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BULLETIN 13-24

Date: July 31, 2013

To: Insurers, Nonprofit Health Service Plans, and Health Maintenance Organizations
Offering Health Benefit Plans on the Individual Exchange ("Issuers")

Re: Segregation of Funds for Certain Abortion Services Covered under Qualified Health
Plans Sold on the Individual Exchange

Purpose:

The purpose of this Bulletin is to advise issuers of qualified health plans (QHPs) to be sold on Maryland's Individual Health Benefit Exchange ("Exchange") of the manner in which the Insurance Commissioner will implement the requirements of 45 C.F.R. § 156.280 regarding segregation of funds for certain abortion services.

Background:

Section 1303 of the Patient Protection and Affordable Care Act (ACA)

Section 1303 of the ACA provides that if a QHP includes coverage for certain abortion services ("non-excepted abortion services"), federal funds furnished in the form of premium tax credits or cost-sharing reductions may not be used to pay for those services. Issuers of QHPs that include coverage for non-excepted abortion services must collect from each enrollee in the QHP (without regard to age, sex, or family status) separate premium payments for non-excepted abortion service coverage and for other coverage under the plan, deposit the separate payments into separate allocation accounts, and use payments allocated to those separate accounts exclusively to pay for non-excepted abortion services and services other than non-excepted abortion services, respectively.

Section 1303 further provides that a QHP that covers non-excepted abortion services must provide a notice of that coverage to enrollees “only as part of the summary of benefits and coverage explanation, at the time of enrollment, of such coverage,” and that such notice, any advertising used by the issuer with respect to the plan, any information provided by the Exchange, and any other information specified by the Secretary shall provide information only with respect to the total amount of the combined payments” for the non-excepted abortion services and other services covered by the QHP. Section 1303 charges State health insurance commissioners with ensuring compliance with fund segregation requirements “in accordance with applicable provisions of generally accepted accounting requirements, circulars on funds management of the Office of Management and Budget and guidance on accounting of the Government Accountability Office.”

Implementing Federal Regulations

Implementing federal regulations provide that each QHP that participates in an Exchange and offers coverage for non-excepted abortion services should, as a condition of participating in an Exchange, submit a plan to the State insurance commissioner that details its process and methodology for complying with the fund segregation requirements (“segregation plan”). 45 C.F.R. § 156.280(5)(ii). The regulations require that the segregation plan “describe the QHP issuer’s financial accounting systems, including appropriate accounting documentation and internal controls, that would ensure the segregation of funds required by section 1303(b)(2)(C), (D), and (E)” of the ACA. *Id.* Specifically, the segregation plan should include:

- (A) The financial accounting systems, including accounting documentation and internal controls, that would ensure the appropriate segregation of payments received for coverage of [non-excepted abortion services] from those received for coverage of all other services;
- (B) The financial accounting systems, including accounting documentation and internal controls, that would ensure that all expenditures for [non-excepted abortion services] are reimbursed from the appropriate account; and
- (C) An explanation of how the QHP issuer’s systems, accounting documentation, and controls meet the requirements for segregation accounts under the law.

45 C.F.R. § 156.280(5)(ii).

In addition to the segregation plan, each QHP issuer participating in an Exchange must provide the State insurance commissioner “an annual assurance statement attesting that the plan has complied with section 1303 of the Affordable Care Act and applicable regulations.” 45 C.F.R. § 156.280(5)(iii). Like Section 1303 of the ACA, implementing regulations provide that a QHP that covers non-excepted abortion services must provide a notice of that coverage to enrollees “only as part of the summary of benefits and coverage explanation, at the time of enrollment, of such coverage” and that such notice, any advertising used by the issuer with respect to the plan, any information provided by the Exchange, and any other information specified by HHS “must provide information only with respect to the total amount of the combined payments” for non-excepted abortion services and other services covered by the QHP. 45 C.F.R. § 156.280(f).

The preamble to the final rule noted commenters' recommendation that the Department of Health and Human Services (HHS) clarify the provisions regarding separate payments for non-excepted abortion and all other services, including, among other things, whether QHP issuers must collect separate payments from all enrollees or only from those receiving federal financial assistance, and whether QHP issuers may satisfy the separate payment provision by providing each enrollee with an itemized bill. 77 Fed. Reg. 18310, 18430 (Mar. 27, 2012). With the exception of finalizing the pre-regulatory model guidelines on issuer segregation plans released by HHS and the Office of Management and Budget, HHS finalized the provisions of proposed § 156.280 without modification. HHS indicated that where future guidance is issued on § 156.280, the referenced comments will be taken into account. To our knowledge, no additional guidance regarding § 156.280 has been issued to date.

Requirements for Issuers of QHPs in Maryland:

Segregation Plan

If a QHP intended to be offered for sale on the Exchange provides coverage for non-excepted abortion services, the QHP issuer shall:

- 1) Submit for prior written approval its proposed segregation plan to the Insurance Commissioner on or before September 1 of the first year in which the issuer intends to offer QHPs on the Exchange during the open enrollment period commencing October 1;
- 2) Include in its segregation plan (a) all of elements set forth in 45 C.F.R. § 156.280(5)(ii); (b) the proposed effective date of the segregation plan; and (c) the date of the first filed Annual Statement required under Section 4-116 of the Insurance Article of the Annotated Code of Maryland ("Annual Statement") in which the proposed segregated allocation accounts will be reported; and
- 3) Submit to the Insurance Commissioner for prior written approval any proposed changes or amendments to its approved segregation plan.

An issuer may not implement a segregation plan until the Insurance Commissioner has approved the plan in writing, and an issuer must obtain the Commissioner's written approval of its segregation plan before offering a QHP that provides coverage for non-excepted abortion services on the Exchange.

Annual Assurance Statement

If a QHP intended to be offered for sale on the Exchange provides coverage for non-excepted abortion services, and the QHP issuer has obtained the Insurance Commissioner's written approval of its segregation plan, the QHP issuer shall:

- 1) On or before March 1 of each year, file with its Annual Statement an annual supplemental information schedule containing a reconciliation of all segregated account activity (beginning balance + receipts - disbursements = ending balance) for the preceding calendar year relating to the filed Annual Statement; and
- 2) On or before March 1 of each year, file with its Annual Statement an annual assurance statement containing an attestation by the issuer's Chief Executive Officer and Chief Financial Officer that the QHP has complied with section 1303 of the Affordable Care Act and applicable regulations, and that the financial accounting systems, including accounting documentation and internal controls, of the segregated account covered by the annual supplemental information schedule meet the requirements for segregated accounts under the ACA.

The segregation plan, annual assurance statement, and Annual Statement should be submitted to the attention of:

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For QHPs issued or delivered in the State, issuers are not required to provide enrollees with separate invoices for non-excepted abortion services and all other services covered under a QHP, nor to provide enrollees with itemization on a single invoice for non-excepted abortion services and all other services covered under a QHP.

The Insurance Commissioner may periodically examine issuers and each QHP to which this Bulletin applies to verify compliance. The Insurance Commissioner will retain working papers and periodic examination reports for a period of ten years, and may make the reports available to the Exchange or the U.S. Department of Health and Human Services upon request.

Any questions about this bulletin may be directed to Donald A. Crawley, Chief Examiner at don.crawley@maryland.gov.

Signature on original

Therese M. Goldsmith
Commissioner