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**Date:** April 28, 2022

**From:** Center for Consumer Information and Insurance Oversight and Center for Clinical Standards and Quality, Centers for Medicare & Medicaid Services

**Title:** Quality Rating Information Bulletin

**Subject:** CMS Bulletin on display of Quality Rating System (QRS) quality ratings and Qualified Health Plan (QHP) Enrollee Experience Survey (QHP Enrollee Survey) results for QHPs offered through Exchanges (often called the Health Insurance Marketplace®)<sup>1</sup>

## I. Purpose

The Centers for Medicare & Medicaid Services (CMS) is releasing this bulletin to provide guidance regarding the public display of QHP quality rating information by all Exchanges, including the Federally-facilitated Exchange (FFE), State-based Exchanges on the Federal Platform (SBE-FPs), and State-based Exchanges (SBEs) that operate their own eligibility and enrollment platform, during the individual market Open Enrollment Period (OEP) for the 2023 plan year (PY 2023).<sup>2,3</sup> In accordance with Section 1311(c)(3) and (c)(4) of the Patient Protection and Affordable Care Act (ACA) and 45 C.F.R. §§ 155.1400 and 155.1405, all Exchanges will be required to publicly report 2022 quality rating information on their websites during PY 2023 to help consumers compare and shop for QHPs. CMS is committed to increasing transparency and providing quality information to help empower consumers in making informed health care decisions.

In October 2021, CMS published the *Quality Rating System and Qualified Health Plan Enrollee Experience Survey: Technical Guidance for 2022* (2022 Technical Guidance),<sup>4</sup> which stated that CMS would release subsequent guidance regarding display of 2022 quality rating information beginning with the individual market OEP for PY 2023 by Exchanges and Direct Enrollment (DE) Entities. This bulletin serves as such guidance, and sets forth the requirements for display of QHP quality rating information by Exchanges and DE Entities, the form and manner for display of the 2022 ratings, and

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<sup>1</sup> Health Insurance Marketplace® is a registered service mark of the U.S. Department of Health & Human Services.

<sup>2</sup> The term “QHP quality rating information” includes the QRS scores and ratings and the QHP Enrollee Survey results. Exchanges can satisfy the requirement to display the QHP Enrollee Survey results by displaying the QRS star ratings (which incorporate member experience data from the QHP Enrollee Survey). See, Exchange and Insurance Market Standards for 2015 and Beyond; Final Rule, 79 FR 30240 at 30310 – 30311 (May 27, 2014), available at: <https://www.gpo.gov/fdsys/pkg/FR-2014-05-27/pdf/2014-11657.pdf>.

<sup>3</sup> The 2023 individual market OEP is from November 1, 2022 to January 15, 2023 for FFE and SBE-FP states. States with State Exchanges that operate their own eligibility and enrollment platform have flexibility to set an end date no earlier than December 15. See 45 C.F.R. § 155.410(e)(4), as added by the Updating Payment Parameters, Section 1332 Waiver Implementing Regulations, and Improving Health Insurance Markets for 2022 and Beyond; Final Rule, 86 FR 53412 (September 27, 2021), available at: <https://www.federalregister.gov/documents/2021/09/27/2021-20509/patient-protection-and-affordable-care-act-updating-payment-parameters-section-1332-waiver>.

<sup>4</sup> Available at: <https://www.cms.gov/files/document/2022-qrs-and-qhp-enrollee-survey-technical-guidance.pdf>.

details for what to display in cases where a QHP did not receive a rating. In addition, this bulletin also details CMS's guidance regarding references to QHP quality rating information in QHP issuer marketing materials.<sup>5</sup>

Please note, the contents of this document do not have the force and effect of law and are not meant to bind the public in any way, unless specifically incorporated into a contract. This document is intended only to provide clarity to the public regarding existing requirements under the law.

## **II. Background**

CMS designed the QRS to offer comparable and useful information to consumers about the quality of health care services and enrollee experience with QHPs offered through the Exchanges. In addition, CMS developed the QHP Enrollee Survey, from which CMS derives a subset of survey measures included within the QRS, to get enrollees' perspectives on the services provided by QHPs. The QHP Enrollee Survey is based on the Consumer Assessment of Healthcare Providers and Systems (CAHPS<sup>®</sup>) surveys and principles, which are the national standard for assessing patient and consumer experience. The QRS star rating program supports CMS's goal to achieve quality care that is affordable for individuals, families, and employers by using public reporting to improve health care quality and empower consumers to make choices that best suit their health care needs. The QRS star ratings provide health plan quality information on important topics, like how well doctors coordinate with enrollees and other doctors to provide the best care, whether the plan's network providers give members health care that achieves the best results, and how other enrollees rate their doctors and their care.

Beginning during the OEP for PY 2020, CMS displayed the QHP quality rating information for all Exchanges that used the HealthCare.gov platform, including the FFEs and SBE-FPs. SBEs that operate their own eligibility and enrollment platform were required to display QHP quality ratings for PY 2020, but had some flexibility to customize the display of the QHP quality rating information. To support CMS's strategic goals of empowering consumers through data, minimizing cost and burden on QHP issuers, and supporting state flexibility, CMS will continue to require the display of QHP quality rating information calculated during the 2022 ratings year for PY 2023, in accordance with Section 1311(c)(3) and (c)(4) of the ACA and 45 C.F.R. §§ 155.1400 and 155.1405.

CMS continues to obtain feedback from consumers about the topics they find most useful when shopping for Exchange plans. We will continue to test consumer use and experience with QRS star ratings to enhance and improve the display of QHP quality rating information to consumers in future benefit years. As the Exchanges continue to mature, CMS remains focused on strategies to improve the experience for consumers and QHP issuers. CMS also continues to seek stakeholder feedback on proposed refinements to the QRS and QHP Enrollee Survey programs through an annual Call Letter process.<sup>6</sup>

## **III. Exchange Display Guidance for QHP Quality Rating Information**

This bulletin announces that public display of 2022 QHP quality rating information by the FFEs and SBE-FPs will begin with the individual market OEP for PY 2023, which starts on November 1, 2022. In

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<sup>5</sup> See 45 C.F.R. § 156.1120(c).

<sup>6</sup> CMS proposes changes to the QRS and QHP Enrollee Survey programs through the annual Draft Call Letter and provides stakeholders with the opportunity to submit feedback via a 30-day public comment period. CMS analyzes the comments and releases a Final Call Letter finalizing changes to the QRS and QHP Enrollee Survey programs. See, e.g., the *Final 2021 Call Letter for the QRS and QHP Enrollee Survey* available at: <https://www.cms.gov/files/document/final-2021-call-letter-qrs-and-qhp-enrollee-survey.pdf>.

alignment with this timeline, SBEs whose consumers do not use HealthCare.gov will also be required to display 2022 QHP quality rating information on their respective websites beginning with the individual market OEP for PY 2023. However, these SBEs have some flexibility to customize the form and manner in which they display their QHP quality rating information, as discussed further below.<sup>7</sup>

### **Display on HealthCare.gov**

For PY 2023, CMS will display star ratings on a 1 to 5 star scale (5 is highest) for the QRS global rating and three summary indicator ratings on the HealthCare.gov website for each eligible QHP available through HealthCare.gov, including those offered through the FFEs and SBE-FPs. CMS will display ratings for QHPs that received a rating during the 2022 ratings year.

On HealthCare.gov, CMS uses consumer-focused labels and plain language to ensure comprehension and ease of use (i.e., “Overall Rating,” “Medical Care,” and “Plan Administration”).<sup>8</sup>

If a QHP is not eligible for scoring during the 2022 ratings year (i.e., did not operate in 2020, 2021, and 2022), CMS will display “New plan – Not Rated” in place of the QHP quality rating information. If a QHP did not receive a 2022 rating for any other reason (e.g., did not meet the participation criteria, did not receive a global score), CMS will display “Not Rated” in place of the QHP quality rating information.

### **Display Guidance for SBEs**

In accordance with 45 C.F.R. §§ 155.1400 and 155.1405 and consistent with the anticipated display of QHP quality rating information by the FFEs and SBE-FPs, SBEs whose consumers do not use HealthCare.gov should prepare to display 2022 QHP quality ratings beginning with the individual market OEP for PY 2023. SBEs whose consumers do not use HealthCare.gov must display QHP quality rating information in the form and manner specified by CMS or with some limited state-specific customizations.<sup>9</sup>

In September 2022, CMS will provide SBEs the State Ratings Data Files through the Health Insurance Oversight System Marketplace Quality Module (HIOS-MQM) which will include the 2022 quality rating information for QHP issuers operating in their state. As needed, CMS will provide technical details to help SBEs display the QRS star ratings. For example, CMS will make the QHP quality rating information accessible to SBEs whose consumers do not use HealthCare.gov by sharing the appropriate quality ratings data file.

The purpose of the QHP quality rating information is to provide additional comparative information for consumers while shopping and selecting plans. SBEs are generally required to display the federally calculated QRS global ratings and summary indicator ratings. SBEs cannot develop their own programs to replace the quality ratings calculated by CMS. However, SBEs have some flexibility to customize the display of quality rating information for their respective QHPs. For example, SBEs can make some

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<sup>7</sup> See the HHS Notice of Benefit and Payment Parameters for 2021; Notice Requirement for Non-Federal Governmental Plans; Final Rule, 85 FR 29164 at 29214 – 29216 (May 14, 2020), available at: <https://www.govinfo.gov/content/pkg/FR-2020-05-14/pdf/2020-10045.pdf>.

<sup>8</sup> The “Overall Rating” label corresponds to the QRS global rating, the “Medical Care” label corresponds to the “Clinical Quality Management” summary indicator, the “Member Experience” label corresponds to the “Enrollee Experience” summary indicator, and the “Plan Administration” label corresponds to the “Plan Efficiency, Affordability, & Management” summary indicator.

<sup>9</sup> 45 C.F.R. §§ 155.1400 and 155.1405. See also *supra* note 7.

state-specific customizations, such as to incorporate additional state or local quality information or to modify the display names of the QRS star ratings.<sup>10</sup>

The QRS ratings reflect QHP performance by product type, which includes QHPs in both the Small Business Health Options Program (SHOP) and individual market. SBEs must display ratings for all QHPs in the product type, including QHPs in the SHOP and individual market, as applicable. If a QHP was not eligible to receive a 2022 rating or did not receive a 2022 rating for other reasons, CMS encourages SBEs to follow the same approach as the FFEs and SBE-FPs and display “New plan – Not Rated” or “Not Rated” in place of the QHP quality rating information.

When displaying the federally calculated QRS ratings, SBEs must prominently display the following disclaimer language on the SBE website or the static website that displays the QHP quality ratings information:

*Plan quality ratings and enrollee survey results are calculated by CMS using data provided by health plans in 2022. The ratings are being displayed for health plans for the 2023 plan year. Learn more about these ratings. [Link to appropriate explanatory/Help text on HealthCare.gov.]*<sup>11</sup>

CMS encourages SBEs to update their CMS State Officers and respective issuers regarding their approach to display the quality rating information for their QHPs beginning with the individual market OEP for PY 2023. CMS will provide technical assistance and will discuss timelines for implementation with any SBEs who are unable to meet these requirements for the PY 2023 OEP.

### **Display Guidelines for DE Entities**

Consistent with the display of QHP quality rating information by Exchanges, Direct Enrollment (DE) entities<sup>12</sup> will be required to display 2022 QHP quality ratings assigned to each eligible QHP beginning during the PY 2023 OEP.<sup>13</sup>

QHP issuer and web-broker DE entities that use direct enrollment<sup>14</sup> to facilitate enrollments through the FFEs and SBE-FPs must follow CMS requirements for the display of QHP information consistent with 45 C.F.R. § 155.205(b)(1).<sup>15</sup> This includes the display of QHP quality rating information.<sup>16</sup>

DE entities will be required to display the federally calculated QRS global ratings and summary indicator ratings on their respective non-Exchange websites. DE entities should use the same consumer-facing labels that CMS displays on HealthCare.gov (i.e., “Overall Rating,” “Medical Care,” “Member

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<sup>10</sup> See *supra* note 9.

<sup>11</sup> SBEs that customize the display of their QHP quality rating information should not display this disclaimer on their SBE website or static website that displays QHP quality information.

<sup>12</sup> See 45 C.F.R. § 155.221(a).

<sup>13</sup> See 45 C.F.R. §§ 155.220(c)(3)(i)(A), (c)(3)(ii)(A) and 156.1230(a)(1)(ii). Also see the HHS Notice of Benefit and Payment Parameters for 2022 and Pharmacy Benefit Standards; Final Rule, 86 FR 24140 at 24206 - 24209 (May 5, 2021), available at <https://www.federalregister.gov/documents/2021/05/05/2021-09102/patient-protection-and-affordable-care-act-hhs-notice-of-benefit-and-payment-parameters-for-2022-and>.

<sup>14</sup> This bulletin applies to DE entities using the classic (i.e., double-redirect) DE pathway and those using the enhanced DE (EDE) pathway.

<sup>15</sup> See 45 C.F.R. § 156.1230(a)(1)(ii) for QHP issuer DE entity display requirements. See 45 C.F.R. § 155.220(c)(3)(i)(A) and (c)(3)(ii)(A) for web-broker DE entity display requirements.

<sup>16</sup> See 45 C.F.R. § 155.205(b)(1)(iv) and (v).

Experience,” and “Plan Administration”).<sup>17</sup> If a QHP was not eligible to receive a 2022 rating or did not receive a 2022 rating for other reasons, DE entities will need to follow the same approach as the FFEs and SBE-FPs and display “New plan – Not Rated” or “Not Rated” in place of the QHP quality rating information.

CMS will make the quality rating information available to DE entities through the Marketplace Application Program Interface (API), which will allow DE entities to integrate QRS ratings for each eligible QHP for display on their non-Exchange websites. DE entities will also be able to access quality rating information through the Quality public use file (PUF) for PY 2023 which will be published on the Marketplace Quality Initiatives (MQI) website in October 2022,<sup>18</sup> after the annual QRS and QHP Enrollee Survey preview period.

QHP issuer and web-broker DE entities that display QHP quality rating information on their non-Exchange websites should prominently display the following disclaimer language provided by CMS:

*Plan quality ratings and enrollee survey results are calculated by CMS using data provided by health plans in 2022. The ratings are being displayed for health plans for the 2023 plan year. Learn more about these ratings. [Link to appropriate explanatory/Help text on HealthCare.gov.]*

#### **IV. Marketing Guidance for QHP Quality Rating Information**

As detailed in the 2022 Technical Guidance,<sup>19</sup> QHP issuers may reference the 2022 QRS quality ratings and QHP Enrollee Survey results for their QHPs in marketing materials in a manner specified by CMS.<sup>20</sup> Any QHP issuer that elects to include its 2022 QHP quality rating information—specifically, its QRS scores and ratings and QHP Enrollee Survey results—in its marketing materials for PY 2023 (whether paper, electronic, or other media) must do so in accordance with the CMS instructions below.<sup>21</sup>

The 2022 marketing guidelines are generally based on CMS guidance related to marketing QHPs as communicated in the annual *Letter to Issuers in the Federally-facilitated Exchanges*.<sup>22</sup> A QHP issuer that elects to include QRS and QHP Enrollee Survey information in its marketing materials must do so

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<sup>17</sup> The “Overall Rating” label corresponds to the QRS global rating, the “Medical Care” label corresponds to the “Clinical Quality Management” summary indicator, the “Member Experience” label corresponds to the “Enrollee Experience” summary indicator, and the “Plan Administration” label corresponds to the “Plan Efficiency, Affordability, & Management” summary indicator.

<sup>18</sup> Available at <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/QualityInitiativesGenInfo/ACA-MQI/ACA-MQI-Landing-Page.html>

<sup>19</sup> See Section 10 of the 2022 Technical Guidance, available at: <https://www.cms.gov/files/document/2022-qrs-and-qhp-enrollee-survey-technical-guidance.pdf>.

<sup>20</sup> 45 C.F.R. §§ 156.1120(c) and 156.1125(c).

<sup>21</sup> The scope of the definition for “marketing” extends beyond the public’s general concept of advertising materials. CMS interprets the definition of marketing and marketing materials, as referenced here, as equivalent to the definitions for the Medicare Advantage program in 42 C.F.R. § 422.2260.

<sup>22</sup> See Chapter 5 in the *Final 2022 Letter to Issuers in the Federally-facilitated Exchanges* (2022 Letter to Issuers), available at <https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Final-2022-Letter-to-Issuers-in-the-Federally-facilitated-Marketplaces.pdf> and Chapter 5, Section 5, “Oversight of Marketing Activities,” in the *Addendum to the Final 2018 Letter to Issuers in the Federally-facilitated Marketplaces*, available at <https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Final-2018-Letter-to-Issuers-in-the-Federally-facilitated-Marketplaces-and-February-17-Addendum.pdf>. See also 45 C.F.R. §§ 156.225 (Marketing and Benefit Design of QHPs), 155.260 (Privacy and Security), and 156.200(e) (Non-discrimination).

in a manner that does not mislead consumers. The instructions that follow detail the manner in which QRS and QHP Enrollee Survey information must be communicated in marketing materials:

- **Disclaimers:** QHP issuers must include the following disclaimers on marketing materials referencing QRS or QHP Enrollee Survey information. All disclaimers must be clear and conspicuous. Disclaimers are not required on call scripts, banners and banner-like ads, envelopes, outdoor advertising (e.g., billboards), text messages, and social media.
  - If marketing materials reference only QRS information, QHP issuers must include the following disclaimer on all materials:
    - *CMS scores qualified health plans (QHPs) offered through the Exchanges using the Quality Rating System (QRS) based on third-party validated clinical measure data and QHP Enrollee Survey responses. CMS calculates ratings yearly on a 5-star scale. Ratings may change from year to year.*
  - If marketing materials reference only QHP Enrollee Survey information, QHP issuers must include the following disclaimer on all materials:
    - *CMS evaluates qualified health plans (QHPs) offered through the Exchanges using QHP Enrollee Survey responses. QHP issuers work with HHS-approved survey vendors that independently conduct the survey each year. QHP Enrollee Survey results may change from year to year.*
  - If marketing materials reference QRS and QHP Enrollee Survey information, QHP issuers must include the following disclaimer on all materials:
    - *CMS scores qualified health plans (QHPs) offered through the Exchanges using the Quality Rating System (QRS) based on third-party validated clinical measure data and QHP Enrollee Survey responses. CMS calculates QRS ratings yearly on a 5-star scale. QHP issuers work with HHS-approved survey vendors that independently conduct the survey each year. QRS ratings and QHP Enrollee Survey results may change from year to year.*
- **Up-to-date information:** QHP issuers that choose to include QHP quality rating information in marketing materials must use the most up-to-date information. QHP issuers must use the quality ratings applicable to the plan year, and QHP issuers must discontinue marketing based on the previous year’s information. CMS anticipates issuing the final QRS ratings to QHP issuers and Exchange administrators annually, prior to the start of the individual market OEP. QHP issuers may use the final quality ratings that are published via the Quality PUF and Nationwide QRS PUF, applicable to the plan year, which will become available on the Marketplace Quality Initiatives (MQI) website in October 2022.<sup>23,24</sup>
- **Specificity of content:** Materials should reference specific QHPs or product types and their CMS-assigned quality rating information. QHP issuers may advertise a product type’s quality rating information (e.g., a “5-star HMO”), as QRS scores and ratings and QHP Enrollee Survey results are calculated for each product type (i.e., EPO, HMO, POS, PPO) and assigned to each QHP within the product type.
  - Materials should be specific as to the state to which the information applies.

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<sup>23</sup> See *supra* note 18.

<sup>24</sup> QHP issuers participating in the FFE and SBE-FPs that are also DE Entities will also have access to quality rating information through the Marketplace API.

- QHP issuers with one or more QHPs (or product types) that were assigned a specific QRS global rating (e.g., 5-stars) should not create or distribute marketing materials in a way that implies that all of their QHPs (or product types) achieved this rating.
- QHP issuers are encouraged to advertise QRS ratings (i.e., stars) rather than scores (i.e., numerical value), which are less meaningful to consumers.
- QHP issuers are encouraged to advertise the QRS global rating rather than the rating for the QRS summary indicator component.
  - If QHP issuers choose to advertise the QRS global rating, it must be labeled “Overall Rating” consistent with HealthCare.gov consumer-facing language. If QHP issuers choose to advertise ratings for the three summary indicators, they must be labeled “Member Experience”, “Medical Care”, and “Plan Administration” consistent with HealthCare.gov consumer-facing language.
  - QHP issuers required to provide information in languages other than English must use translated content consistent with HealthCare.gov. If QHP issuers choose to advertise ratings for any QRS summary indicator component, the QHP issuer may use only the component titles assigned by CMS without variation (like Member Experience). Additionally, if the QHP issuer references a QRS summary indicator rating, they must also include the QRS global rating.
- The use of a general label in reference to the rating of a specific QHP (like “a 5-star plan”) can only be used to reference the QRS global rating, unless the component is specified (like “a 5-star plan for [insert component name]”). QHP issuers may not use the rating for a QRS summary indicator component to imply a higher global rating than actually received. For example, a QHP issuer may not promote a QHP that received a global rating of three stars and a summary indicator rating of five stars as a “5-star plan.”
- QHP issuers may not use superlatives (like “highest ranked,” “one of the best”) without additional context. For example, a QHP that received a 5-star rating for a specific QRS component, but received a 3-star global rating, may not be promoted as the highest ranked QHP in the state when other QHPs have a higher global rating.
- QHP issuers may not claim that any of their product types or QHPs are recommended or endorsed by the federal government, HHS, CMS, CCIIO, or the Exchanges. This includes, but is not limited to, use of the Department’s name or logo; any HHS agency’s name and marks; or the Exchanges’ names, logos, and marks in a manner that would convey the false impression that any product type is recommended or endorsed by the Federal Government, HHS or its Agencies, or the Exchanges.
- **Compliance with state law and regulations:** QHP issuers must comply with all applicable state laws and regulations on health plan marketing, and must not employ marketing practices that will have the effect of discouraging the enrollment of individuals with significant health needs in QHPs.<sup>25</sup>

Pursuant to 45 C.F.R. § 156.340(a)(1), a QHP issuer participating in an FFE or an SBE-FP maintains responsibility for its compliance and the compliance of any of its delegated or downstream entities,

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<sup>25</sup> See 45 C.F.R. § 156.225.

including affiliated agents and brokers, with the QRS and QHP Enrollee Survey marketing standards.<sup>26,27</sup>

States generally regulate health plan marketing practices and materials and related documents under state law, and CMS does not intend to review QHP marketing materials for compliance with state standards as described at 45 C.F.R. § 156.225(a).<sup>28</sup> In the FFEs, CMS may review QHP marketing materials for compliance with applicable federal regulations.<sup>29</sup> CMS will work with states to determine where additional monitoring and review of marketing activities may be needed.

Complaints about a QHP issuer's marketing activities related to QHP quality rating information are generally overseen by the state. CMS will send such complaints to state regulators or federal entities, as appropriate, for investigation. Following investigation by the state or another federal agency investigation, CMS may take further enforcement action, if necessary or appropriate.

Issuers should contact the Marketplace Service Desk with any questions at [CMS\\_FEPS@cms.hhs.gov](mailto:CMS_FEPS@cms.hhs.gov) or 1-855-CMS-1515 (1-855-267-1515).

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<sup>26</sup> This includes, but is not limited to, compliance by delegated and downstream entities with the marketing standards at 45 C.F.R. §§ 156.225, 156.1120(c), and 156.1125(c).

<sup>27</sup> Amendments were recently proposed to the federal Exchange standards applicable to QHP issuer downstream and delegated entities codified at 45 C.F.R. § 156.340. If finalized as proposed, among other things, QHP issuers in all Exchange models – FFEs, SBE-FPs, and SBEs – would be responsible for oversight of compliance of their respective downstream and delegated entities. See the HHS Notice of Benefit and Payment Parameters for 2023; Proposed Rule, 87 FR 584 at 686-687 (January 5, 2022), available at: <https://www.govinfo.gov/content/pkg/FR-2022-01-05/pdf/2021-28317.pdf>.

<sup>28</sup> See *supra* note 22 (the 2022 Letter to Issuers).

<sup>29</sup> See, for example, 45 C.F.R. §§ 156.200(e), 156.225(b), 156.1120(c), and 156.1125(c).