

Dept. of Health and Human Services

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(1) Provide to HHS the results of the audit, in the manner and timeframe to be specified by HHS;

(2) Ensure that the audit addresses the prohibitions set forth in § 153.265;

(3) Identify to HHS any material weakness or significant deficiency identified in the audit, and address in writing to HHS how the State intends to correct any such material weakness or significant deficiency; and

(4) Make public a summary of the results of the audit, including any material weakness or significant deficiency and how the State intends to correct the material weakness or significant deficiency, in the manner and timeframe to be specified by HHS.

[78 FR 65093, Oct. 30, 2013]

§ 153.265 Restrictions on use of reinsurance funds for administrative expenses.

A State that establishes a reinsurance program must ensure that its applicable reinsurance entity does not use any funds for the support of reinsurance operations, including any reinsurance contributions provided under the national contribution rate for administrative expenses, for any of the following purposes:

- (a) Staff retreats;
- (b) Promotional giveaways;
- (c) Excessive executive compensation; or
- (d) Promotion of Federal or State legislative or regulatory modifications.

[78 FR 65093, Oct. 30, 2013]

§ 153.270 HHS audits of State-operated reinsurance programs.

(a) *Audits.* HHS or its designee may conduct a financial and programmatic audit of a State-operated reinsurance program to assess compliance with the requirements of this subpart or subpart B of this part. A State that establishes a reinsurance program must ensure that its applicable reinsurance entity and any relevant contractors, sub-contractors, or agents cooperate with any audit under this section.

(b) *Action on audit findings.* If an audit results in a finding of material weakness or significant deficiency with respect to compliance with any requirement of this subpart or subpart B,

the State must ensure that the applicable reinsurance entity:

(1) Within 60 calendar days of the issuance of the final audit report, provides a written corrective action plan to HHS for approval;

(2) Implements that plan; and

(3) Provides to HHS written documentation of the corrective actions once taken.

[79 FR 13835, Mar. 11, 2014]

Subpart D—State Standards Related to the Risk Adjustment Program

§ 153.300 [Reserved]

§ 153.310 Risk adjustment administration.

(a) *State eligibility to establish a risk adjustment program.* (1) A State that elects to operate an Exchange is eligible to establish a risk adjustment program.

(2) Any State that does not elect to operate an Exchange, or that HHS has not approved to operate an Exchange, will forgo implementation of all State functions in this subpart, and HHS will carry out all of the provisions of this subpart on behalf of the State.

(3) Any State that elects to operate an Exchange but does not elect to administer risk adjustment will forgo implementation of all State functions in this subpart, and HHS will carry out all of the provisions of this subpart on behalf of the State.

(4) Beginning in 2015, any State that is approved to operate an Exchange and elects to operate risk adjustment but has not been approved by HHS to operate risk adjustment prior to publication of its State notice of benefit and payment parameters for the applicable benefit year, will forgo implementation of all State functions in this subpart, and HHS will carry out all of the provisions of this subpart on behalf of the State.

(b) *Entities eligible to carry out risk adjustment activities.* If a State is operating a risk adjustment program, the State may elect to have an entity other than the Exchange perform the

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State functions of this subpart, provided that the entity meets the standards promulgated by HHS to be an entity eligible to carry out Exchange functions.

(c) *State responsibility for risk adjustment.* (1) A State operating a risk adjustment program for a benefit year must administer the applicable Federally certified risk adjustment methodology through an entity that—

(i) Is operationally ready to implement the applicable Federally certified risk adjustment methodology and process the resulting payments and charges; and

(ii) Has experience relevant to operating the risk adjustment program.

(2) The State must ensure that the risk adjustment entity complies with all applicable provisions of subpart D of this part in the administration of the applicable Federally certified risk adjustment methodology.

(3) The State must conduct oversight and monitoring of its risk adjustment program.

(4) *Maintenance of records.* A State operating a risk adjustment program must maintain documents and records relating to the risk adjustment program, whether paper, electronic, or in other media, for each benefit year for at least 10 years, and make them available upon request from HHS, the OIG, the Comptroller General, or their designees, to any such entity. The documents and records must be sufficient to enable the evaluation of the State-operated risk adjustment program's compliance with Federal standards. A State operating a risk adjustment program must also ensure that its contractors, subcontractors, and agents similarly maintain and make relevant documents and records available upon request from HHS, the OIG, the Comptroller General, or their designees, to any such entity.

(d) *Approval for a State to operate risk adjustment.* (1) To be approved by HHS to operate risk adjustment under a particular Federally certified risk adjustment methodology for a benefit year, a State must establish that it and its risk adjustment entity meet the standards set forth in paragraph (c) of this section.

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(2) To obtain such approval, the State must submit to HHS, in a form and manner specified by HHS, evidence that its risk adjustment entity meets these standards.

(3) In addition to requirements set forth in paragraphs (d)(1) and (2) of this section, to obtain re-approval from HHS to operate risk adjustment for a third benefit year, the State must, in the first benefit year for which it operates risk adjustment, provide to HHS an interim report, in a manner specified by HHS, including a detailed summary of its risk adjustment activities in the first 10 months of the benefit year, no later than December 31 of the applicable benefit year.

(4) To obtain re-approval from HHS to operate risk adjustment for each benefit year after the third benefit year, each State operating a risk adjustment program must submit to HHS and make public a detailed summary of its risk adjustment program operations for the most recent benefit year for which risk adjustment operations have been completed, in the manner and timeframe specified by HHS.

(i) The summary must include the results of a programmatic and financial audit for each benefit year of the State-operated risk adjustment program conducted by an independent qualified auditing entity in accordance with generally accepted auditing standards (GAAS).

(ii) The summary must identify any material weakness or significant deficiency identified in the audit and address how the State intends to correct any such material weakness or significant deficiency.

(e) *Timeframes.* A State, or HHS on behalf of the State, must implement risk adjustment for the 2014 benefit year and every benefit year thereafter. For each benefit year, a State, or HHS on behalf of the State, must notify issuers of risk adjustment payments due or charges owed annually by June 30 of the year following the benefit year.

[77 FR 17247, Mar. 23, 2012, as amended at 78 FR 15527, Mar. 11, 2013; 78 FR 65093, Oct. 30, 2013]