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FACT SHEET

FOR IMMEDIATE RELEASE
August 28, 2013

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Program Integrity – Exchanges, SHOP, Eligibility Appeals: Safeguarding Federal Funds and Furthering Consumer Protection

On August 28, 2013, HHS released a rule finalizing a number of policies related to the implementation of the Affordable Care Act, including provisions regarding Affordable Insurance Exchanges, also known as the Health Insurance Marketplaces. These policies generally are unchanged from previous proposed rules and guidance documents.

Overview

This rule finalizes policies from the proposed rule, titled “Program Integrity: Exchange, SHOP, Premium Stabilization Programs, and Market Standards,” published on June 19, 2013. This final rule addresses the proposed regulations included in the June NPRM that necessary for October 1 implementation. The rule also finalizes eligibility and SHOP appeals provisions from the proposed rule, titled “Essential Health Benefits in Alternative Benefit Plans, Eligibility Notices, Fair Hearing and Appeal Procedures for Medicaid and Exchange Eligibility Appeals,” published on January 22, 2013.

The overarching goal is to safeguard federal funds and to protect consumers by ensuring that issuers, Marketplaces, and other entities comply with federal standards meant to ensure consumers have access to quality, affordable health insurance. A part of the final rule focuses on program integrity regarding issuers offering coverage in the Federally-facilitated Marketplaces (FFMs). This rule also finalizes, among other things, standards for issuer handling of consumer complaints in the Marketplace, as well as other provisions meant to ensure the efficient operation of the Marketplace, protect consumers, and give flexibility to states.

Key policies in the final rule include:

Oversight of QHP Issuers in Federally-facilitated Marketplace

To protect consumers and the financial integrity of the Federally-facilitated Marketplace, the final rule provides for standards that would establish oversight of health insurance issuers. This includes HHS focusing on ensuring compliance with Marketplace-related standards while preserving states' traditional role in overseeing the individual and small group insurance market.

Oversight and Monitoring of Privacy and Security Requirements

This rule finalizes that HHS will oversee and monitor all the FFM and non-Marketplace entities operating in the FFMs for compliance with the privacy and security standards established and implemented by the FFM. Additionally, HHS will monitor each State-based Marketplace (SBM) for compliance with the privacy and security standards established and implemented by the SBMs. SBMs must also oversee and monitor non-Marketplace entities operating in the SBM.

Consumer Protections for Payment and Application Assistance

To ensure consumers are provided multiple avenues to make payments of their monthly premiums, the final rule requires Qualified Health Plan (QHP) issuers to accept a variety of payment methods. Issuers must equally present those methods together as options for consumers to select so they may utilize their preferred payment method.

Agents and brokers will play an important role in helping consumers and small businesses shop for and compare coverage in the Marketplace. This rule clarifies and provides additional standards for agent and broker participation in FFMs and SPMs when assisting consumers and small businesses, while preserving states' traditional role in overseeing and regulating agents and brokers.

Individual Eligibility Appeals

The final rule provides standards for the eligibility appeals process, including coordination between agencies and appeals entities; the standards for appeal notices, appeal requests, pended benefits, informal resolution, hearings, and appeal decisions; and the due process and procedural rights of the appellant.

A federally-managed appeals process will be available for appellants in the individual market. Under the federal appeals process set forth in this final rule, appellants will first have the opportunity for a preliminary case review, referred to as "informal resolution." If the appellant is satisfied with the outcome of the informal resolution, the informal resolution will be the final

decision in the matter. However, if the appellant is dissatisfied with the outcome of informal resolution, the appellant retains the right to a hearing.

In addition, under the final rule, SBMs have the flexibility to implement their own appeals process in accordance with the requirements of the final rule; however, SBM appellants in the individual market retain the right to escalate their appeal to the federal appeal process managed by HHS if they remained dissatisfied following the State-based appeals process. Like the federal appeals process, state-based appeals processes may also include an informal resolution process.

Employer Appeals in the Individual Market

The Affordable Care Act directs the Secretary to establish a separate appeals process for employers that wish to contest a Marketplace determination that the employer does not provide minimum essential coverage (MEC) that meets both minimum value and affordability standards. Under the final rule, SBMs will have the flexibility to establish a state-based appeals process for employer appeals, and HHS will provide this process if the state does not opt to do so or does not operate a SBM.

Small Business Health Options Program (SHOP) Eligibility Appeals

Employer and employee applicants to the SHOP may appeal denials of eligibility to purchase coverage through the SHOP, and the final rule provides standards for this appeals process. Because the SHOP has the flexibility to establish state-specific eligibility criteria, we specify that any state that operates a SHOP will also operate the SHOP appeals process. HHS will provide the appeals process for states that do not operate a SHOP.

Flexibility for States

The final rule allows a state to operate a State-based Small Business Health Options Program (SHOP) while HHS would operate an individual market Federally-facilitated Marketplace in that state. States that can provide reasonable assurances through the Exchange Blueprint submission and/or amendment process that they will be able to establish and operate a SHOP can do so in 2014. These provisions have been developed based on state feedback and would allow a state to focus on the effective implementation of the SHOP.

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