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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®)¹

I. Purpose

The Centers for Medicare & Medicaid Services (CMS) is releasing this bulletin to provide guidance for the public display of QHP quality rating information² by all Exchanges, including the Federally-facilitated Exchanges (FFE), inclusive of FFE states where the state performs plan management functions, State-based Exchanges on the Federal Platform (SBE-FPs), and State-based Exchanges (SBEs) that operate their own eligibility and enrollment platform during the Open Enrollment Period (OEP) for the 2021 plan year (PY).³

In April 2020, CMS published the COVID-19 Marketplace Quality Initiatives Memo, which announced CMS's temporary policy of relaxed enforcement due to the challenges health care providers have been facing responding to the COVID-19 virus, and directed all eligible QHP issuers to discontinue the collection of clinical quality measure data and survey measure data that would normally be used to calculate 2020 quality ratings and that would normally be reported to CMS between May and June 2020.⁴ This enforcement discretion policy included discontinuation of reporting data for the QRS and QHP Enrollee Survey that would be used to calculate the quality ratings for display on Exchange websites beginning during the 2021 OEP for the individual market.⁵ The COVID-19 Marketplace Quality Initiatives Memo stated that CMS

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

² The term "QHP quality rating information" includes the Quality Rating System (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 Patient Protection and Affordable Care Act; Exchange and Insurance Market Standards for 2015 and Beyond; Final Rule; (May 27, 2014), 79 FR 30240 at 30310, available at: <https://www.gpo.gov/fdsys/pkg/FR-2014-05-27/pdf/2014-11657.pdf>.

³ The PY 2021 OEP is from November 1, 2020 to December 15, 2020. See 45 C.F.R. § 155.410(e)(3).

⁴ See the COVID-19 Marketplace Quality Initiatives Memo, available at: <https://www.cms.gov/files/document/covid-grs-and-marketplace-quality-initiatives-memo-final.pdf>

⁵ *Id.*

would release subsequent guidance regarding display of quality rating information for the 2021 individual market OEP.⁶

This bulletin serves as such guidance, and provides that in accordance with Sections 1311(c)(3) and (c)(4) of the Patient Protection and Affordable Care Act and 45 C.F.R. §§ 155.1400 and 155.1405, FFEs and SBE-FPs will be required to continue to publicly report 2019 quality rating information on their websites during PY 2021 to help consumers compare and shop for QHPs. However, due to the COVID-19 public health emergency, SBEs whose consumers do not use HealthCare.gov have flexibility to continue to display 2019 QHP quality rating information on their respective websites beginning with the individual market OEP for PY 2021 or follow a state-specific approach for display of quality rating information for PY 2021. This bulletin also includes information regarding requirements for display of QHP quality rating information by Exchanges and direct enrollment (DE) entities for PY 2021, the form and manner for display of the ratings, and details for what to display in cases where a QHP did not receive a rating. In addition, this bulletin details CMS's guidance regarding references to QHP quality rating information in QHP issuer marketing materials.

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[®]) 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 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.

In April 2020, CMS directed all eligible QHP issuers to discontinue the collection and reporting of clinical quality measure data and survey measure data that would normally be reported to

⁶ *Id.*

CMS between May and June 2020.⁷ Typically, CMS would apply the QRS rating methodology to the validated clinical quality measure data and survey measure data submitted during this window to calculate the 2020 quality rating information. Due to the discontinuation of data collection and reporting, however, CMS will not be able to calculate 2020 quality ratings for PY 2021. In place of 2020 quality ratings, CMS will continue to display quality rating information calculated during the 2019 QRS ratings year (and displayed during PY 2020) for PY 2021. This approach supports CMS's strategic goals of empowering consumers through data, and provides consumers with quality rating information to reference when shopping for and selecting their plan.⁸

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 program through the annual QRS and QHP Enrollee Survey Call Letter process.⁹

III. Exchange Display Guidance for QHP Quality Rating Information

This bulletin announces that public display of 2019 QHP quality rating information by the FFEs and SBE-FPs will continue during the individual market OEP for PY 2021, which starts on November 1, 2020. Due to the COVID-19 public health emergency, SBEs whose consumers do not use HealthCare.gov have flexibility to continue to display 2019 QHP quality rating information on their respective websites beginning with the individual market OEP for PY 2021 or follow a state-specific approach for display of quality rating information for PY 2021.

QHP issuers can review their 2019 quality rating information, previously released in August 2019, on the Health Insurance Oversight System Marketplace Quality Module (HIOS-MQM).

IV. Display on HealthCare.gov

For PY 2021, 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 2019 ratings year.

⁷ *Id.*

⁸ The 2019 quality rating information refers to the QRS ratings calculated by CMS during the 2019 ratings year (i.e., provided to QHP issuers and State representatives during the August 2019 preview period and displayed to consumers beginning with the PY 2020 individual market OEP).

⁹ 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. CMS analyzes the comments and releases a Final Call Letter finalizing changes to the QRS and QHP Enrollee Survey programs. See, e.g., *Final 2019 Call Letter for the QRS and QHP Enrollee Survey* available at: https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/QualityInitiativesGenInfo/Downloads/2019_Call_Letter_for_QRS_and_QHP_Enrollee_Experience_Survey_508.pdf

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”).¹⁰

If a QHP was not eligible for scoring during the 2019 ratings year (i.e., had not been in operation for at least three consecutive years), CMS will display “New plan – Not rated” in place of the QHP quality rating information. If a QHP did not receive a 2019 rating for any other reason (e.g., did not meet the participation criteria, did not receive a global score, was not offered in 2019), CMS will display “Not Rated” in place of the QHP quality rating information.

V. Display Guidance for SBEs

SBEs whose consumers do not use HealthCare.gov should display QHP quality rating information in the form and manner specified by CMS.¹¹ However, due to the COVID-19 pandemic, CMS will exercise enforcement discretion to adopt a temporary policy of relaxed enforcement of the display requirements contained in 45 C.F.R. §§ 155.1400 and 155.1405 in recognition of the challenges these SBEs may have encountered in light of the public health emergency. Under this policy, SBEs whose consumers do not use HealthCare.gov have flexibility to follow the approach required of the FFEs and SBE-FPs and continue to display 2019 QHP quality ratings information during PY 2021 or choose another state-specific approach for display of quality rating information for PY 2021 that is appropriate and reasonable for the state in light of the public health emergency.

In September 2019, CMS provided SBEs State Ratings Data Files through the HIOS-MQM which included the 2019 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 state-specific customizations, such as to incorporate additional state or local quality information or to modify the display names of the QRS star ratings.¹²

¹⁰ 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.

¹¹ 45 C.F.R. §§ 155.1400 and 155.1405.

¹² See the Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2021; Notice Requirement for Non-Federal Governmental Plans; Final Rule, 85 FR 7088 at 7127 (May 14, 2020), available at: <https://www.federalregister.gov/documents/2020/05/14/2020-10045/patient-protection-and-affordable-care-act-hhs-notice-of-benefit-and-payment-parameters-for-2021>

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 should 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 2019 rating or did not receive a 2019 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.

SBEs that display federally calculated QRS ratings 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. Due to the COVID-19 virus, CMS did not collect data from health plans during the 2020 calendar year. Therefore, the ratings reflect data previously provided by health plans in 2019. The ratings are being displayed for health plans for the 2021 plan year. Learn more about these ratings. [Link to appropriate explanatory/Help text on HealthCare.gov.]¹³

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 the 2021 PY. CMS will provide technical assistance and will discuss timelines for implementation with any SBEs who are unable to meet these requirements for the PY 2021 OEP.

VI. Display Guidelines for DE Entities

CMS is similarly exercising enforcement discretion to adopt a temporary policy of relaxed enforcement of the display requirements contained in 45 C.F.R. §§ 155.220(c)(3)(i)(A), (c)(3)(ii)(A) and 156.1230(a)(1)(ii) due to challenges DE entities may have encountered in light of the public health emergency posed by COVID-19.¹⁴ For DE entities that elect to display quality rating information beginning with the PY 2021 OEP, the following requirements govern that display.

QHP issuer and web-broker DE entities¹⁵ that use direct enrollment¹⁶ to facilitate enrollments in QHPs through the FFEs and SBE-FPs must comply with CMS requirements for the display of

¹³ SBEs that incorporate state-specific customizations in 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.

¹⁴ For future benefit years, CMS will provide a minimum of 90 days’ advance notice to DE entities in future guidance before enforcing these requirements consistent with previously released FAQs. See Frequently Asked Questions Regarding the *Quality Rating Information Bulletin’s* Display Guidelines for Direct Enrollment Entities Serving Consumers in States with Federally-facilitated Exchanges and State-based Exchanges on the Federal Platform (November 5, 2019), available at: <https://www.cms.gov/CCIIO/Programs-and-Initiatives/Health-Insurance-Marketplaces/Downloads/QRS-FAQs-for-DE-Entities.pdf>.

¹⁵ DE entity is defined at 45 CFR 155.20 as “an entity that an Exchange permits to assist consumers with direct enrollment in [QHPs] offered through the Exchange in a manner considered to be through the Exchange as authorized by 155.220(3), 155.221, or 156.1230 of this subchapter.” Also see 45 CFR 155.221(a).

¹⁶ This bulletin applies to DE entities using the classic (i.e., double-redirect) DE pathway and those using the enhanced DE (EDE) pathway.

QHP information consistent with 45 C.F.R. § 155.205(b)(1).¹⁷ This includes the display of QHP quality rating information.¹⁸

Consistent with the display of QHP quality rating information by Exchanges, for PY 2021, DE entities should continue to display 2019 QHP quality ratings information assigned to each eligible QHP.

DE entities will be required to display the federally calculated QRS global ratings and summary indicator ratings. DE entities should use the same consumer-facing labels that CMS displays on HealthCare.gov (i.e., “Overall Rating,” “Medical Care,” “Member Experience,” and “Plan Administration”).¹⁹ If a QHP was not eligible for scoring in 2019 or did not receive a 2019 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 API or they can use a public use file (PUF). The API will allow DE entities to integrate QRS ratings for each eligible QHP for display on their non-Exchange websites. CMS published the Quality PUF that includes 2019 ratings down to the QRS composite level on the Marketplace Quality Initiatives (MQI) website in October 2019.²⁰

In accordance with 45 C.F.R. §§ 155.220(c)(3)(i)(A) and (c)(3)(ii)(A), to the extent that all information required under 45 C.F.R. § 155.205(b)(1) is not displayed on the web-broker DE entity’s website, it must display the Plan Detail Disclaimer.²¹ As such, if a web-broker DE entity is unable to display the federally calculated QRS global ratings and summary indicator ratings beginning with the individual market OEP for PY 2021, it must prominently display the Plan Detail Disclaimer, which will direct the consumer to HealthCare.gov for more information, on its non-Exchange website.

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:

¹⁷ 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.

¹⁸ See 45 C.F.R. § 155.205(b)(1)(iv) and (v).

¹⁹ 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.

²⁰ Available at <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/QualityInitiativesGenInfo/ACA-MQI/Downloads/2020-Quality-PUF.zip>

²¹ See Section 5.3.2 of the *Federally-facilitated Exchanges (FFEs) and Federally-facilitated Small Business Health Options Program (FF-SHOP) Enrollment Manual* (July 10, 2019), available at: https://www.regtap.info/uploads/library/ENR_EnrollmentManualForFFEandFF-SHOP_v1_5CR_092519.pdf .

Plan quality ratings and enrollee survey results are calculated by CMS using data provided by health plans. Due to the COVID-19 virus, CMS did not collect data from health plans during the 2020 calendar year. Therefore, the ratings reflect data previously provided by health plans in 2019. The ratings are being displayed for health plans for the 2021 plan year. Learn more about these ratings. [Link to appropriate explanatory/Help text on HealthCare.gov.]

CMS encourages DE entities to report their status on display of 2019 QHP quality rating information beginning with the individual market OEP for the 2021 PY to their DE entity point of contact in CMS.

VII. Marketing Guidance for QHP Quality Rating Information

QHP issuers may reference the QRS quality ratings and QHP Enrollee Survey results for their QHPs in marketing materials in a manner specified by CMS.²² Any QHP issuer that elects to include its 2019 QHP quality rating information—specifically, its QRS scores and ratings and QHP Enrollee Survey results—in its marketing materials for PY 2021 (whether paper, electronic, or other media) must do so in accordance with the CMS instructions below.²³

The 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*.²⁴ A QHP issuer that elects to include QRS and QHP Enrollee Survey information in its marketing materials must do so 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. Due to the COVID-19 virus, CMS did not collect data from health*

²² 45 C.F.R. §§ 156.1120(c) and 156.1125(c).

²³ The scope of the definition for “marketing” extends beyond the public’s general concept of advertising materials. CMS interprets the definition of marketing materials, as referenced here, as equivalent to the definitions for the Medicare Advantage program in 42 C.F.R. § 422.2260.

²⁴ See Chapter 5, Section 1 in the *Final 2021 Letter to Issuers in the Federally-facilitated Exchanges*, available at <https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Final-2021-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).

plans during the 2020 calendar year. Therefore, the ratings reflect data previously provided by health plans in 2019.

- 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. Due to the COVID-19 virus, CMS did not collect data from health plans during the 2020 calendar year. Therefore, the results reflect data previously provided by health plans in 2019.*
- 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. Due to the COVID-19 virus, CMS did not collect data from health plans during the 2020 calendar year. Therefore, the ratings and results reflect data previously provided by health plans in 2019.*
- **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 applicable to the PY. QHP issuers must use the quality ratings applicable to the PY, and QHP issuers must discontinue marketing based on the previous year’s information.²⁵ CMS anticipates issuing the final QRS ratings to QHP issuers and Exchange administrators annually, prior to the start of the individual market OEP.
- **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.
 - 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 disseminate 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

²⁵ For PY 2021 marketing materials, the 2019 quality rating information is deemed as being the “up-to-date” information that QHP issuers must use if they elect to include such information in their marketing materials.

rating for other QRS components (i.e., summary indicators, domains, or composites).

- If QHP issuers choose to advertise ratings for QRS components, the QHP issuer may use only the component titles assigned by CMS without variation (e.g., Clinical Quality Management). 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 adhere to requirements for providing information in languages other than English must use translated content consistent with HealthCare.gov. If QHP issuers choose to advertise ratings for any other QRS components, the QHP issuer may use only the component titles assigned by CMS without variation (like Patient Safety). Additionally, the QHP issuer must always include the QRS global rating alongside the QRS component rating.
- The use of a general label in reference to the rating of a specific QHP (e.g., “a 5-star plan”) can only be used to reference the QRS global rating, unless the component is specified (e.g., “a 5-star plan for [insert component name]”). QHP issuers may not use the rating for another QRS component (i.e., summary indicator, domain, composite, or measure) 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.²⁶

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

²⁶ See 45 C.F.R. § 156.225.

downstream entities, including affiliated agents and brokers, with the QRS and QHP Enrollee Survey marketing standards.²⁷

As noted in the 2021 Letter to Issuers, 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).²⁸ In the FFEs, CMS may review QHP marketing materials for compliance with applicable federal regulations.²⁹ 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 or 1-855-CMS-1515 (1-855-267-1515).

²⁷ 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).

²⁸ See *supra* note 24.

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