

§ 156.606

§ 156.606 HHS audit authority.

The Secretary may audit a plan or program recognized as minimum essential coverage under §156.604 at any time to ensure compliance with the requirements of §156.604(a).

Subpart H—Oversight and Financial Integrity Standards for Issuers of Qualified Health Plans in Federally-Facilitated Exchanges

SOURCE: 78 FR 65100, Oct. 30, 2013, unless otherwise noted.

§ 156.705 Maintenance of records for Federally-facilitated Exchanges.

(a) *General standard.* Issuers offering QHPs in a Federally-facilitated Exchange must maintain all documents and records (whether paper, electronic, or other media) and other evidence of accounting procedures and practices, necessary for HHS to do the following:

(1) Periodically audit financial records related to QHP issuers' participation in a Federally-facilitated Exchange, and evaluate the ability of QHP issuers to bear the risk of potential financial losses; and

(2) Conduct compliance reviews or otherwise monitor QHP issuers' compliance with all Exchange standards applicable to issuers offering QHPs in a federally-facilitated Exchange as listed in this part.

(b) *Records.* The records described in paragraph (a) of this section include the sources listed in §155.1210(b)(2), (3), and (5) of this subchapter.

(c) *Record retention timeframe.* Issuers offering QHPs in a Federally-facilitated Exchange must maintain all records referenced in paragraph (a) of this section for 10 years.

(d) *Record availability.* Issuers offering QHPs in a Federally-facilitated Exchange must make all records in paragraph (a) of this section available to HHS, the OIG, the Comptroller General, or their designees, upon request.

§ 156.715 Compliance reviews of QHP issuers in Federally-facilitated Exchanges.

(a) *General standard.* Issuers offering QHPs in a Federally-facilitated Ex-

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change may be subject to compliance reviews to ensure ongoing compliance with Exchange standards applicable to issuers offering QHPs in a Federally-facilitated Exchange.

(b) *Records.* In preparation for or in the course of the compliance review, a QHP issuer must make available for HHS to review the records of the QHP issuer that pertain to its activities within a Federally-facilitated Exchange. Such records may include, but are not limited to the following:

(1) The QHP issuer's books and contracts, including the QHP issuer's policy manuals and other QHP plan benefit information provided to the QHP issuer's enrollees;

(2) The QHP issuer's policies and procedures, protocols, standard operating procedures, or other similar manuals related to the QHP issuer's activities in a Federally-facilitated Exchange;

(3) Any other information reasonably necessary for HHS to—

(i) Evaluate the QHP issuer's compliance with QHP certification standards and other Exchange standards applicable to issuers offering QHPs in a Federally-facilitated Exchange;

(ii) Evaluate the QHP's performance, including its adherence to an effective compliance plan, within a Federally-facilitated Exchange;

(iii) Verify that the QHP issuer has performed the duties attested to as part of the QHP certification process; and

(iv) Assess the likelihood of fraud or abuse.

(c) *Interest of Qualified Individuals and Qualified Employers.* HHS's findings from the compliance reviews under this section may be in conjunction with other findings related to the QHP issuers' compliance with certification standards, used to confirm that permitting the issuer's QHPs to be available through a Federally-facilitated Exchange is in the interest of the qualified individuals and qualified employers as provided under §155.1000(c)(2) of this subchapter.

(d) *Onsite and desk reviews.* The QHP issuer will make available, for the purposes listed in paragraph (c) of this section, its premises, physical facilities and equipment (including computer and other electronic systems), for HHS

to conduct a compliance review as provided under this section.

(1) A compliance review under this section will be carried out as an onsite or desk review based on the specific circumstances.

(2) Unless otherwise specified, nothing in this section is intended to preempt Federal laws and regulations related to information privacy and security.

(e) *Compliance review timeframe.* A QHP issuer may be subject to a compliance review up to 10 years from the last day of that plan benefit year, or 10 years from the last day that the QHP certification is effective if the QHP is no longer available through a Federally-facilitated Exchange; provided, however, that if the 10 year review period falls during an ongoing compliance review, the review period would be extended until the compliance review is completed.

(f) *Failure to comply.* A QHP issuer that fails to comply with a compliance review under this section may be subject to enforcement remedies under subpart I of this part.

[78 FR 65100, Oct. 30, 2013, as amended at 81 FR 94182, Dec. 22, 2016]

Subpart I—Enforcement Remedies in the Exchanges

SOURCE: 78 FR 54143, Aug. 30, 2013, unless otherwise noted.

§ 156.800 Available remedies; Scope.

(a) *Kinds of sanctions.* HHS may impose the following types of sanctions on QHP issuers in an Exchange that are not in compliance with Exchange standards applicable to issuers offering QHPs in an Exchange:

(1) Civil money penalties as specified in § 156.805; and

(2) Decertification of a QHP offered by the non-compliant QHP issuer in a Federally-facilitated Exchange as described in § 156.810.

(b) *Scope.* Sanctions under subpart I are applicable for non-compliance with QHP issuer participation standards and other standards applicable to issuers offering QHPs in a Federally-facilitated Exchange. Sanctions under paragraph (a)(1) of this section are also ap-

plicable for non-compliance by QHP issuers participating in State Exchanges and State-based Exchanges on the Federal platform when HHS is responsible for enforcement of the requirements in subpart E of this part and 45 CFR 156.50.

(c) *Compliance standard.* For calendar years 2014 and 2015, sanctions under this subpart will not be imposed if the QHP issuer has made good faith efforts to comply with applicable requirements.

(d) *Information sharing.* HHS may consult and share information about QHP issuers with other Federal and State regulatory and enforcement entities to the extent that the consultation and information is necessary for purposes of State or Federal oversight and enforcement activities.

[78 FR 54143, Aug. 30, 2013, as amended at 79 FR 30351, May 27, 2014; 80 FR 10875, Feb. 27, 2015; 86 FR 24293, May 5, 2021]

§ 156.805 Bases and process for imposing civil money penalties in Federally-facilitated Exchanges.

(a) *Grounds for imposing civil money penalties.* Civil money penalties may be imposed on an issuer in an Exchange if, based on credible evidence, HHS has reasonably determined that the issuer has engaged in one or more of the following actions:

(1) Misconduct in the Federally-facilitated Exchange or substantial non-compliance with the Exchange standards and requirements applicable to issuers offering QHPs in the Federally-facilitated Exchange, including but not limited to issuer standards and requirements under parts 153 and 156 of this subchapter;

(2) Limiting the QHP's enrollees' access to medically necessary items and services that are required to be covered as a condition of the QHP issuer's ongoing participation in the Federally-facilitated Exchange, if the limitation has adversely affected or has a substantial likelihood of adversely affecting one or more enrollees in the QHP offered by the QHP issuer;

(3) Imposing on enrollees premiums in excess of the monthly beneficiary