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State may not be substantially enforcing PHS Act requirements, it may initiate the process described in this subchapter to determine whether the State is failing to substantially enforce these requirements.

(c) *Special rule for guaranteed availability in the individual market.* If a State has notified CMS that it is implementing an acceptable alternative mechanism in accordance with §148.128 of this subchapter instead of complying with the guaranteed availability requirements of §148.120, CMS's determination focuses on the following:

(1) Whether the State's mechanism meets the requirements for an acceptable alternative mechanism.

(2) Whether the State is implementing the acceptable alternative mechanism.

(d) *Consequence of a State not implementing an alternative mechanism.* If a State is not implementing an acceptable alternative mechanism, CMS determines whether the State is substantially enforcing the requirements of §§148.101 through 148.126 and §148.170 of this subchapter.

[64 FR 45795, Aug. 20, 1999, as amended at 78 FR 13440, Feb. 27, 2013]

§ 150.205 Sources of information triggering an investigation of State enforcement.

Information that may trigger an investigation of State enforcement includes, but is not limited to, any of the following:

(a) A complaint received by CMS.

(b) Information learned during informal contact between CMS and State officials.

(c) A report in the news media.

(d) Information from the governors and commissioners of insurance of the various States regarding the status of their enforcement of PHS Act requirements.

(e) Information obtained during periodic review of State health care legislation. CMS may review State health care and insurance legislation and regulations to determine whether they are:

(1) Consistent with PHS Act requirements.

(2) Not pre-empted as provided in §146.143 (relating to group market provisions) and §148.120 (relating to individual market requirements) on the basis that they prevent the application of a PHS Act requirement.

(f) Any other information that indicates a possible failure to substantially enforce.

[64 FR 45795, Aug. 20, 1999, as amended at 78 FR 13440, Feb. 27, 2013; 86 FR 24286, May 5, 2021]

§ 150.207 Procedure for determining that a State fails to substantially enforce PHS Act requirements.

Sections 150.209 through 150.219 describe the procedures CMS follows to determine whether a State is substantially enforcing PHS Act requirements.

[64 FR 45795, Aug. 20, 1999, as amended at 78 FR 13440, Feb. 27, 2013]

§ 150.209 Verification of exhaustion of remedies and contact with State officials.

If CMS receives a complaint or other information indicating that a State is failing to enforce PHS Act requirements, CMS assesses whether the affected individual or entity has made reasonable efforts to exhaust available State remedies. As part of its assessment, CMS may contact State officials regarding the questions raised.

[64 FR 45795, Aug. 20, 1999, as amended at 78 FR 13440, Feb. 27, 2013]

§ 150.211 Notice to the State.

If CMS is satisfied that there is a reasonable question whether there has been a failure to substantially enforce PHS Act requirements, CMS sends, in writing, the notice described in §150.213 of this part, to the following State officials:

(a) The governor or chief executive officer of the State.

(b) The insurance commissioner or chief insurance regulatory official.

(c) If the alleged failure involves HMOs, the official responsible for regulating HMOs if different from the official listed in paragraph (b) of this section.

[64 FR 45795, Aug. 20, 1999, as amended at 78 FR 13440, Feb. 27, 2013]

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