

Issue Brief

FEDERAL ISSUE BRIEF



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CMS Proposes Patient Protection and Affordable Care Act; Marketplace Integrity and Affordability Rule

The Centers for Medicare and Medicaid Services (CMS) are issuing a 268-page rule addressing standards relating to past-due premium payments; exclude Deferred Action for Childhood Arrivals recipients from the definition of "lawfully present"; the evidentiary standard HHS uses to assess an agent's, broker's, or web broker's potential noncompliance; failure to file and reconcile; income eligibility verifications for premium tax credits and cost-sharing reductions; annual eligibility redetermination; the automatic reenrollment hierarchy; the annual open enrollment period; special enrollment periods; de minimis thresholds for the actuarial value for plans subject to essential health benefits (EHB) requirements and for income-based cost-sharing reduction plan variations; and the premium adjustment percentage methodology; and prohibit issuers of coverage subject to EHB requirements from providing coverage for sex-trait modification as an EHB.

The rule is scheduled for publication on March 19. A comment period ending April 11 is provided. A display copy is currently available at: <https://public-inspection.federalregister.gov/2025-04083.pdf>

Comment

"On January 20, 2025, President Trump issued a memorandum entitled 'Delivering Emergency Price Relief for American Families and Defeating the Cost-of-Living Crisis.' This memorandum instructed all executive departments and agencies to deliver emergency price relief for the American people and to increase the prosperity of the American worker. Health care represents a substantial portion of a family's budget and a tremendous cost to Federal taxpayers. To provide relief from rising health care costs, we propose several regulatory actions aimed at strengthening the integrity of the Patient Protection and Affordable Care Act (ACA) eligibility and enrollment systems to reduce waste, fraud, and abuse. We expect these actions would provide premium relief to families who do not qualify for Federal premium subsidies and reduce the burden of the ACA premium subsidy expenditures to the Federal taxpayer."

CMS proposes the following regulatory changes "to improve program integrity and protect against adverse selection, while at the same time keeping the enrollment process streamlined and accessible, especially for low-income consumers who utilize Exchanges for subsidized individual market coverage."

We are adding page numbers in red.

Executive Summary

- CMS proposes to remove § 147.104(i), which would reverse the policy restricting an issuer from attributing payment of premium for new coverage to past-due premiums from prior coverage. (Page 8)
- CMS proposes to modify the definition of "lawfully present" currently articulated at § 155.20 and used for the purpose of determining whether a consumer is eligible to enroll in a Qualified Health Plan (QHP) through an Exchange or a Basic Health Program (BHP) in States that elect to operate a BHP. (Page 8)

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- CMS proposes to revise § 155.220(g)(2) to require HHS to apply a “preponderance of the evidence” standard of proof for terminations for cause by HHS of an agent’s, broker’s, or web broker’s Exchange agreements under § 155.220(g)(1). CMS also proposes to add a definition for “preponderance of the evidence” to § 155.20. CMS believes this change would improve transparency in the process for holding agents, brokers, and web brokers accountable for compliance with applicable law, regulatory requirements, and the terms and conditions of their Exchange agreements. (Page 9)
 - CMS proposes to revise the failure to file and reconcile (FTR) process at § 155.305(f)(4) to reinstate the policy that Exchanges must determine a tax filer ineligible for APTC if: (1) HHS notifies the Exchange that the tax filer (or their spouse if the tax filer is a married couple) received advance payments of the premium tax credit (APTC) for a prior year for which tax data would be utilized for verification of income, and (2) the tax filer or tax filer’s spouse did not comply with the requirement to file a Federal income tax return and reconcile APTC for that year. (Page 9)
 - CMS proposes to remove § 155.315(f)(7) which requires that applicants receive an automatic 60-day extension to the 90-day period set forth in section 1411(e)(4)(A) of the ACA to provide documentation to verify household income when there is an income inconsistency. Removing § 155.315(f)(7) would end APTC payments to individuals who have failed to provide documentation verifying their eligibility for APTC within 90 days and further protect them from surprise tax liabilities if they are ineligible.
 - CMS proposes an amendment to the annual eligibility redetermination regulation and are seeking comment on a range of potential measures to ensure program integrity with respect to re-enrollments. (Page 10)
 - CMS proposes to amend the automatic reenrollment hierarchy by removing § 155.335(j)(4) which currently allows Exchanges to move a CSR-eligible enrollee from a bronze QHP and reenroll them into a silver QHP for an upcoming plan year, if a silver QHP is available in the same product, with the same provider network, and with a lower or equivalent net premium after the application of APTC as the bronze plan into which the enrollee would otherwise have been reenrolled. (Page 12)
 - CMS proposes to modify § 155.400(g) to remove paragraphs (2) and (3), which establish an option for issuers to implement a fixed dollar and/or gross percentage-based premium payment threshold. To preserve the integrity of the Exchanges, CMS believes it is important to ensure that enrollees do not remain enrolled in coverage without paying at least some of the premium owed, as there are situations where the fixed dollar and/or gross percentage-based thresholds would allow an enrollee to remain enrolled in coverage for extended periods of time after payment of the binder. (Page 12)
 - For benefit years starting January 1, 2026, and beyond, CMS proposes to change the annual Open Enrollment Period (OEP) for coverage through all individual market Exchanges from November 1 through January 15 to November 1 through December 15 of the calendar year preceding the benefit year of enrollment. This change would also apply to non-grandfathered individual health insurance coverage offered outside of an Exchange. (Page 12)
 - Based on recent evidence suggesting an increase in the misuse and abuse of special enrollment period (SEP) to gain coverage outside the OEP, we propose to amend § 155.420(g) to enable HHS to reinstate pre-enrollment verification of eligibility of applicants for all categories of individual market SEPs. (Page 13)

- CMS proposes to amend § 156.115(d) to provide that an issuer of coverage subject to EHB requirements may not provide sex-trait modification as an EHB beginning with Plan Year (PY) 2026. (Page 13)

Comment

While brief and not fully encompassing, the material above provides insight into the changes being made in this proposal.

Provisions of the Individual Health Insurance Market and Exchange Program Integrity Proposed Rule (Page 29)

Comment

This section of the proposal (Pages 29-172) contains the details of the changes identified in the Executive Summary above.

Regulatory Impact (Page 190)

The proposed rule would implement standards for programs that would have numerous effects, including supporting program integrity, reducing the impact of adverse selection, and stabilizing premiums in the individual and small group health insurance markets and in Exchanges. CMS says it is unable to quantify and monetize all the benefits and costs of the proposal.

Nonetheless, the effects in Table 11 (Page 193) reflect qualitative assessment of impacts and estimated direct monetary costs and transfers resulting from the provisions of this proposed rule for Exchanges, health insurance issuers, and consumers.

Accounting Table

Benefits:	Estimate	Year Dollar	Discount Rate	Period Covered
Annualized Monetized (\$/year)	\$0.6 million	2025	7 percent	2025-2029
Annualized Monetized (\$/Year	\$0.6 million	2025	3 percent	2025-2029
Quantified: <ul style="list-style-type: none"> • Annual reduction in costs starting in 2025 of \$40,267 in application processing savings for the Federal Government and \$50,129 total for State Exchanges and States that choose to operate BHPs as a result of fewer individuals applying for coverage associated with the proposal regarding the definition of "lawfully present." • Annual reduction in costs starting in 2025 of \$9,861 total for State Exchanges and \$9,745 for the Federal Government as a result of fewer individuals generating immigration status inconsistencies associated with the proposal regarding the definition of "lawfully present." • Annual reduction in costs starting in 2025 of \$187,991 to individuals who would no longer be applying for BHP or Exchange health coverage or submitting documents to verify their lawful presence status for purposes of those enrollments. • Annual reduction in costs starting in 2026 of \$92,400 total for States and \$292,000 for the Federal Government as a result of not sending an additional 2-tax year notice to consumers found as failing to file and reconcile. 				

Non-quantified:

- Reduction in the risk of gaming and adverse selection by consumers exploiting or utilizing loopholes in the insurance system associated with the proposal to permit attribution of payment for new coverage to past-due premium amounts.
- Reduction in outstanding premium debt amount for enrollees resulting in potential improvement in their financial standing over time and a reduced likelihood of any debt being placed into collections associated with the proposal to permit attribution of payment for new coverage to past-due premium amounts.
- Improved continuous coverage for enrollees and premium collection rates and reduced administrative costs for issuers associated with the proposal to permit attribution of payment for new coverage to past-due premium amounts.
- Increased transparency for agents, brokers, and web-brokers by establishing an evidentiary standard to be used during investigations of agent, broker, or web-broker noncompliance under § 155.220(g)(1)-(3).
- Reduced potential for APTC recipients to incur large tax liabilities as a result of the proposals regarding FTR and income verification in this proposed rule.
- Simplified operational processes for issuers and the Exchanges associated with the proposal regarding the annual OEP length.
- Improved continuous coverage for the full year and improved risk pool associated with the proposal regarding the annual OEP length.
- Increased issuer participation and improved coverage options, resulting in an improved overall risk pool and reduced overall costs associated with the proposal to revise the AV de minimis ranges.
- Better matches between consumers’ coverage preferences and available coverage offerings and a reduction in financial burden due to improper enrollment associated with the proposals in this rule.
- Reduction in improper enrollments of fully subsidized enrollees by agents, brokers, and web-brokers associated with the proposals in this rule.

Costs:	Estimate	Year Dollar	Discount Rate	Period Covered
Annualized Monetized (\$/year)	\$276.0 million	2025	7 percent	2025-2029
Annualized Monetized (\$/year)	\$276.7 million	2025	3 percent	2025-2029

Quantified:

- One-time costs in 2025 of \$1,965,965 total for State Exchanges and States operating BHPs and \$97,325 for the Federal Government to make changes to eligibility systems regarding the definition of “lawfully present” proposed in this rule.
- One-time costs in 2025 of \$1,654,525 total for State Exchanges and \$97,325 for the Federal Government to end QHP coverage for individuals no longer considered “lawfully present” if the proposals in this rule are finalized.
- One-time costs in 2025 of \$19,465,000 total for State Exchanges and \$973,250 for the Federal Government to develop and code changes to the eligibility systems to evaluate and verify FTR status under the revised FTR process proposed in this rule.
- One-time costs in 2025 of approximately \$14.8 million total for State Exchanges and \$778,600 for the Federal Government to complete the necessary system changes and other technical changes to implement the proposal regarding creating annual income DMIs when applicants attest to income above 100 percent of the Federal poverty level (FPL), but trusted data sources show income below 100 percent of the FPL.
- Annual operating costs of approximately \$19.7 million for the Federal Government and approximately \$12.1 million total for State Exchanges beginning in 2025 to review and verify submitted documents, communicate with consumers, and process DMIs for applicants with incomes below 100 percent of the FPL.
- Increase in annual burden of \$13,475,320 beginning in 2025 for consumers with incomes below 100 percent of the FPL to fulfill income verification requirements addressing DMIs.
- One-time costs in 2025 of approximately \$16.6 million total for State Exchanges and approximately

\$876,000 for the Federal Government to complete the necessary system changes and other technical changes to implement the proposal to no longer permit Exchanges to accept an applicant's income attestation without further verification when tax return data is unavailable.

- Increase in annual burden of approximately \$76.2 million for the Federal Government and approximately \$46.7 million total for State Exchanges beginning in 2025 to review and verify submitted documents, communicate with consumers, and process DMIs for applicants whose tax return data is unavailable.
- Increase in annual burden of \$52,081,620 beginning in 2025 for consumers whose tax return data is unavailable to fulfill income verification requirements addressing DMIs.
- One-time costs in 2025 of approximately \$9,500,000 total for State Exchanges and approximately \$500,000 for the Federal Government to complete the necessary changes to implement the proposal to remove the automatic 60-day extension to resolve income DMIs.
- One-time costs in 2025 of \$973,250 for the Federal Government and \$19,465,000 total for State Exchanges associated with the proposals regarding annual eligibility redeterminations.
- One-time costs in 2025 of \$389,300 for the Federal Government and \$7,786,000 for State Exchanges associated with the proposal to shorten the Open Enrollment Period.
- One-time costs in 2025 of \$390,000 for the Federal Government to remove functionality to grant the 150 percent FPL SEP and make any necessary updates to eligibility logic systems for Exchanges on the Federal platform.
- One-time cost of approximately \$60 million total in 2026 for the five State Exchanges that did not previously verify SEPs associated with the proposal to remove the limit for verification of SEPs to only those SEPs that deal with loss of minimum essential coverage.
- Annual processing cost beginning in 2026 of approximately \$46.7 million for Exchanges to comply with proposed pre-enrollment verification requirements.
- Annual labor cost increase for the Federal Government of \$2,833,449 and \$1,736,615 total for State Exchanges starting in 2025 associated with the proposals regarding SEP verification.
- Annual cost increase for consumers of approximately \$7,206,665 starting in 2025 associated with the proposals regarding SEP verification.
- One-time cost in 2025 of \$1,849,270 to the Federal Government to develop and code changes associated with the proposals regarding SEP verification.
- Regulatory review costs of \$2,532,810 for interested parties to review and analyze this proposed rule in 2025.

Non-quantified:

- Total reduced annual enrollment between 750,000 and 2,000,000 individuals, including:
 - Reduced annual QHP enrollment of 10,000 and annual BHP enrollment of 1,000 associated with the proposal to exclude DACA recipients from the definition of "lawfully present" used to determine eligibility for enrollment in a QHP through an Exchange, for APTC and CSRs, and for a BHP in States that operate BHPs.

- Potential increase in the number of people who owe past-due premiums and who may be deterred from enrolling and lose coverage due to a higher initial premium payment associated with the proposal to permit attribution of payment for new coverage to past-due premium amounts.
- Potential loss of coverage due to non-payment of premiums for some automatically re-enrolled, fully subsidized enrollees associated with the annual eligibility redetermination provision, if these enrollees do not submit an application for an updated eligibility determination to an Exchange, subsequently experience a decrease in the amount of APTC applied to their policy such that the remaining monthly premium owed by the enrollee for the entire policy equals \$5 for the first month and for every following month that the enrollee does not confirm or update the eligibility determination, and fail to make payment of the premium amount due.
- Reduced annual enrollment by 80,000 beginning in 2026 due to decreases in PTC subsidies for enrollees, based on an assumption that the Department of the Treasury and the IRS would adopt the use of the same premium measure proposed for the calculation of the premium adjustment percentage in this rule for purposes of calculating the indexing of the PTC applicable percentage and the required contribution percentage under section 36B of the Code.
- Small negative impact on the individual market risk pool associated with the proposal to exclude DACA recipients from the definition of “lawfully present” for purposes of enrolling in a QHP offered through an Exchange, APTC, PTC, CSRs, or BHP coverage in States that elect to operate a BHP.
- Potential costs to the Federal Government and to States to provide limited Medicaid coverage for the treatment of an emergency medical condition to DACA recipients who have a qualifying medical emergency and who would become uninsured if the proposal pertaining to DACA recipients in this rule is finalized.
- Increase in costs for care and medical debt if care is needed for people deterred from enrolling due to a higher initial premium payment, which could in turn be incurred by hospitals and municipalities associated with the proposal to permit attribution of payment for new coverage to past-due premium amount.
- Potential costs to State governments and private hospitals in the form of charity care for individuals who become uninsured as a result of the proposals in this rule.
- Potential increase in Federal and State Medicaid expenditures by enrolling more people in Medicaid who would otherwise have enrolled in APTC-subsidized QHP coverage due to the proposal regarding income verification for individuals with incomes below 100 percent of the FPL.
- Time costs to enrollees who would be automatically re-enrolled in their QHP with a zero-dollar premium after application of APTC to submit an application for an updated eligibility determination to an Exchange associated with the annual eligibility redetermination provision.
- Costs to the Federal Government, State Exchanges, and issuers for outreach activities associated with the proposed shortened open enrollment period.
- Enrollment for 293,073 enrollees potentially delayed for 1-3 days for SEP verification.

Transfers	Low	High	Year Dollar	Discount Rate	Period Covered
Annualized Monetized (\$/year)	-\$8.7 Billion	-\$11.4 Billion	2025	7 percent	2025-2029
Annualized Monetized (\$/year)	-\$8.9 Billion	-\$11.6 Billion	2025	3 percent	2025-2029

Quantified:

- Reduced annual transfers from the Federal Government to issuers of \$34 million in APTC payments and \$3.2 million in BHP payments associated with the proposal to exclude DACA recipients from the definition of “lawfully present” for purposes of enrolling in a QHP offered through an Exchange, APTC, PTC, CSRs, or BHP coverage in States that elect to operate a BHP, beginning in 2025.
- Reduced annual APTC transfers from the Federal Government to issuers of between \$1.16 billion to \$1.86 billion associated with the proposals regarding FTR beginning in 2026.
- Annual reduction in APTC transfers from the Federal Government to issuers of \$266 million beginning in 2025 for households across all Exchanges who receive fewer months of APTC due to no longer receiving an automatic 60 days of additional time to resolve their income DMI.
- Annual reduction in APTC transfers from the Federal Government to issuers of \$189 million beginning in 2025 for consumers across all Exchanges who receive fewer months of APTC due to reinstatement of DMIs where households attest to income above 100 percent of the FPL and data sources show income below 100 of the percent FPL.
- Annual reduction in APTC transfers from the Federal Government to issuers of \$956 million beginning in 2025 for households across all Exchanges who receive fewer months of APTC due to reinstatement of DMIs when IRS data is not available.
- Annual reduction in APTC transfers from the Federal Government to issuers of \$817,571,843 beginning in 2026 associated with the proposal regarding premium payment thresholds.
- Reduction in APTC transfers from the Federal Government to issuers of approximately \$3.4 billion in 2026, \$3.6 billion in 2027, \$3.8 billion in 2028, and \$4.0 billion in 2029 associated with the proposal to repeal the 150 percent FPL SEP, which is anticipated to reduce premiums by 3 to 4 percent.
- Annual reduction in APTC transfers from the Federal Government to issuers of approximately \$105.4 million associated with the proposal to revise pre-enrollment verification requirements for SEPs, associated with a reduction in premiums of approximately 0.5-1.0 percent for PY 2026 and 1.0-2.0 percent for PY 2027 and beyond.
- Reduced annual transfers from the Federal Government to issuers of between \$1.27 billion and \$1.55 billion in APTC payments beginning in 2026, assuming that the Department of the Treasury and the IRS would adopt the use of the same premium measure proposed for the calculation of the premium adjustment percentage in this rule for purposes of calculating the indexing of the PTC applicable percentage and the required contribution percentage under section 36B of the Code.
- Reduced annual transfers from large employers to the Federal Government of between \$3 million and \$20 million in Employer Shared Responsibility Payments annually over the period of 2028 to 2030, based on an assumption that the Department of the Treasury and the IRS would adopt the use of the same premium measure proposed for the calculation of the premium adjustment percentage in this rule for purposes of calculating the indexing of the PTC applicable percentage and the required contribution percentage under section 36B of the Code.
- Reduced annual APTC transfers from the Federal Government to issuers of approximately \$1.22 billion in 2026, \$1.28 billion in 2027, \$1.33 billion in 2028, and \$1.40 billion in 2029 associated with an estimated 1 percent premium decrease on average for individuals eligible for PTC due to the proposal to require individual market silver QHPs to provide an AV between 66-72 percent and associated income-based CSR plan variations to follow a de minimis range of +1/-1.

Non-Quantified:

- Reduction in net Federal PTC spending associated with policy terminations if enrollees do not pay their portion of the premium and a reduction in improper enrollments occurs due to the annual eligibility redetermination provision.
- Reduced premiums and APTC cost to the Federal Government associated with the proposal regarding the annual OEP length.
- Decreased premiums for plans that do not include sex-trait modification as a covered benefit as a result of the proposal.
- Reduction in commission payments from issuers to agents, brokers, and web-brokers associated with a reduction in improper enrollments of fully subsidized enrollees by agents, brokers, and web-brokers due to the proposals in this rule.

Final Thoughts

On the surface this rule does not seem to directly impact providers. CMS provides the following table identifying huge savings.

Summary of Undiscounted Annual Impacts Reported in Accounting Table

	2025	2026	2027	2028	2029
Benefits	\$0.3 million	\$0.7 million	\$0.7 million	\$0.7 million	\$0.7 million
Costs	\$210.8 million	\$338.7 million	\$278.7 million	\$278.7 million	\$278.7 million
Transfers – Low	\$0	-\$10.5 billion	-\$11.0 billion	-\$11.7 billion	-\$12.2 billion
Transfers – High	\$0	-\$13.7 billion	-\$14.4 billion	-\$15.2 billion	-\$15.9 billion

While some savings will be from eliminating waste, the greater savings may come from the loss of health care coverage to many individuals. These individuals could become bad debts to those providing their care.