

CMS Announces Key 2015 Compliance Priorities for Federally Facilitated Exchange Plans

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April 2015

The Centers for Medicare & Medicaid Services (“CMS”) recently announced its 2015 key priorities for compliance reviews of qualified health plans (“QHPs”) offered in the federally facilitated marketplaces (“FFMs”). Through a document titled “Key Priorities for FFM Compliance Reviews for the 2015 Benefit Year,”¹ released on April 2, 2015, CMS has outlined its areas of focus for QHP issuer compliance reviews.

A new priority for 2015 is prescription drug formulary compliance, including meeting drug coverage minimums and the provision of a process to allow enrollees to request and access clinically appropriate drugs not included in the formulary. All other areas of focus are the same as those identified as 2014 priorities, including:

- complying with issuer participation standards,
- maintaining a sufficient provider network,
- ensuring access to Essential Community Providers,
- not employing marketing practices or benefit designs that discourage enrollment of individuals with significant health needs, and
- ensuring compliance of appointed agents/brokers.

CMS will continue its good faith compliance policy through 2015 for QHP issuers that demonstrate a good faith effort to comply with QHP certification and operational requirements. CMS conducted 23 audits of QHP issuers in 2014 and noted in public

¹ The Centers for Medicare & Medicaid Services, “Key Priorities for FFM Compliance Reviews for the 2015 Benefit Year” (April 2, 2015), available at: http://www.cms.gov/CCIIO/Resources/Forms-Reports-and-Other-Resources/Downloads/Compliance_Review_Table_032715_508.pdf.

presentations that the agency found a lack of familiarity with QHP requirements. Many of the examined policies and procedures were non-existent, had been recently created prior to the audit date, or did not address QHP-specific requirements. Common findings included a QHP issuer's failure to:

- meet notice accessibility requirements,
- address requirements on maintaining current and accurate provider directories,
- ensure compliance with agent/broker training and registration requirements, and
- ensure that agent/broker compensation is equal inside and outside the FFM.

If a QHP issuer fails to implement policies and procedures that reflect FFM requirements, then it will be difficult for the issuer to demonstrate that it has acted in good faith. As with the 2014 cycle, issuers were again invited to volunteer for audit during the 2015 cycle.

CMS has not yet stated whether it will be extending its good faith compliance policy for 2016. Issuers should not expect this policy to continue indefinitely and should be prepared for a CMS QHP compliance review.

Epstein Becker Green can assist plans in evaluating whether to volunteer for review and in preparing for CMS's 2015 review of QHP compliance in the FFM.

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*This Client Alert was authored by **Helaine I. Fingold** and **M. Brian Hall, IV**. For additional information about the issues discussed in this Client Alert, please contact one of the authors or the Epstein Becker Green attorney who regularly handles your legal matters.*

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