For further information please contact:
 - Carey Appold, 410-786-2117
 - Jessica Schubel, 410-786-3032