

## Exchange Standards and Duties

The following are certain health care reform provisions of the Patient Protection and Affordable Care Act (Public Law 111-148) as amended by the Health Care and Education Reconciliation Act of 2010 (Public Law 111-152) and referred to collectively as the Affordable Care Act (ACA) and the regulations and guidance promulgated thereunder, including 42 CFR Parts 431, 435, 457, and 45 CFR Parts 155, 156, and 157.

### **I. Exchange Standards**

1. Section 1311 of the ACA establishes the requirement that each State shall establish an Exchange that meets certain minimum functions.
2. 45 C.F.R. § 155.106 establishes relevant processes and timelines for States, especially States operating SBE-FPs, to submit or update Exchange Blueprints, submit declaration letters.
3. 45 C.F.R. § 155.200 establishes that an eligible SBE may rely on Federal services that the Federal government agrees to provide under a Federal platform agreement to meet its obligations under 45 C.F.R. §155.200(a).
4. 45 C.F.R. § 155.220(l) extends the FFE agent and broker standards established under 45 C.F.R. § 155.220 to agents and brokers who assist with enrollments through SBE-FPs.
5. 45 C.F.R. § 155.260 establishes privacy and security requirements for Exchanges and for “Non-Exchange Entities,” as defined at 45 C.F.R. 155.260(b)(1), and to which SBE-FPs must adhere.
6. 45 C.F.R. § 155.1200 establishes standards for Exchange program integrity and oversight, including various accounting, reporting, and external auditing requirements.
7. 45 C.F.R. § 155.1210 establishes standards for the maintenance of various Exchange documents, records, and other evidence of accounting procedures and practices, namely that an Exchange, its contractor, subcontractors, and agents maintain the same for a period of 10 years.
8. 45 C.F.R. § 156.50(c)(2) establishes that HHS will charge issuers participating in the SBE-FP market in the State a user fee for the services and benefits provided by the FFE.
9. 45 C.F.R. § 156.122(d)(2) establishes the requirement for a QHP to make available published, up-to-date, accurate, and complete formulary drug list on its website in a format and at times determined by HHS.
10. 45 C.F.R. § 156.230 establishes the minimum criteria for network adequacy that health and dental plan issuers must meet to be certified as QHPs, including SADPs, in accordance with the Secretary’s authority in section 1311(c)(1)(B) of the Affordable Care Act.

11. 45 C.F.R. § 156.235 – establishes various general requirements and alternative standards applicable to essential community providers. SBE-FPs have an obligation to ensure oversight and enforcement of this provision against their issuers.
12. 45 C.F.R. § 156.298 – establishes standards for ensuring that QHPs are meaningfully different from one another. SBE-FPs have an obligation to ensure oversight and enforcement of this provision against their issuers.
13. 45 C.F.R. § 156.330 – establishes that issuers must communicate to HHS any changes of ownership along with their agreement to adhere to all applicable statutes and regulations. SBE-FPs have an obligation to ensure oversight and enforcement of this provision against their issuers.
14. 45 C.F.R. § 156.340(a)(4) establishes standards related to QHP issuer compliance and compliance of delegated and downstream entities. SBE-FPs have an obligation to ensure oversight and enforcement of this provision against their issuers.
15. 45 C.F.R. § 156.1010 – establishes FFE case work standards, which SBE-FPs have an obligation for overseeing and enforcing against their issuers.
16. 45 C.F.R. § 155.200(f)(3) – establishes that HHS will work collaboratively with the SBE-FP to ensure that FFE issuer standards are enforced directly against the issuers or plans that do not meet them, and provides that HHS has the authority to suppress a plan from displaying under 45 C.F.R. § 156.815 in that event.
17. 45 C.F.R. § 156.350 – establishes that QHP issuers that participate in SBE-FPs must comply with certain HHS regulations and guidance pertaining to issuer eligibility and enrollment functions as if the issuer were offering QHPs through an FFE.

## **II. Exchange Duties**

The SBE-FP will receive approval or conditional approval to operate an SBE-FP through the Blueprint process set out at 45 CFR §155.106(c) and meet its obligations under §155.200(a).

The SBE-FP's election to rely on the Federal platform to operate an individual market Exchange, SHOP, or both as an SBE-FP will be documented in its Blueprint submission. This must occur in accordance with applicable timelines under §155.106(c).

Requirement of an Exchange and Exchange policies applicable to the various operational areas including eligibility and enrollment, consumer assistance, plan management, program integrity and oversight and monitoring, SHOP, technology, and privacy and security are described below.

### *A. Eligibility & Enrollment and Consumer Assistance.*

The following provisions apply regardless of whether the SBE-FP relies on the federal platform for individual market functions, SHOP functions, or both:

1. The SBE-FP will rely on the Federal platform to provide for Eligibility Determinations and to facilitate enrollment in QHPs.

2. Issuers

These requirements can be found at the CMSzONE Issuer Community at: <https://zone.cms.gov/document/edi-onboarding-form-and-instructions-connectivity-testing>. SBE-FPs and issuers can establish registration for this community via the CMS Enterprise Identity Management System (EIDM) at: <https://portal.cms.gov/>. CMS training opportunities for issuers can be found at: [www.RegTap.info](http://www.RegTap.info). SBE-FPs and issuers are able register at this site via: <https://www.regtap.info/register.php>. Lastly, SBE-FPs should also direct their issuers to e-mail the CMS Issuer Communications distribution list ([CMS\\_Issuer\\_Communications@cms.hhs.gov](mailto:CMS_Issuer_Communications@cms.hhs.gov)) to receive regular CMS communications to issuers.

3. Federal Call Center

As part of the SBE-FP's reliance on the Federal platform, the SBE-FP will rely on the Federal call center to provide telephonic consumer support to consumers applying for, and enrolling in, coverage through the SBE-FP.

4. Toll-Free Hotline

By leveraging the Federal call center, the SBE-FP satisfies the requirement to operate a toll-free call center, if it, at a minimum, operates a toll-free telephone hotline to respond to requests for assistance to consumers in the SBE-FP, in accordance with §1311(d)(4)(B) of the ACA. This includes having the capability to provide information to consumers and appropriately direct them to the Federal call center or HealthCare.gov to apply for, and enroll in, QHP coverage.

5. Internet Web Site

As part of the SBE-FP's reliance on the Federal platform, the SBE-FP will rely on HealthCare.gov, the Federally-provided consumer-facing Web site, to provide the information technology infrastructure to enable consumers to receive eligibility determinations and enroll in QHPs. While the SBE-FP will rely on HealthCare.gov, it must at a minimum operate an informational Internet Web site in accordance with §1311(d)(4)(C) of the ACA. This includes having the capability to provide information to consumers and direct them to HealthCare.gov to apply for, and enroll in, QHP coverage.

6. Casework

Due to the nature of cases that involve the Federal platform, CMS will handle consumer casework that is not the responsibility of the issuer and will also ensure that issuers are resolving cases according to Federal laws, regulations and guidance. Cases will be entered in the Federally-operated Health Insurance Casework System (HICS) and will be routed to appropriate entities, including issuers. Thus, CMS will enter cases into HICS and assign cases to the relevant issuer, as appropriate. The SBE-FP's role will be to enforce the Federal casework standards in 156.1010 (further guidance is provided at <https://www.cms.gov/CCIIO/Resources/Regulations-and->

[Guidance/Downloads/casework-guidance-03132014.pdf](#)) with respect to issuers participating in the SBE-FP. SBE-FPs may accomplish this through coordination with the state regulatory authority. As with all other Exchange models, State regulatory authorities will continue to handle appropriate consumer complaints related to issuers in their States.

7. Assisters

The SBE-FP will maintain responsibility for working with Assisters in the SBE-FP, as set forth below:

a. Navigators

The SBE-FP maintains full responsibility for establishing, funding, and operating its Navigator grant program in accordance with §1311(d)(4)(K) and §1311(i) of the ACA. Specifically, the SBE-FP must ensure that Navigators complete any required SBE training(s) and comply with all applicable statutory and regulatory requirements, including §1311(i) of the ACA, 45 C.F.R. §155.205(d)-(e), 45 C.F.R. §155.210, and 45 C.F.R. §155.260(b).

b. Non-Navigator Assistance Personnel

If the SBE-FP opts to have a Non-Navigator Assistance Personnel program, the SBE-FP maintains full responsibility for program operations, as well as for selecting and ensuring the proper training of all Non-Navigator Assistance Personnel in the SBE-FP. Specifically, the SBE-FP must ensure that Non-Navigator Assistance Personnel complete any required SBE training(s) and comply with all applicable regulatory requirements, including 45 C.F.R. §155.205(d)-(e), 45 C.F.R. §155.215 (if applicable), and 45 C.F.R. §155.260(b).

c. CACs and CDOs

The SBE-FP maintains full responsibility for its CAC program, including for designating CDOs and for ensuring that all CACs in the SBE-FP are certified, either by certifying staff and volunteers of CDOs directly, or by designating CDOs to certify their staff and volunteers, or by a combination of both approaches. Specifically, the SBE-FP must ensure, either directly or through CDOs, that CACs complete required SBE-approved training(s) and comply with all applicable regulatory requirements, including 45 C.F.R. §155.225.

Navigators and other Assisters in SBE-FPs are encouraged to use FFE resources for Assisters, such as FFE Assister training content, webinars, newsletters, and other resources on [Marketplace.cms.gov](http://Marketplace.cms.gov). Navigators, Non-Navigator assistance personnel, CDOs, and CACs in SBE-FPs may sign up for the CMS Assister listserv by emailing

[assisterlistserv@cms.hhs.gov](mailto:assisterlistserv@cms.hhs.gov) and writing “add to listserv” in the subject line.

As part of the SBE-FP’s responsibility to operate an informational Internet Web site and to maintain responsibility (as described above) for its Assister programs, the SBE-FP will maintain a tool on its website for consumers to use to find local Assisters for help applying for and enrolling in coverage. HealthCare.gov’s Find Local Help tool will direct consumers to this SBE-FP-developed and operated tool.

## 8. Agents and Brokers

The SBE-FP maintains responsibility for ensuring that agents and brokers in the SBE-FP complete the applicable FFE training and registration requirements under 45 C.F.R. § 155.220 and any required State-specific training(s), requirements under 45 C.F.R. §155.260(b), as well as comply with State licensure requirements.

Once the agent or broker completes those requirements, they will be provided the option to display their information on HealthCare.gov’s Find Local Help tool for consumer assistance applying for and enrolling in coverage.

Additionally, CMS provides public access to the Agent and Broker Registration Completion List which may be used only for the following purposes:

- a. To confirm that an agent or broker has successfully completed registration requirements for the FFE or SBE-FP for the individual market and/or the SHOP; and
- b. To allow States and other stakeholders to conduct oversight, monitoring and enforcement activities related to agents and brokers, and to educate consumers about agents and brokers who may provide assistance to consumer who are interested in obtaining health care coverage through the FFE or SBE-FP in their States.

The SBE-FP is responsible for operating an informational Internet Web site and to maintain certain responsibilities (as described above) and direct consumers to HealthCare.gov’s Find Local Help tool. A redirect to the SBE-FP may be available if the SBE-FP has developed supplemental consumer support tools that list only those agents and brokers who appear on the CMS Registration Completion List.

## 9. Coordinated Outreach

The SBE-FP will coordinate closely with CMS to develop an outreach strategy to identify what – if any – outreach the SBE-FP will conduct for current enrollees, as well as new consumers looking to gain new coverage. These activities will include identifying all stakeholders. (e.g., current Exchange enrollees, general population, tribes), potential outreach and education campaigns (e.g., paid media, digital, grassroots), and other

activities. CMS may also conduct Federal outreach campaigns, including geo-targeted messaging on FFE social media channels throughout open enrollment.

*B. Additional Eligibility & Enrollment and Consumer Assistance for an Individual Market SBE-FP.*

1. Connect to the Non-Employer Sponsored Insurance (Non-ESI) Minimum Essential Coverage (MEC) HUB service via the State Medicaid Agency.

The SBE-FP understands that the Medicaid agency in its State must have sufficient technology to ensure that the Medicaid agency can connect to the non-ESI MEC Hub service for the FFE to check Medicaid/CHIP enrollment as appropriate.

2. Federal Data Services Hub (Hub)

The SBE-FP must ensure it has all appropriate connectivity to the Hub to meet its obligations under paragraph 5(a) of this section II.C., as applicable, and meets all privacy and other related contractual agreements referenced in this Agreement.

3. Special Enrollment Periods

While the SBE-FP maintains legal authority to administer special enrollment periods (SEPs) in the SBE-FP, due to operational limitations of leveraging the Federal platform, SBE-FPs agrees to set SEPs in a manner consistent with those set by the FFEs at 45 CFR 155.420. Further information about the SEPs that are currently available in the FFEs under 45 CFR 155.420 can be found at <https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/index.html>. This list is subject to change.

4. Data Sharing

CMS will disclose data to the SBE-FP that is necessary for the SBE-FP to fulfill its responsibilities described under its Blueprint Application, including consumer outreach and support, as described at 45 CFR Parts 155-157.

Qualified Health Plan Selection Enrollment Data is to be disclosed by CMS to the SBE-FP by zip code and other breakdowns. Should any indicator have less than twenty (20) individuals reported within a data cell, no number will be provided rather, a blank cell or other indicator will be used to safeguard against the identification of individuals, and to maintain compliance with all relevant provisions of the Privacy Act of 1974 (Title 5 U.S.C. § 552a) and its implementing regulations and guidance. CMS will disclose this data to the SBE-FP through a secure electronic process. The QHP Selection Enrollment Data will be provided on a monthly basis.

CMS may provide the SBE-FP with additional data for the purposes of the SBE-FP fulfilling its responsibilities in the area of consumer assistance and outreach.

C. *Plan Management.*

1. QHP Certification

The SBE-FP maintains primary responsibility for QHP certification and must review and transmit data to CMS in accordance with applicable requirements, as detailed in the current final Letter to Issuers in the Federally-facilitated Exchanges.

2. Issuer Standards

Although the SBE-FP maintains primary responsibility for certifying QHPs and overseeing QHPs and issuers, it has an obligation under §155.200(f)(2) to establish and oversee certain requirements for its QHPs and QHP issuers that are no less strict than the requirements that apply to QHPs and QHP issuers on an FFE. The SBE-FP has the flexibility to exceed the standards listed in 155.200(f)(2) to the extent that doing so does not create data display problems on HealthCare.gov.

3. Enforcement

Under §155.200(f)(3), CMS will work closely and collaboratively with the SBE-FP to ensure that the issuer standards in paragraph II.C.2 above are enforced directly against issuer or plans who do not meet them. In that circumstance, CMS has the authority to suppress a plan, which means temporarily making a QHP certified to be offered through the Federally-facilitated Exchange unavailable for enrollment through the Federally-facilitated Exchange. Because plan suppression relates to plan display on HealthCare.gov and the availability of plans for enrollment, the ability to suppress a plan is a fundamental element of the Federal eligibility and enrollment infrastructure and CMS also has the authority under this Agreement to suppress plans on the SBE-FP under any of the grounds provided for under 45 CFR §156.815, as applied to issuers in the SBE-FP.

D. *Program Integrity and Oversight.*

1. All SBE-FPs remain responsible for compliance with key Exchange oversight and program integrity activities under 45 CFR §§155.1200 and 155.1210. These regulatory requirements and other guidance mandate a defined set of oversight activities, including independent external financial and programmatic audits, to track and monitor how Exchanges, including SBE-FPs, are meeting applicable standards.

2. To meet these standards, the SBE-FP, like all SBEs, must submit an annual State-based Marketplace Annual Reporting Tool (SMART), and must participate in ongoing oversight activities and readiness reviews as required by CMS. The SBE-FP remains responsible for submitting a SMART for any coverage years during which it operated as an SBE and did not rely on the Federal platform for its eligibility and enrollment activities. Submission of the SMART ensures sufficient documentation is provided to demonstrate that the SBE-FP has complied with these and other applicable regulatory requirements and helps identify observations and potential action items. In its SMART submission, the SBE-FP must demonstrate that it completes various oversight and program integrity activities relevant to

activities for which the SBE-FP does not rely on the federal platform, including but not limited to:

- a. Attesting to the establishment of policies and procedures on discrimination safeguards, accessibility of information, and identification, adjudication and reporting of incidences of fraud and abuse, in addition to compliance with applicable State and Federal privacy and requirements;
- b. Submitting an annual financial statement and independent external financial audit report identifying any material weaknesses or significant deficiencies and the corrective actions taken by the Exchange to address the auditor's findings;
- c. Submitting an external programmatic audit that addresses relevant subparts of 45 CFR, Part 155, including at a minimum, 45 CFR, Part 155, Subparts C, D, E and K, for any coverage years during which it operated as an SBE and did not rely on the Federal platform. The external programmatic audit should also include any material weaknesses or significant deficiencies, and the corrective actions taken by the Exchange to address the auditor's findings;
- d. Submitting an external programmatic audit that addresses relevant subparts of 45 CFR, Part 155 that are consistent with the SBE-FP's obligations under this agreement, including at a minimum, 45 CFR, Part 155, Subparts C and K. The external programmatic audit should also include any material weaknesses or significant deficiencies and the corrective actions taken by the Exchange to address the auditor's findings; and
- e. Additional SMART requirements include completing an executive summary to highlight accomplishments and updating the oversight and monitoring plan.

*E. User Fee*

1. Under 45 CFR §156.50(c)(2), CMS will charge all issuers offering QHPs through the SBE-FP a user fee for the services and benefits provided by the FFE. The SBE-FP acknowledges that the proposed user fee rate has been calculated based on the proportion of FFE costs that are associated with services and benefits provided to the SBE-FP issuers, which include the Federal Exchange information technology and call center infrastructure used in connection with eligibility determinations for enrollment.
2. The annual HHS Notice of Benefit and Payment Parameters serves as the final authority detailing the annual user fee rate applicable to SBE-FP issuers from year to year. Under the HHS Notice of Benefit and Payment Parameters for 2017, this user fee rate was calculated at 3.0 percent of premiums for issuers offering plans through an SBE-FP. HHS received a waiver from OMB of the requirement that this user fee cover HHS' full costs



for 2017 and 2018. The SBE-FP user fee will be charged as a percent amount of monthly premium charged by the issuer for each policy under a plan offered through an SBE-FP in an amount of 1.5 percent for 2017, 2.0 percent for 2018, and 3.0 percent for 2019.

3. The SBE-FP works with HHS to ensure that it (or a designated entity) completes CMS's Vendor Management onboarding process. In order to receive invoices and make payments, the SBE-FP (or a designated entity) must be established as a paying entity in HHS's payment systems, which include Healthcare Integrated General Ledger Account System (HIGLAS) and Pay.gov with a Taxpayer Identification Number (TIN) and Bank Verification Letter from the banking institution. The SBE-FP will be held to the Federal government standards for timely invoice payments, as established by the Office of Financial Management of the Centers for Medicare and Medicaid Services (CMS) in HHS.

*F. Privacy and Security.*

CMS will oversee and monitor the SBE-FPs to comply with the applicable privacy and security standards pursuant to §155.260, including the applicable documentation that is required to be maintained to comply with the Minimum Acceptable Risk Standards for Exchanges (MARS-E).

The SBE-FP remains responsible for ensuring that all legal agreements are fully-updated, to include the Computer Matching Agreement (CMA), Information Exchange Agreement (IEA), and Interconnection Security Agreement (ISA).

