

Dept. of Health and Human Services

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provided that the responsible entity submits the following:

(i) Documentation verifying that the rights and protections of all individuals adversely affected by the non-compliance have been restored; and

(ii) A plan of correction to prevent future similar violations.

(3) Demonstrated that the violation is an isolated occurrence.

(4) Demonstrated that the financial and other impacts on affected individuals is negligible or nonexistent.

(5) Demonstrated that the non-compliance is correctable and that a high percentage of the violations were corrected.

§ 158.609 Determining the amount of penalty—aggravating circumstances.

For every violation subject to a civil monetary penalty, if there are substantial or several aggravating circumstances, HHS may set the aggregate amount of the penalty at an amount sufficiently close to or at the maximum permitted by § 158.606 of this subpart to reflect that fact. HHS considers the following circumstances to be aggravating circumstances:

(a) The frequency of violation indicates a pattern of widespread occurrence.

(b) The violation(s) resulted in significant financial and other impacts on the average affected individual.

(c) The entity does not provide documentation showing that substantially all of the violations were corrected.

§ 158.610 Determining the amount of penalty—other matters as justice may require.

HHS may take into account other circumstances of an aggravating or mitigating nature if, in the interests of justice, they require either a reduction or an increase of the penalty in order to assure the achievement of the purposes of this part, and if those circumstances relate to the entity's previous record of compliance or the gravity of the violation.

§ 158.611 Settlement authority.

Nothing in § 158.606 through § 158.610 of this subpart limits the authority of HHS to settle any issue or case de-

scribed in the notice furnished in accordance with § 158.603 of this subpart or to compromise on any penalty provided for in §§ 158.606 through 158.610 of this subpart.

§ 158.612 Limitations on penalties.

(a) *Circumstances under which a civil monetary penalty is not imposed.* HHS does not impose any civil monetary penalty on any failure for the period of time during which none of the responsible entities knew, or exercising reasonable diligence would have known, of the failure. HHS also may not impose a civil monetary penalty for the period of time after any of the responsible entities knew, or exercising reasonable diligence would have known of the failure, if the failure was due to reasonable cause and not due to willful neglect and the failure was corrected within 30 days of the first day that any of the entities against whom the penalty would be imposed knew, or exercising reasonable diligence would have known, that the failure existed.

(b) *Burden of establishing knowledge.* The burden is on the responsible entity or entities to establish to HHS's satisfaction that no responsible entity knew, or exercising reasonable diligence would have known, that the failure existed.

§ 158.613 Notice of proposed penalty.

(a) *Contents of notice.* If HHS proposes to assess a penalty in accordance with this part, it must provide the issuer written notice of its intent to assess a penalty, which includes the following:

(1) A description of the requirements under this part that HHS has determined the issuer violated.

(2) A description of the information upon which HHS based its determination, including the basis for determining the number of affected individuals and the number of days or weeks for which the violations occurred.

(3) The amount of the proposed penalty as of the date of the notice.

(4) Any considerations described in § 158.607 through § 158.610 of this subpart that were taken into account in determining the amount of the proposed penalty.

(5) A specific statement of the issuer's right to a hearing.

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(6) A statement that failure to request a hearing within 30 days after the date of the notice permits the assessment of the proposed penalty without right of appeal in accordance with § 158.615 of this subpart.

(b) *Delivery of notice.* This notice must be either hand delivered, sent by certified mail, return receipt requested, or sent by overnight delivery service with signature upon delivery required.

§ 158.614 Appeal of proposed penalty.

Any issuer against which HHS has assessed a penalty under this part may appeal that penalty in accordance with § 150.400 *et seq.*

§ 158.615 Failure to request a hearing.

If the issuer does not request a hearing within 30 days of the issuance of the notice described in § 158.613 of this subpart, HHS may assess the proposed civil monetary penalty indicated in such notice and may impose additional penalties as described in § 158.606 of this subpart. HHS must notify the issuer in writing of any penalty that has been assessed and of the means by which the issuer may satisfy the penalty. The issuer has no right to appeal a penalty with respect to which it has not requested a hearing in accordance with § 150.405 of this subchapter, unless the responsible entity can show good cause, as determined at § 150.405(b) of this subchapter, for failing to timely exercise its right to a hearing.

PART 159—HEALTH CARE REFORM INSURANCE WEB PORTAL

Sec.

159.100 Basis and Scope.

159.110 Definitions.

159.120 Data Submission for the individual and small group markets.

AUTHORITY: Section 1103 of the Patient Protection and Affordable Care Act (Pub. L. 111-148).

SOURCE: 75 FR 24482, May 5, 2010, unless otherwise noted.

§ 159.100 Basis and scope.

This part establishes provisions governing a Web portal that will provide information on health insurance coverage options in each of the 50 States

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and the District of Columbia. It sets forth data submission requirements for health insurance issuers. It covers the individual market and the small group market.

§ 159.110 Definitions.

For purposes of part 159, the following definitions apply unless otherwise provided:

Health Insurance Coverage: We adopt the Public Health Service Act (PHSA) definition of “health insurance coverage” found at section 2791(b)(1) of the Public Health Service Act (PHSA).

Health Insurance Issuer: We adopt the PHSA definition of “health insurance issuer” found at section 2791(b)(2) of the PHSA.

Health Insurance Product: Means a package of benefits that an issuer offers that is reported to State regulators in an insurance filing.

Individual Health Insurance Coverage: We adopt the PHSA definition of “individual health insurance coverage” found at section 2791(b)(5) of the PHSA.

Individual Market: We adopt the Affordable Care Act definition of “individual market” found at section 1304(a)(2) of the Affordable Care Act and 2791(e)(1)(A) of the PHSA.

Portal Plan: Means the discrete pairing of a package of benefits and a particular cost sharing option (not including premium rates or premium quotes).

Section 1101 High Risk Pools: We define section 1101 high risk pools as any entity described in regulations implementing section 1101 of the Affordable Care Act.

Small Employer: We adopt the Affordable Care Act definition of “small employer” found at section 1304(b)(2) and (3).

Small Group Coverage: Means health insurance coverage offered to employees of small employers in the small group market.

Small Group Market: We adopt the Affordable Care Act definition of “small group market” found at section 1304(a)(3).

State Health Benefits High Risk Pools: Means nonprofit organizations created by State law to offer comprehensive health insurance to individuals who otherwise would be unable to secure