COMMISSIONER OF SECURITIES AND INSURANCE

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Commissioner

Office of the
Montana State Auditor

ADDENDUM TO
April 10, 2023 ADVISORY MEMORANDUM

To: ALL INTERESTED PERSONS

From: TROY DOWNING
Commissioner of Securities and Insurance, Office of the Montana State Auditor

Date: April 27, 2023

Updated Requirements for Qualified Health Plan (QHP) Certification related to the 2024 Final Notice of Benefit Payment Parameters

The Office of the Montana State Auditor, Commissioner of Securities and Insurance (CSI), issues this Addendum to the Advisory Memorandum, dated April 10, 2023, titled "2024 Form, Rate, & Network Adequacy Filing Requirements including Qualified Health Plan Certification," which summarized proposed provisions set forth in the 2024 Draft Notice of Benefit Payment Parameters (Proposed Rule) issued by the U.S. Department of Health and Human Services (HHS) through the Centers for Medicare & Medicaid Services (collectively "CMS"). CMS issued the 2024 Final Notice of Benefit Payment Parameters (2024 Final Rule), on April 17, 2023. This Addendum updates any "Items of Note" listed in the April 10, 2023 Advisory Memo that were affected by the 2024 Final Rule.

Neither the April 10 Advisory Memorandum nor this Addendum exhaustively discuss QHP certification requirements, or all new requirements set forth in the 2024 Final Rule. CMS has not finalized the 2024 Letter to Issuers, which should be reviewed by issuers after its release. Issuers should independently review the 2024 Final Rule and related publications. Please see the following links for specific information:

Final Rule: https://www.cms.gov/files/document/cms-9899-f-patient-protection-final.pdf

Fact Sheet: https://www.cms.gov/newsroom/fact-sheets/hhs-notice-benefit-and-payment-parameters-2024-final-rule

UPDATED ITEMS OF NOTE FOR 2024

1) **URRT.** The 2024 Final Rule does not affect the URRT and corresponding URR instructions. Please see:

   https://www.qhpcertification.cms.gov/s/Unified%20Rate%20Review

2) **New Actuarial Value (AV) Calculator.** The final **AV Calculator** and methodology for 2024 can be found here:

   2024 Final AV Calculator: https://www.cms.gov/files/document/copy-final-2024-av-calculator.xlsm

   2024 Final AV Calculator Methodology: https://www.cms.gov/files/document/2024-av-calculator-methodology.pdf

3) **Defrayal of State Mandated benefits**. The 2024 Final Rule does not affect defrayal.

4) **Standardized Plan Options**. Beginning in 2023, CMS re-introduced standardized plans for FFM Marketplaces, requiring issuers to offer plans with standardized benefits designed by CMS at every product network type, at every metal level (including expanded and non-expanded Bronze level), and throughout every service area in which they offer plans in the individual market. Under the 2024 Final Rule, CMS no longer requires FFM issuers to offer a standardized plan at the non-expanded Bronze metal level. (Finalized as proposed.)

   With regard to non-standardized plans, the 2024 Final Rule finalizes a limit on the number of non-standardized plan options that issuers of QHPs can offer through Marketplaces on the federal platform to **four** non-standardized plan options per product network type, metal level (excluding catastrophic plans), and inclusion of dental and/or vision benefit coverage, in any service area, for PY2024 (CMS had proposed two) and **two** for PY2025 and subsequent plan years. CMS will permit additional flexibility specifically for plans with additional dental and/or vision benefit coverage. The 2024 Final Rule clarifies the specific dental and/or vision benefit coverage a non-standardized plan option would need to include in order to qualify for this additional flexibility.

   Because CMS believes that directly limiting the number of non-standardized plan options is a more effective and straightforward approach to reduce the risk of plan choice overload, CMS **did not** finalize a meaningful difference standard as an alternative, as CMS had proposed.

5) **Prescription Drugs.** CMS **did not** finalize its proposal to place all covered drugs in the appropriate cost-sharing tier unless there is an "appropriate non-discriminatory basis" for placing the drug in the specialty tier.

6) **Stand-Alone Dental Plans (SADPs)**. The 2024 Final Rule requires that SADP issuers set their premium rates and determine plan eligibility based on an enrollee's age at the time the policy is issued or renewed, beginning in 2024. (Finalized as proposed.)

   The 2024 Final Rule requires SADP issuers, as a condition for Marketplace certification for PY2024, to submit only guaranteed rates. This requirement applies to Marketplace-certified SADPs, whether they are sold on- or off-Marketplace. (Finalized as proposed.)

   The 2024 Final Rule requires all individual market QHPs, including SADPs and SHOPs, across all Marketplace types to use a network of providers that complies with the network adequacy and ECP standards. (Finalized as proposed.)

   The 2024 Final Rule finalizes a limited exception to this network requirement for certain SADP issuers that sell plans in areas where it is "prohibitively difficult for the issuer to establish a network of dental providers." Specifically, under this exception, an area is considered "prohibitively difficult" for an SADP issuer to establish a network of dental

providers based on attestations from state insurance departments in states with at least 80% of their counties classified as Counties with Extreme Access Considerations (CEAC) that at least one of the following factors exist in the area of concern: a significant shortage of dental providers, a significant number of dental providers unwilling to contract with Marketplace issuers, or significant geographic limitations impacting consumer access to dental providers.

CSI has confirmed that Montana is a state with at least 80% of counties classified as a CEAC. CSI will be working with CMS on an attestation for the "prohibitively difficult" exception. CSI will provide future guidance on the attestation and the "prohibitively difficult" exception.

7) **QHP Marketing Names.** The 2024 Final Rule requires that QHP plan and plan variant marketing names include correct information, without omission of material fact, and do not include content that is misleading. CMS will review plan and plan variant marketing names during the annual QHP certification process in collaboration with state regulators. (Finalized as proposed.)

8) **Network Adequacy and ECP Standards.** As noted above, subject to the limited exception described above in Item # 6, the 2024 Final Rule requires all Marketplace plans, SHOPs, and SADPs to use a network of providers that complies with CMS's network adequacy and ECP requirements and eliminates the exemption for plans that do not maintain a provider network. (Finalized as proposed.)

Beginning in 2023, CMS required QHP issuers to meet minimum appointment wait time standards but delayed implementation of that requirement to PY2024. The 2024 Final Rule amends the regulations to **delay application of the appointment wait time standards until PY2025**. Accordingly, QHP issuers in Federally Facilitated Marketplaces (FFM) like Montana will have one additional plan year before being required to attest to meeting appointment wait time standards. CMS stated it will be releasing specific guidelines for complying with appointment wait time standards in later guidance.

The 2024 Final Rule modifies ECP standards in two ways. First, the 2024 Final Rule creates two new and distinct ECP categories: Mental Health Facilities and Substance Use Disorder (SUD) Treatment Centers. These providers are thus removed from the "Other ECP Providers" category, and issuers must therefore attempt to contract with at least one SUD Treatment Center and at least one Mental Health Facility. Second, the 2024 Final Rule requires QHPs to contract with at least 35% of available Federally Qualified Health Centers and at least 35% of available Family Planning Providers that qualify as ECPs within the plan's service area. This is in addition to the existing requirement that plans have at least 35% of all available ECPs within their service area, in-network. (Finalized as proposed.)

9) **Dependent Coverage.** The 2024 Final Rule codifies the current operational HealthCare.gov requirement to cover dependent children until the end of the plan year in which they turn 26. (Finalized as proposed.)

10) **Payment Delinquency Notices Standards.** Issuers are currently required to send a notice to an enrollee who becomes delinquent in making premium payments. The 2024 Final Rule establishes a timeliness standard for FFM issuers. Those issuers must

send notices within 10 business days of the date the issuer should have discovered that the enrollee was in delinquency. (Finalized as proposed.)

11) **Employee Counting Method.** The 2024 Final Rule does not affect the definition of small employer set forth in the April 10 Advisory Memo.

This advisory memorandum is informational only and does not enlarge, delimit, or otherwise modify any requirements of applicable law or in any way limit the authority of CSI under applicable law. CSI encourages interested persons to consult with independent legal counsel for guidance on the application of law to any particular circumstances.