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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 435 and 600

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Patient Protection and Affordable Care Act, HHS Notice of Benefit and Payment Parameters for 2025; Updating Section 1332 Waiver Public Notice Procedures; Medicaid; Consumer Operated and Oriented Plan (CO-OP) Program; and Basic Health Program

AGENCY: Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS); Department of the Treasury.

ACTION: Final rule.

Establishment of Exchange Network Adequacy Standards (§ 155.1050)

In the HHS Notice of Benefit and Payment Parameters for 2025 proposed rule (88 FR 82510, 82585), we proposed to require that State Exchanges and SBE-FPs establish and impose quantitative time and distance QHP network adequacy standards that are at least as stringent as the FFEs' time and distance standards established for QHPs under § 156.230. We also proposed that State Exchanges and SBE-FPs be required to conduct quantitative network adequacy reviews prior to certifying any plan as a QHP, consistent with the reviews conducted by the FFEs under § 156.230. We further proposed to require State Exchanges and SBE-FPs permit issuers that are unable to meet the specified time and distance network adequacy standards to

participate in a justification process after submitting their initial network adequacy data to account for variances and potentially earn QHP certification. In addition, we proposed a framework for granting State Exchanges and SBE-FPs an exception to the proposed quantitative network adequacy standards and review requirements if we determine that the Exchange applies and enforces quantitative network adequacy standards that are different from the FFEs' but ensure a level of access to providers that is as great as that ensured by the FFEs' network adequacy standards established for QHPs under § 156.230. Finally, we proposed to mandate that State Exchanges and SBE-FPs require all issuers seeking QHP certification to submit information to the State Exchange or SBE-FP about whether network providers offer telehealth services.

Understanding that some State Exchanges or SBE-FPs may need to promulgate regulations to comply with the proposed provisions requiring State Exchanges and SBE-FPs to impose quantitative network adequacy standards and conduct quantitative network adequacy reviews, as well as the requirement related to QHP issuer submission of telehealth information, we proposed that these provisions would be effective for plan years beginning on or after January 1, 2025, to accommodate the time it may take for a State Exchange or SBE-FP to come into compliance. We stated in the proposed rule that we are of the view that strong network adequacy time and distance standards across all Exchanges would enhance consumer access to quality, affordable care through the Exchanges. We refer readers to the proposed rule (88 FR 82586 through 82587) for a detailed background discussion of HHS' network adequacy policy and the network adequacy proposals.

a. Network Adequacy Standards and Reviews Across Exchanges

In the proposed rule (88 FR 82587), we stated that network adequacy is a key factor affecting consumers' access to care. We explained that while the FFEs impose uniform network adequacy standards across the States they serve that require QHP issuers to meet quantitative metrics, a similarly uniform network adequacy standard does not exist for States served by State Exchanges and SBE-FPs. Indeed, we further explained that these circumstances prompted the National Association of Insurance Commissioners to develop the NAIC Health Benefit Plan Network Access and Adequacy Model Act (Model Act).[256] The Model Act includes recommendations for qualitative network adequacy standards to which States could hold their issuers accountable and that require submission of access plans. We noted, however, that the Model Act does not specify what constitutes network adequacy, and, currently, only a few State Exchanges and SBE-FPs have adopted the full Model Act, resulting in the lack of a strong floor for network adequacy standards among State Exchanges and SBE-FPs.

We noted in the proposed rule (88 FR 82587) that State Exchanges and SBE-FPs currently have a mix of network adequacy policies in place, and approximately 25 percent of those fail to impose any quantitative standard. Quantitative network adequacy standards can be monitored relatively easily and applied objectively and may include standards that measure provider-to-enrollee ratios, time and distance, or appointment wait times.[257] On the other hand, a qualitative approach to network adequacy typically articulates a broad, general standard of adequacy and typically grants regulators or insurers discretion to determine how to measure compliance.[258] State regulators using this approach may require issuers to simply articulate how

[256] Health Benefit Plan Network Access and Adequacy Model Act. (2015, 4th Quarter). *https://www.nh.gov/insurance/legal/documents/naic_model_act_network_adequacy.pdf*.
[257] Hall, Ginsburg. (2017, Sep.). A Better Approach to Regulating Provider Network Adequacy. *https://www.brookings.edu/wp-content/uploads/2017/09/regulatory-options-for-provider-network-adequacy.pdf*.
[258] Id.

they determine and measure adequacy in their networks.[259] Once regulators approve an issuer's network adequacy plan using this approach, they then typically let issuers self-monitor their own compliance.[260] As opposed to conducting routine audits or requiring periodic reports of compliance, State regulators usually rely on consumer complaints to highlight situations that might require investigation.[261]

We stated in the proposed rule that, based on our experience conducting network adequacy reviews and regulating QHPs, as well as feedback from interested parties, including the many commenters who requested in the 2023 Payment Notice (87 FR 27334) that HHS extend Federal network adequacy standards to State Exchanges in future rulemaking, we are now of the view that no matter the State in which a QHP is offered, some quantitative analysis is necessary for an Exchange to objectively monitor network adequacy and determine whether a QHP provides enrollees in that State with access to an adequate network of providers.

Moreover, we stated that the proliferation in recent years of QHP issuers with narrower provider networks raises several consumer protection concerns. QHPs with narrower networks may lack access to specific provider specialties in-network, resulting in significant out-of-pocket expenses for consumers who must seek care out-of-network or resulting in consumers forgoing care to avoid these expenses. We noted that we have also been made aware, through communications with interested parties, of issues faced by consumers where in-network emergency physicians and mental health providers are in limited supply or, in the case of in-network emergency physicians, not available at in-network hospitals. Additionally, we stated that the proliferation of narrower networks risks consumers being enrolled in plans whose networks

[259] Id.
[260] Id.
[261] Id.

do not have sufficient capacity to serve them or whose providers are too geographically dispersed to be reasonably accessible.

Therefore, we proposed (88 FR 82587) to establish a national floor of quantitative network adequacy standards and network adequacy reviews. We stated in the proposed rule that although a number of State Exchanges and SBE-FPs have taken meaningful steps towards ensuring the adequacy of QHP networks, we are of the view that every Exchange should apply quantitative network adequacy standards and conduct a thorough review and analysis of issuer compliance with these standards to effectively evaluate the adequacy of QHP networks in order to ensure that all consumers, regardless of which State they live in, have timely access to providers to manage their health care needs.

b. Proposals Related to State Exchange and SBE-FP Network Adequacy Standards and Reviews

i. Quantitative Network Adequacy Time and Distance Standards

For plan years beginning on or after January 1, 2025 and future plan years, we proposed that State Exchanges and SBE-FPs must (1) establish and impose quantitative time and distance network adequacy standards for QHPs that are at least as stringent as standards for QHPs participating on the FFEs under § 156.230; and (2) conduct reviews of a plan's compliance with those quantitative network adequacy standards prior to certifying any plan as a QHP, consistent with the manner in which the FFEs review the network adequacy of plans under § 156.230. For purposes of this proposed policy, we stated in the proposed rule that "at least as stringent as" means time and distance standards that use a specialty list that includes at least the same specialties as our provider specialty lists and time and distance parameters that are at least as short as our parameters. We explained that States would be permitted to implement network adequacy standards that are more stringent than those performed by the FFEs under § 156.230.

In other words, States could use a specialty list that is broader than our specialty lists, but it must include all the provider specialties included in our lists. Similarly, we explained that the time and distance parameters could also be narrower than our parameters, meaning they could require shorter time and/or distances, but they cannot be less demanding than our time and distance parameters.

In the proposed rule, we stated that quantitative time and distance standards help strengthen QHP enrollees' timely access to a variety of providers to meet their health care needs, which in turn helps ensure that enrollees can receive health care services without unreasonable delay. Additionally, we stated that quantitative time and distance standards, when varied by county type, provide a useful assessment of whether QHPs provide reasonable access to care and a more comprehensive evaluation of the adequacy of QHPs' networks.

In the 2023 Payment Notice (87 FR 27322), we adopted time and distance standards that the FFEs would use to assess whether plans to be certified as QHPs in the FFEs meet network adequacy standards. The proposed provider specialty lists for time and distance standards for PY 2023 were informed by prior HHS network adequacy requirements, consultation with interested parties, and other Federal and State health care programs, such as Medicare Advantage and Medicaid. The provider specialty lists that were finalized for PY 2023 covered more provider types than previously evaluated under FFE standards so that QHP networks would be robust, comprehensive, and responsive to QHP enrollees' needs. In the proposed rule (88 FR 82588), we stated that we believe these provider specialty lists promote access to a variety of provider types and, as a result, strengthen consumer access to health care services without unreasonable delay. To establish a national floor for quantitative network adequacy standards, we proposed that the provider specialty list that State Exchanges and SBE-FPs use must include, at a

minimum, the providers in the provider specialty lists for the FFEs that were applicable to PY 2023. Those lists are included in the preamble of this final rule, in Tables 9 and 10.

Consistent with the standards for the FFEs, and to strengthen QHP enrollees' timely access to a variety of providers to meet their health care needs, we proposed that State Exchanges and SBE-FPs' time and distance standards would be calculated at the county level and vary by county designation. We proposed that State Exchanges and SBE-FPs would be required to use a county type designation method that is based on the population size and density parameters of individual counties. We further stated that under our proposal, the time and distance standards State Exchanges and SBE-FPs would establish and impose would apply to the provider specialty lists contained in the proposed rule (Tables 9 and 10 in the preamble of this final rule). We explained that to count towards meeting the time and distance standards, individual and facility providers listed in Tables 9 and 10 would have to be appropriately licensed, accredited, or certified to provide services in their State, as applicable, and would need to have in-person services available.

TABLE 9: Individual Provider Specialty List for Time and Distance Standards

Individual Specialty Types
Allergy and Immunology
Cardiology
Cardiothoracic Surgery
Chiropractor
Dental
Dermatology
Emergency Medicine
Endocrinology
ENT/Otolaryngology
Gastroenterology
General Surgery
Gynecology, OB/GYN
Infectious Diseases
Nephrology
Neurology
Neurosurgery
Occupational Therapy
Oncology – Medical, Surgical

Individual Specialty Types
Oncology – Radiation
Ophthalmology
Orthopedic Surgery
Outpatient Clinical Behavioral Health (Licensed, accredited, or certified professionals)
Physical Medicine and Rehabilitation
Physical Therapy
Plastic Surgery
Podiatry
Primary Care – Adult
Primary Care – Pediatric
Psychiatry
Pulmonology
Rheumatology
Speech Therapy
Urology
Vascular Surgery

TABLE 10: Facility Specialty List for Time and Distance Standards

Facility Specialty Types
Acute Inpatient Hospitals (Must have Emergency services available 24/7)
Cardiac Catheterization Services
Cardiac Surgery Program
Critical Care Services – Intensive Care Units (ICU)
Diagnostic Radiology (Free-standing; hospital outpatient; ambulatory health facilities with Diagnostic Radiology)
Inpatient or Residential Behavioral Health Facility Services
Mammography
Outpatient Infusion/Chemotherapy
Skilled Nursing Facilities
Surgical Services (Outpatient or ASC)
Urgent Care

We stated in the proposed rule that the county-specific time and distance parameters that QHPs would be required to meet would be detailed in future guidance, namely, the annual CMS Letter to Issuers in the Federally-facilitated Exchanges. We stated that we would consider industry standards in developing these standards.

ii. Quantitative Network Adequacy Reviews

For plan years beginning on or after January 1, 2025, we proposed (88 FR 82590) that State Exchanges and SBE-FPs be required to conduct quantitative network adequacy reviews prior to QHP certification, and that they conduct them consistent with network adequacy reviews

conducted by the FFEs under § 156.230. Specifically, we proposed that State Exchanges and SBE-FPs would be required to conduct, prior to QHP certification, quantitative network adequacy reviews to evaluate compliance with requirements under § 156.230(a)(1)(ii) and (iii), and (a)(2)(i)(A), while providing QHP certification applicants the flexibilities described under § 156.230(a)(2)(ii) and (a)(3) and (4). We stated in the proposed rule that under this proposal, State Exchanges and SBE-FPs would be prohibited from accepting an issuer's attestation as the only means for plan compliance with network adequacy standards. We further proposed that State Exchanges and SBE-FPs would make available to SADP applicants the limited exception available to SADPs under § 156.230(a)(4) pursuant to which SADPs may not be required to meet FFE network adequacy standards under § 156.230(a)(4), for the same reasons we made this exception available in the FFEs in the 2024 Payment Notice (88 FR 25878 through 25879). This exception is not available to medical QHP issuers.

iii. Quantitative Network Adequacy Review Justification Process

In the proposed rule (88 FR 82590), we acknowledged that State-specific challenges may necessitate exceptions, and so we proposed to require State Exchanges and SBE-FPs to permit issuers that are unable to meet the specified standards to participate in a justification process after submitting their initial data to account for variances, consistent with the processes specified under § 156.230(a)(2)(ii) and (a)(3) and (4). We noted that State-specific challenges could include barriers beyond an issuer's control, such as provider supply shortages or topographic barriers.

We stated in the proposed rule that the issuer would include this justification as part of its QHP application and describe how the plan's provider network provides an adequate level of service for enrollees and how the plan's provider network will be strengthened and brought

closer to compliance with the network adequacy standards prior to the start of the plan year. We further stated that the issuer would be required to provide information as requested by the State Exchange or SBE-FP to support this justification. We also explained that State Exchanges and SBE-FPs would be required to review the issuer's justification to determine whether making such health plan available through the Exchange is in the interests of qualified individuals in the State or States in which such Exchange operates as specified under § 156.230(a)(3). We further explained that in making this determination, the factors State Exchanges and SBE-FPs could consider include whether the exception is reasonable based on circumstances such as the local availability of providers and variables reflected in local patterns of care. We stated that if the State Exchange or SBE-FP determines that making such health plan available through its Exchange is in the interests of qualified individuals in the State or States in which such Exchange operates, it could then certify the plan as a QHP.

iv. Exception Process for State Exchanges and SBE-FPs

In the proposed rule (88 FR 82590), we stated that we are aware that some States Exchanges employ robust, quantitative network adequacy standards that differ from those used by the FFEs, but still ensure that QHPs provide consumers with reasonable, timely access to practitioners and facilities to manage their health care needs, consistent with the ultimate aim of these proposals. Accordingly, we proposed a framework for granting exceptions to the requirements that State Exchanges and SBE-FPs establish and impose network adequacy time and distance standards for QHPs that are at least as stringent as the standards applicable to QHPs in FFEs and conduct quantitative network adequacy reviews that are consistent with those carried out by the FFEs under § 156.230. We proposed that HHS could grant State Exchanges and SBE-FPs an exception if it determines that the Exchange applies and enforces quantitative

network adequacy standards that are different from the FFEs' but ensure reasonable access as defined under § 156.230. We also proposed that the exception would be available only to State Exchanges and SBE-FPs that conduct quantitative reviews of network adequacy prior to certifying plans as QHPs. We further proposed that Exchanges seeking to employ alternative network adequacy standards would be required to submit an exception request, in a form and manner specified by HHS, and to support their exception request with evidence-based data demonstrating that such standards ensure access as defined under § 156.230.

For example, we explained that if a State were to provide quantitative evidence that their network adequacy time and distance standards that measure access by service types provide consumers with equal access to providers as the Federal network adequacy standards under § 156.230 that measure access by provider types, we may grant the respective State's request for an exception from measuring access by provider types. Additionally, we explained that if a State were to use different county type designations than the five county type designations that we use to assess QHP time and distance standards at the county level (that is, Large Metro, Metro, Micro, Rural, CEAC), we would consider the respective State's request for an exemption from using the same five county type designations only if the State were to provide evidence that their alternative county type designations provide consumers with equal access to providers as the Federal network adequacy standards under § 156.230. We stated that alternative quantitative network adequacy standards that we would review for potentially qualifying for the exemption must be supported by evidence-based data, demonstrating that such standards provide enrollees with a level of access to providers that is equal to or greater than that ensured by the FFE network adequacy standards under § 156.230.

Although we proposed to establish minimum standards related to network adequacy in the proposed rule, we solicited comment on how States may be able to develop a combination of data-driven quantitative and qualitative standards, developed with input from interested parties, to assess network adequacy. In the 2020 Medicaid Program; Medicaid and Children's Health Insurance Program (CHIP) Managed Care final rule (85 FR 72754, 72802), we provided States the flexibility to develop quantitative network adequacy standards for determining network adequacy. In that rule, we noted that in some situations, time and distance may not be the most effective type of standard for determining network adequacy and that some States have found that the time and distance analysis produces results that may not accurately reflect provider availability. For example, a State that has a heavy reliance on telehealth in certain areas of the State may find that a health care provider-to-enrollee ratio is more useful in measuring meaningful access to all services without unreasonable delay, as the time it would take the enrollee, and the distance the enrollee would have to travel, to access the provider in-person could be well beyond applicable time and distance standards, but the enrollee may still be able to easily and quickly access many different providers on a virtual basis (85 FR 72802).

In the proposed rule, we sought comment on how we should administer the process for Exchanges to apply for these exceptions, including the appropriate timelines, and the data that would be required to be submitted as part of the exception request. We also sought comment on how we should evaluate the provider access offered by QHP issuers in a State that requests an exception to establish and impose quantitative network adequacy standards that are different from the FFEs', whether and how to measure the access provided by those different standards over time, and how long an approved exemption should last.

In the proposed rule, we stated that to ensure compliance with these proposed quantitative time and distance QHP network adequacy standards and review requirements, we would coordinate with State Exchanges and SBE-FPs to provide technical assistance to support their compliance with the requirements of this policy and work with them should it be necessary to remedy any gaps in compliance. However, we stated that if a State Exchange or SBE-FP fails to comply with these standards, we could seek to take remedial action under our authorities related to Exchange program integrity.

c. Proposal Related to QHP Reporting on Telehealth Services

We proposed (88 FR 82591) to require State Exchanges and SBE-FPs to require that all issuers seeking certification of plans to be offered as QHPs submit information to the respective State Exchanges or SBE-FPs about whether network providers offer telehealth services. We proposed that this requirement would be applicable beginning with the QHP certification cycle for PY 2025. We stated in the proposed rule that this data would be for informational purposes; it would be intended to help inform the future development of telehealth standards and would not be displayed to consumers. We also stated that this information could be relevant to State Exchange and SBE-FP analysis of whether a QHP meets network adequacy standards. We noted that this proposal is not intended to suggest that telehealth services would be counted in place of in-person service access for the purpose of State Exchange and SBE-FP issuers meeting time and distance network adequacy standards for PY 2025. We explained that while we acknowledge the growing importance of telehealth, we want to ensure that telehealth services do not reduce the availability of in-person care.

We explained that for the purpose of this proposal, telehealth encompasses professional consultations, office visits, and office psychiatry services delivered through technology-based

methods, including virtual check-ins, remote evaluation of pre-recorded patient data, and inter-professional internet consultations. We noted that, currently, for issuers in FFEs to comply with telehealth reporting standards, issuers must indicate whether each provider offers telehealth with the options "Yes," "No," or "Requested information from the provider, awaiting their response." We proposed that State Exchanges and SBE-FPs would be required to impose this requirement on issuers when issuers submit provider information.

We sought comment on this proposal, including comments on how we might incorporate telehealth availability into network adequacy standards in future plan years.

d. Additional Network Adequacy Standards

To reduce burden on State Exchanges and SBE-FPs that are not yet conducting quantitative network adequacy reviews, we did not propose that State Exchanges and SBE-FPs enforce appointment wait time standards or that State Exchanges and SBE-FPs ensure that the provider network of each QHP meets applicable standards specified in § 156.230(b) through (e). However, we sought comment to inform any potential future enforcement of appointment wait time standards as well as the standards specified in § 156.230(b) through (e) and stated that we looked forward to capturing a wide range of perspectives on these topics from various interested parties. We stated that we were especially interested in comments about how State Exchanges and SBE-FPs may enforce quantitative network adequacy standards for appointment wait times, as well as the impact enforcing these standards may have on issuers and consumers.

We also sought comment on our proposal for State Exchanges and SBE-FPs to establish and impose quantitative time and distance QHP network adequacy standards that are at least as stringent as the FFEs' time and distance standards established for QHPs under § 156.230 and to conduct quantitative network adequacy reviews, prior to QHP certification, that are consistent

with the reviews conducted by the FFEs under § 156.230, including comment on whether we should amend § 156.230 in addition to § 155.1050 to directly apply the same standards applicable to issuers on FFEs to issuers in State Exchanges and SBE-FPs for plan years beginning on or after January 1, 2025.

After consideration of comments and for the reasons outlined in the proposed rule and our responses to comments, we are finalizing these proposals with a clarification to the exception process and a modification to require implementation for plan years beginning on or after January 1, 2026.

First, under § 155.1050(a)(2)(i)(A), we are finalizing that for plan years beginning on or after January 1, 2026, State Exchanges and SBE-FPs must establish and impose quantitative time and distance network adequacy standards for QHPs that are at least as stringent as standards for QHPs participating on the FFEs under § 156.230(a)(2)(i)(A).

Second, we are finalizing that, for plan years beginning on or after January 1, 2026, State Exchanges and SBE-FPs must conduct quantitative network adequacy reviews prior to certifying any plan as a QHP, consistent with the reviews conducted by the FFEs under § 156.230. Specifically, we are finalizing at § 155.1050(a)(2)(i)(B) that, for plan years beginning on or after January 1, 2026, State Exchanges and SBE-FPs must conduct network adequacy reviews to evaluate a plan's compliance with network adequacy standards under § 156.230(a)(1)(ii), (a)(1)(iii), and (a)(2)(i)(A) prior to certifying any plan as a QHP, while providing QHP certification applicants the flexibilities described under § 156.230(a)(2)(ii) and (a)(3) and (4).

Third, we are finalizing § 155.1050(a)(2)(ii) to provide that, for plan years beginning on or after January 1, 2026, HHS may grant an exception to the requirements described under § 155.1050(a)(2)(i) to a State Exchange or SBE-FP that demonstrates with evidence-based data, in

a form and manner specified by HHS, that (1) the Exchange applies and enforces alternate quantitative network adequacy standards that are reasonably calculated to ensure a level of access to providers that is as great as that ensured by the Federal network adequacy standards established for QHPs under § 156.230(a)(1)(iii), (a)(2)(i)(A), and (a)(4); and (2) the Exchange evaluates whether plans comply with applicable network adequacy standards prior to certifying any plan as a QHP. In this final rule, for this exception process, we are clarifying that, for (1) above, the Exchange will need to demonstrate that it applies and enforces alternate quantitative network adequacy standards that are reasonably calculated to ensure a level of access to providers that is as great as that ensured by the Federal network adequacy standards established for QHPs under § 156.230(a)(1)(iii), (a)(2)(i)(A), and (a)(4), and not § 156.230 generally, to reinforce that issuers on the State Exchanges and SBE-FPs do not need to comply with the appointment wait time standards under § 156.230(a)(2)(i)(B) under this policy.

Lastly, we are finalizing § 155.1050(a)(2)(i)(C) to provide that, for plan years beginning on or after January 1, 2026, State Exchanges and SBE-FPs must require that all issuers seeking certification of a plan as a QHP submit information to the Exchange reporting whether or not network providers offer telehealth services.

In preparation for PY 2026, we will begin communicating and coordinating with State Exchanges and SBE-FPs through the provision of technical assistance. Specifically, during PYs 2024 and 2025, we will work closely with State Exchanges and SBE-FPs on their plans to comply with these network adequacy requirements for plan years beginning on or after January 1, 2026.

We summarize and respond below to public comments received on these proposals.

Comment: Many commenters expressed support for the proposal that State Exchanges and SBE-FPs: (1) establish and impose quantitative time and distance network adequacy standards for QHPs that are at least as stringent as standards for QHPs participating on the FFEs under § 156.230(a)(2)(i)(A); and (2) conduct reviews of a plan's compliance with those quantitative network adequacy standards prior to certifying any plan as a QHP, consistent with the manner in which the FFEs review the network adequacy of plans under § 156.230.

Response: We appreciate the commenters' support for this proposal.

Comment: Many commenters expressed general support for the creation of a Federal floor for network adequacy standards or standardization of network adequacy standards across States. Commenters indicated that the imposition of standardized quantitative time and distance network adequacy requirements across States, particularly in States that do not currently impose quantitative time and distance network adequacy requirements or that impose requirements that are less stringent than the FFEs', is valuable because it increases access to providers and services. Commenters stated that the imposition of these requirements will do so by for example, decreasing disparities in access across States, and requiring States that have not implemented quantitative network adequacy standards to do so. One commenter also stated that "the establishment of stringent network adequacy standards is critical in ensuring continual access to high-quality dental care and incentivizing fair negotiations between insurers and dental providers during the network contracting process." Some of these commenters suggested alternatives to the proposed approach such as suggesting that the floor be qualitative in nature, that it be methods-based and not metrics-based, and that CMS work with State Exchanges and SBE-FPs to harmonize standards across States rather than extending the FFE network adequacy standards as a national floor.

Response: We appreciate the support for our proposals and agree with the benefits raised by commenters. We are finalizing these policies as proposed with a modification to the implementation date and a clarification to the exception process, as previously discussed. While we appreciate commenters suggesting a qualitative approach or a methods-based one, which we believe may refer to approaches that impose standards that only require States or issuers to have processes in place to ensure network adequacy, we believe quantitative network adequacy standards, unlike qualitative or other methods-based approaches, can be monitored relatively easily and applied objectively. By contrast, qualitative or other methods-based approaches to network adequacy typically articulate a broad, general standard of adequacy and grant regulators or insurers discretion to determine how to measure compliance. State regulators using these approaches may require issuers to attest to meeting the network adequacy standards or allow the issuers to self-monitor compliance with the standards in a different way. As opposed to conducting routine audits or requiring periodic reports of compliance, State regulators using these approaches usually also rely on consumer complaints to highlight situations that might require investigation. Based on our experience conducting network adequacy reviews and regulating QHPs, as well as feedback from interested parties, we are of the view that no matter the State in which a QHP is offered, some quantitative analysis is necessary for an Exchange to objectively monitor network adequacy and determine whether a QHP can provide enrollees access to an adequate network of providers.

Additionally, harmonizing network adequacy standards across States would prevent States from enforcing quantitative network adequacy standards that are more stringent than the FFEs' standards or from using the exception process under § 155.1050(a)(2)(ii) to enforce standards that they determined are in the best interest of their consumers. We are of the view that

setting the FFEs' quantitative time and distance network adequacy standards as a national floor strikes an appropriate balance of providing States with these important flexibilities while also ensuring that all consumers, regardless of which State they live in, have timely access to providers to manage their health care needs.

Comment: Many commenters offered recommendations about additional provider and facility specialty types that should be subject to the time and distance standards, such as academic cancer centers, essential community hospitals, substance use disorder treatment providers, and reproductive health providers, as well as recommendations about changes to the time and distance metrics such as changes to the number of minutes/miles associated with time and distance standards for certain specialties.

Response: We are not inclined to add additional provider types to the individual and facility provider specialty lists for time and distance standards at this time. The provider specialty lists we proposed are the same lists we finalized for FFE issuers in the 2023 Payment Notice (87 FR 27325). Those specialty lists were informed by prior HHS network adequacy requirements, consultation with interested parties, and other Federal and State health care programs, such as Medicare Advantage and Medicaid, and those lists covered more provider specialty types than previously evaluated under FFE standards so that QHP networks would be robust, comprehensive, and responsive to QHP enrollees' needs. We continue to believe that those provider specialty lists promote access to a variety of provider types and, as a result, strengthen consumer access to health care services without unreasonable delay. Until we have more experience with the impact of the specialty lists, we finalize in this rule on QHP issuers in State Exchanges and SBE-FPs, adding additional providers to the specialty lists would be premature and may impose burdens on QHP issuers that we have not fully evaluated. Therefore,

at this time, we do not believe that it is appropriate to include additional provider types in these specialty lists.

Our time and distance metrics for network adequacy are based on Medicare Advantage standards and were designed with careful consideration of other network adequacy standards, including those of individual States, accrediting entities, and Federal health care programs. Until we can more fully assess the impact of the time and distance standards, we finalize in this rule on QHP issuers in State Exchanges and SBE-FPs, we believe that modifying those standards would also be premature and may impose burdens on QHP issuers that we have not fully evaluated. We will further research commenters' recommended changes to our time and distance metrics as well as their implications and may consider them in future rulemaking.

Comment: Many commenters also opposed the proposal that State Exchanges and SBE-FPs (1) establish and impose quantitative time and distance network adequacy standards for QHPs that are at least as stringent as standards for QHPs participating on the FFEs under § 156.230(a)(2)(i)(A); and (2) conduct reviews of a plan's compliance with those quantitative network adequacy standards prior to certifying any plan as a QHP, consistent with the manner in which the FFEs review the network adequacy of plans under § 156.230. Commenters stated that States are best informed about local context factors that should be considered in network adequacy standards and reviews such as provider shortages, provider quality, innovative delivery methods, and geographic constraints. Commenters also noted that the proposal has the potential for creating conflicting or duplicative regulations and increasing administrative burden on States and issuers.

Response: For the reasons explained in the proposed rule (88 FR 82587 through 82588), we continue to believe that requiring State Exchanges and SBE-FPs to establish and impose

quantitative time and distance network adequacy standards for QHPs that are at least as stringent as the FFEs' and conduct reviews of plan compliance with those quantitative network adequacy standards consistent with the manner in which the FFEs review plan network adequacy will create an effective national baseline for network adequacy standards and help provide consumers, regardless of which State they live in, with reasonable, timely access to providers and facilities to manage their health care needs.

We acknowledge commenters' concerns that our network adequacy proposal may create conflicting or duplicative regulations and increase administrative burden on States Exchanges, SBE-FPs, and their issuers. We believe that finalizing these proposals with a modification to require implementation for plan years beginning on or after January 1, 2026, will provide States an opportunity to revise their regulations to ensure there are no conflicting or duplicative regulations. This modification may also lessen the administrative burden of this policy on State Exchanges, SBE-FPs, and their issuers by providing them more time to come into compliance with these new requirements.

In the proposed rule (88 FR 82590), we acknowledged that State-specific factors, such as provider supply shortages, topographic barriers, or other barriers beyond an issuer's control, may necessitate exceptions to these requirements, and this network adequacy policy permits State Exchanges and SBE-FPs to consider those factors as they conduct network adequacy reviews prior to plan certification. Specifically, this final rule extends flexibility to State Exchanges and SBE-FPs to permit issuers that are unable to meet the specified standards to participate in a justification process after submitting their initial data to account for variances, consistent with the processes specified under § 156.230(a)(2)(ii) and (a)(3) and (4). The issuer would include this justification as part of its QHP application and describe how the plan's provider network

provides an adequate level of service for enrollees and how the plan's provider network will be strengthened and brought closer to compliance with the network adequacy standards prior to the start of the plan year. State Exchanges and SBE-FPs will be required to review the issuer's justification to determine whether making such health plan available through the Exchange is in the interests of qualified individuals in the State or States in which such Exchange operates as specified under § 156.230(a)(3). In making this determination, the factors State Exchanges and SBE-FPs could consider include local context factors that the commenters reference and may envision, such as whether the exception is reasonable based on circumstances such as the local availability of providers and variables reflected in local patterns of care. If the State Exchange or SBE-FP determines that making such health plan available through its Exchange is in the interests of qualified individuals in the State or States in which such Exchange operates, it could then certify the plan as a QHP.

Comment: Several commenters urged CMS to delay implementation of the proposed network adequacy standards to allow States sufficient time to assess whether their network adequacy standards comply with the proposed requirements or need modification, and for issuers offering QHPs through State Exchanges and SBE-FPs to modify their networks to comply with the new national floor for network adequacy standards.

Response: In the proposed rule, we proposed that the new network adequacy standards that State Exchanges and SBE-FPs must establish and impose would be applicable for plan years beginning on or after January 1, 2025. We understand, however, the desire expressed by some commenters to delay the implementation of this proposal, and we acknowledge that compliance with the network adequacy standards finalized in this rule may require States to review and modify their network adequacy standards and processes. In response to these concerns, CMS is

finalizing that the new network adequacy standards for State Exchanges and SBE-FPs will apply to plan years beginning on or after January 1, 2026. In preparation for PY 2026, we will begin communicating and coordinating with State Exchanges and SBE-FPs through the provision of technical assistance. Specifically, during PYs 2024 and 2025, we will work closely with State Exchanges and SBE-FPs on their plans to comply with these network adequacy requirements for plan years beginning on or after January 1, 2026.

Comment: Several commenters requested clarification about whether the proposed network adequacy policies would apply when it is the State Department of Insurance, and not the State Exchange or SBE-FP, conducting the network adequacy reviews.

Response: When establishing a State Exchange or SBE-FP through the Exchange Blueprint approval process under § 155.105, a State must attest to its capacity to ensure QHPs' compliance with market reform rules, applicable regulations, and guidance, as well as its capacity to ensure QHPs' ongoing compliance with QHP certification requirements.[262] As part of this process, a State must inform CMS that network adequacy activities will be completed by the Exchange or an Exchange's designee through contract, agreement, or other arrangement. Regardless of whether a State intends to designate some entity other than the Exchange to perform network adequacy activities, under § 155.1050(a), Exchanges are ultimately responsible for ensuring QHP network adequacy. This proposal does not alter a State's ability to designate an entity other than the Exchange to perform network adequacy reviews, nor does it alter any existing agreements a State Exchange or an SBE-FP may have entered into with State regulatory entities, including State Departments of Insurance, to perform network adequacy reviews or other QHP certification functions. We clarify that the State Exchanges and SBE-FPs may

[262] Blueprint for Approval of State-Based Health Insurance Exchanges, section III, part C. 4.0. *https://www.cms.gov/cciio/resources/fact-sheets-and-faqs/downloads/cms-blueprint-application.pdf*

continue current relationships with entities they have designated to undertake QHP certification functions under their approved Exchange Blueprint, including network adequacy reviews, and that all network adequacy reviews, including reviews conducted by an Exchange's designee, must meet the requirements of the network adequacy policies finalized in this rule under new § 155.1050(a)(2).

Comment: Most commenters were supportive of the proposal to make a justification process available for issuers in State Exchanges and SBE-FPs that cannot meet the FFEs' time and distance standards and urged CMS to work with State Exchanges and SBE-FPs to closely scrutinize submitted justifications and ensure that issuers' justifications would only be accepted if truly valid.

Response: We appreciate the commenters' feedback. This final rule requires State Exchanges and SBE-FPs to review the issuer's justification to determine whether making such health plan available through the Exchange is in the interests of qualified individuals in the State or States in which such Exchange operates as specified under § 156.230(a)(3). In making this determination, the factors State Exchanges and SBE-FPs could consider include State-specific factors, such as provider supply shortages, topographic barriers, or other barriers beyond an issuer's control. Upon publication of this rule, we will begin communicating and coordinating with State Exchanges and SBE-FPs through technical assistance, in preparation for PY 2026, including on best practices to review and approve or deny issuer-submitted justifications.

Comment: Several commenters opposed the limited exception for SADPs because they believe that SADPs should be held accountable for access to dental providers in the same manner as medical QHPs.

Response: We acknowledge the commenters' concerns. In the 2024 Payment Notice (88 FR 25875), we finalized a limited exception to the provider network requirement for SADP issuers that sell plans in areas where it is prohibitively difficult for the issuer to establish a network of dental providers; this exception is not applicable to medical QHP issuers at this time.[263] 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 Departments of Insurance in States with at least 80% of their counties classified as CEAC, that at least one of the following factors exists in the area of concern: a significant shortage of dental providers, a significant number of dental providers unwilling to contract with Exchange issuers, or significant geographic limitations impacting consumer access to dental providers. We are extending the limited SADP exception to SADP issuers on State Exchanges and SBE-FPs to ensure that consumers residing in all States where it is prohibitively difficult for the issuer to establish a network of dental providers have access to dental plans. As we explained in the 2024 Payment Notice, this limited exception follows logically from how the requirements in sections 1311(c)(1)(B) and (C) of the ACA that plans ensure a sufficient choice of providers apply in the unique SADP context. If creating a network of dental providers is prohibitively difficult for SADPs in certain areas in State Exchange or SBE-FP States, it is foreseeable that there may be some areas where SADPs could not be Exchange-certified, which then risks there being no SADPs in that area and thus no choice of dental providers through SADPs at all. Thus, in this limited context, requiring that SADP issuers in State Exchanges and SBE-FPs establish a dental provider network would defeat the purpose of section 1311(c)(1)(B) and (C) the ACA to ensure that enrollees have a sufficient choice of providers.

[263] See § 156.230(a)(4).

Comment: Most commenters supported the availability of an exception process for State Exchanges and SBE-FPs and urged CMS to review these exception requests quickly and to clearly identify the criteria for acceptance.

Response: We appreciate the commenters' support for the exception process. Upon publication of this rule, we will begin communicating and coordinating with State Exchanges and SBE-FPs through technical assistance in preparation for PY 2026. In reviewing exception requests, we will seek to determine whether the State has the requisite statutory, regulatory, and/or sub-regulatory authority to review all QHPs applying for QHP certification in the State for network adequacy as well as the requisite authority to review all QHPs for compliance with time and distance standards using the same specialty lists as detailed in the 2023 Payment Notice (87 FR 27324 through 27326) (set forth at Tables 9 and 10 of this preamble to this final rule).

We will also seek to determine whether the State conducts quantitative reviews of time and distance standards for QHP network adequacy using issuer-submitted data for all plans applying for QHP certification and whether the State's quantitative review of time and distance standards for QHP network adequacy includes parameters that are at least as short as those listed in the 2023 Letter to Issuers[264] for the specialty types listed in Tables 9 and 10 of this preamble to this final rule. Lastly, we will seek to determine whether the State's quantitative review of time and distance standards occurs prior to plan certification and whether the review includes a justification process for plans that do not meet the network adequacy standards.

Before PY 2026, we will also review the information provided by State Exchanges and SBE-FPs to support their exception request. This information may include materials such as guidance documents or templates that describe the State's methodology for reviewing issuer-

[264] 2023 Letter to Issuers in the Federally-facilitated Exchanges: *https://www.cms.gov/files/document/2023-draft-letter-issuers-508.pdf.*

submitted quantitative data to assess compliance with QHP network adequacy standards, information about the frequency and timeline for network adequacy reviews for QHP issuers in the State, information regarding the State's justification process for issuers not yet meeting the network adequacy standards, and information regarding any compliance review processes the State utilizes to follow up with issuers that complete the justification process.

Comment: Many commenters expressed support for the proposal to require collection of information about which providers offer telehealth services and one commenter recommended that issuers be required to ensure that a percentage of care available in their network is available via telehealth services.

Response: We appreciate the support from these commenters. In the proposed rule, we noted that this proposal is not intended to suggest that telehealth services would be counted in place of in-person service access for the purpose of meeting network adequacy time and distance standards for PY 2025. While we acknowledge the growing importance of telehealth, we want to ensure that telehealth services do not reduce the availability of in-person care. More research would be needed before we could analyze whether counting telehealth is appropriate for purposes of a QHP meeting network adequacy time and distance standards.

Comment: A few commenters expressed opposition to the collection of information about which providers offer telehealth services indicating that the proposed rule underestimated the burden of this proposal, and that the information would not capture the availability of telehealth services.

Response: We believe that the telehealth reporting standards, pursuant to which issuers in State Exchanges and SBE-FPs must indicate whether each network provider offers telehealth services with the options "Yes," "No," or "Requested information from the provider, awaiting

their response," would not require extensive administrative time to gather. Approximately half of the parent companies of issuers on the State Exchanges and over two thirds of the parent companies of issuers on SBE-FPs offer Medicare Advantage plans, and Medicare Advantage offers a telehealth credit for network adequacy. Therefore, many more issuers on State Exchanges and SBE-FPs likely already have access to this information. We also believe that QHP issuers that do not currently collect this information may do so using the same means and methods by which they already collect information from their network providers relevant to time and distance standards and provider directories. For these reasons, we estimate that any additional burden resulting from the requirement that QHP issuers report whether each network provider is furnishing telehealth services would be minimal.

We stated in the proposed rule (88 FR 82591, 82638 through 82639) that this data would be for informational purposes, would be intended to help inform the future development of telehealth standards, and would not be displayed to consumers. We believe that the above-described telehealth reporting standards support these objectives by providing State Exchanges and SBE-FPs with a general picture regarding the availability of telehealth services in their State. Additionally, at this time, since this data will not be displayed to consumers, it is not necessary for State Exchanges and SBE-FPs to collect more granular telehealth data from their issuers.

Comment: One commenter recommended delaying collection of telehealth information to allow the development of more efficient ways for issuers to collect that information from providers.

Response: We acknowledge this concern and will require compliance with this network adequacy requirement for plan years beginning on or after January 1, 2026. Upon publication of this rule, we will begin communicating and coordinating with State Exchanges and SBE-FPs

through technical assistance in preparation for PY 2026. Notably, we collect the same telehealth information from QHP issuers in the FFEs, and all those issuers have successfully submitted it each plan year.

Comment: Many commenters recommended that CMS extend the FFEs' appointment wait time standards to State Exchanges and SBE-FPs, citing that it would further provide consumers with reasonable, timely access to practitioners and facilities to manage their health care needs. Many commenters also sought information on appointment wait time standards and operations, such as the use of secret shopper surveys to assess compliance with these standards.

Response: As we explained in the proposed rule (88 FR 82591), to reduce burden on State Exchanges and SBE–FPs that are not yet conducting quantitative network adequacy reviews, we did not propose, at this time, that State Exchanges and SBE-FPs enforce appointment wait time standards or that State Exchanges and SBE–FPs ensure that the provider network of each QHP meets applicable standards specified in § 156.230(b) through (e). We will monitor the implementation of these network adequacy standards in State Exchanges and SBE-FPs and consider whether applying the FFEs' appointment wait time standards to issuers in State Exchanges and SBE-FPs in future plan years is warranted. Additional information about appointment wait time standards will appear in the 2025 Letter to Issuers and will only apply to issuers in the FFEs in PY 2025.

We thank commenters for their feedback on these issues and will take their comments into consideration in future rulemaking.

1. Section 155.1050 is amended by revising paragraph (a) to read as follows:

§ 155.1050 Establishment of Exchange network adequacy standards.

(a) Except with regard to multi-State plans:

(1) A Federally-facilitated Exchange must ensure that the provider network of each QHP meets the standards specified in § 156.230 of this subtitle.

(2) State Exchanges and State-based Exchanges on the Federal Platform must ensure that the provider network of each QHP meets applicable standards specified in § 156.230(a)(1)(ii), (a)(1)(iii) and (a)(4) of this subtitle.

(i) For plan years beginning on or after January 1, 2026, to comply with the requirement under paragraph (a)(2) of this section, State Exchanges and State-based Exchanges on the Federal platform must:

(A) Establish and impose network adequacy time and distance standards for QHPs that are at least as stringent as standards for QHPs participating on the Federally-facilitated Exchanges under § 156.230(a)(2)(i)(A) of this subtitle;

(B) Conduct, prior to QHP certification, quantitative network adequacy reviews to evaluate compliance with requirements under § 156.230(a)(1)(ii), (a)(1)(iii), and (a)(2)(i)(A),

while providing QHP certification applicants the flexibilities described under § 156.230(a)(2)(ii) and (a)(3) and (4) of this subtitle; and

(C) Require that all issuers seeking certification of a plan as a QHP submit information to the Exchange reporting whether or not network providers offer telehealth services.

(ii) For plan years beginning on or after January 1, 2026, HHS may grant an exception to the requirements described under paragraphs (a)(2)(i) of this section to a State Exchange or State-based Exchange on the Federal platform that demonstrates with evidence-based data, in a form and manner specified by HHS, that:

(A) the Exchange applies and enforces alternate quantitative network adequacy standards that are reasonably calculated to ensure a level of access to providers that is as great as that ensured by the Federal network adequacy standards established for QHPs under § 156.230(a)(1)(iii), (a)(2)(i)(A), and (a)(4); and

(B) the Exchange evaluates whether plans comply with applicable network adequacy standards prior to certifying any plan as a QHP.