

# Fact Sheet for Exchange Program Integrity Proposed Rule

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## 2018 Health and Human Services Exchange Program Integrity Proposed Rule

The Centers for Medicare & Medicaid Services (CMS) released a proposed rule on November 7, 2018 to strengthen program integrity for Exchanges with respect to subsidy payments in the individual market.

The proposed rule is intended to advance the Administration's goals of:

- Strengthening CMS' oversight over State-based Exchanges (SBEs) through monitoring, reporting, and oversight of Exchange activities to, among other things, ensure SBEs are correctly determining consumer eligibility for advance payments of the premium tax credit (APTC) and cost-sharing reduction (CSR) amounts (as applicable), and that SBEs are meeting the standards of federal law in a transparent manner;
- Safeguarding taxpayer funds by ensuring that enrollees are accurately determined eligible for APTC and CSRs (as applicable) through revisions to the periodic data matching (PDM) requirements, and an optional consumer authorization that would allow CMS to identify and resolve issues around consumers dually enrolled in Medicare and a Qualified Health Plan (QHP) through the Exchange;
- Protecting rights of conscience by enforcing requirements in the statute that require issuers to send a separate bill to consumers who selected a plan with abortion coverage for the portion of premiums attributable to abortion services for which public funding is prohibited.

To advance these goals, key proposals in this rule would amend standards relating to oversight of SBEs, periodic data matching frequency and data disclosure authority. This proposed rule would also reinforce the PPACA requirements related to the collection of separate payments for certain abortion services related to these services which serve the dual purpose of helping issuers meet the statutory requirement to keep funds for these services separate from federal funds and helping consumers understand that they have selected a plan that includes this coverage. These proposed changes will help strengthen Exchange program integrity, including helping stabilize Exchange premiums.

The proposals in this rule build on other actions the Administration has taken to promote Exchange program integrity. For example, CMS has fully implemented policy-based payments in the FFEs and almost all of the SBEs, a critical system change across Exchanges and issuers that ensures the data used to generate APTC and CSR payments to issuers are verified and associated with particular enrollees.

CMS also recently implemented pre-enrollment verification of applicable individual market special enrollment periods for all states served by the HealthCare.gov platform, ensuring that only those who qualify for special enrollment periods receive them. In addition, the HHS Notice of Benefit and Payment Parameters for 2019 Final Rule (83 FR 16930), we established a policy to require documentary evidence for certain consumers who attest to income that is significantly higher than the amount found in the income data available to the Exchange from trusted data

sources. This new check will be conducted for households for which trusted data sources reflect income below 100 percent of the Federal Poverty Level (FPL) (which would make them generally ineligible for APTC), but the applicant attests to income between 100 and 400 percent FPL (which would make them eligible for APTC). An accurate eligibility determination is critical for consumers near this threshold to ensure APTC is not paid on behalf of consumers who are statutorily ineligible.

In late 2017, CMS developed an innovative approach to notify people who failed to reconcile the APTC they received on their tax returns of the requirement that they must take action to reconcile APTCs they have previously received, or else have their APTCs cut off. The notices explained that the tax filer is required to take action to reconcile these prior APTC payments, or future APTC payments associated with all enrollees for whom the individual is the tax filer would be terminated.

We continue to explore opportunities to improve program integrity and oversight by conducting comprehensive audits of Exchange processes to verify their integrity. This fact sheet highlights certain elements of the proposed rule. In addition to the elements highlighted below, through the rule CMS is proposing other changes in order to improve program integrity. For example, the rule would clarify that Exchanges are permitted to use and disclose applicant information to certain entities for program integrity efforts, such as combatting fraud.

#### ***Exchange and Qualified Health Plan Provisions:***

##### **State-based Exchange Oversight**

CMS is proposing changes that provide further specificity to the program reporting requirements for SBEs and State-based Exchanges on the Federal Platform (SBE-FPs). In addition, we are proposing changes that clarify the scope of the annual programmatic audits that SBEs and SBE-FPs are required to conduct and submit results to CMS, including testing of SBE eligibility and enrollment transactions to ensure the SBEs are properly determining consumer eligibility for qualified health plans, APTC and CSRs. We believe these proposed changes will strengthen CMS's programmatic oversight and the program integrity of SBEs, and better align with CMS's program integrity priorities, providing CMS and states with greater insight into SBE compliance with eligibility and enrollment standards in a more cost-effective manner.

#### ***Exchange Plan Management Programs:***

##### **Collection of Separate Payments for Certain Abortion Services**

CMS is proposing that issuers: (1) send an entirely separate monthly bill to the consumer for only the portion of premium attributable to abortion coverage, and (2) instruct the enrollee to pay the portion of their premium attributable to abortion coverage in a separate transaction from any payment the consumer makes for the portion of their premium not attributable to abortion coverage. We believe that some of the methods for billing and collection of the separate payment for abortion services noted as permissible in the 2016 Payment Notice do not align with the statutory requirements to collect separate payments, one for the abortion services at issue, and one for all other services covered under the policy. We instead believe that requiring issuers to separately bill the portion of the consumer's premium attributable to abortion services and instruct consumers to make a separate payment for this amount as proposed in the proposed rule

is a better interpretation of the statutory requirement for issuers to collect a separate payment for these services. The proposed rule would also add new compliance reviews to monitor FFE issuer compliance with the requirements applicable to issuers offering coverage for abortions services.

***Eligibility and Enrollment Provisions:***

**Periodic Data Matching**

CMS is planning to add optional authorizations to the Exchange application that, if an applicant were to elect them, would allow Exchanges access to their Medicare enrollment information, and, if authorized, to end enrollees' QHP coverage on their behalf if the Exchange determines they are enrolled in such qualifying coverage, even if the enrollee is not receiving APTC or CSRs. Where the enrollee does not provide this authorization, the Exchange may only access Medicare enrollment information for enrollees receiving APTC/CSRs and cannot end Exchange enrollment if an enrollee is found to be dually enrolled, even though the Exchange is required to terminate financial assistance in that case. Beginning with plan year 2020, the proposed rule would also require the Exchange to conduct Medicare, Medicaid/CHIP, and Basic Health Plan (BHP) periodic data matching (PDM) at least twice a year. SBEs that have implemented fully integrated eligibility systems would be deemed in compliance with the proposed regulations related to Medicaid/CHIP and BHP PDM. These changes would help ensure that consumers are aware of their dual enrollment and potential risk for tax liability.