The End Of The Good Faith Compliance Policy

An overview for federal marketplace issuers heading into plan year 2016
Terminology Preferences

- **Exchanges** → **Marketplaces**
- **Federal exchange** → **Federally-facilitated Marketplace / FFM**
- **Health Plans** → **Issuers**
- **Safe Harbor** → **Good Faith Compliance**
- **Audit** → **Compliance Review**
- **Members** → **Enrollees**
Discussion Outline

• Background: issuer participation in FFM
• CMS goals
• Good Faith Compliance
• CMS Priorities
• Issuer Compliance Review Results
• What’s happening now, what’s happening next
• What should issuers do
• Health Care Compliance Online at Pitt Law
## Participation in the Federally-Facilitated Marketplace

In 2016, consumers in two thirds of counties will have three or more insurers to choose from.

<table>
<thead>
<tr>
<th>Plan Year</th>
<th>Number of States covered by the FFM</th>
<th>Number of issuers in the FFM</th>
<th>Number of plans offered in the FFM</th>
</tr>
</thead>
<tbody>
<tr>
<td>2014</td>
<td>27</td>
<td>120</td>
<td>5,149</td>
</tr>
<tr>
<td>2015</td>
<td>27</td>
<td>132</td>
<td>7,078</td>
</tr>
</tbody>
</table>

In 2016, consumers in two thirds of counties will have three or more insurers to choose from.
Participation in the Federally-Facilitated Marketplace

- Large National Issuers
- Local and Regional Issuers
- PSPs\(^3\)

Approximately 25% of issuers offering QHPs in 2014 were Provider-sponsored Plans (PSPs)\(^3\)
What are CMS’s Goals?

• Protect consumers
• Identify opportunities for improvement
• Identify where additional CMS guidance will be helpful
Issuer data sources that CMS monitors and examines

- Issuer self-reporting
- Policies, Procedures, Operations
- Network Adequacy and other analyses
- Consumer and Provider Complaints
- Customer service and satisfaction indicators

CMS Oversight + Monitoring
What Is the Good Faith Compliance Policy?

- CMS acknowledgement of challenges
- Good faith effort
- Demonstration of issuer’s continuous efforts to come into compliance with certification requirements

CMS asks: Is continuing to offer this issuer’s plans in the best interest of consumers / potential Marketplace enrollees?
What Has “Good Faith” Meant so Far?

Issuers must have internal monitoring programs to:

- Identify areas where they are out of compliance with the federal Marketplace issuer requirements
- Report compliance violations to CMS
- Correct compliance violations to minimize enrollee impact, and
- Demonstrate effectiveness of corrections
What Has “Good Faith” Meant so Far?

- Internal Policies & Procedures
- Coordinate with CMS to make corrections

“Work Plan”

No work plan = Not good faith

CMS expects issuers to comply with all Marketplace standards at all times
What Are CMS’s Priorities For Issuer Compliance?

All about Access:

- Provider network
- Essential community providers
- No discriminatory marketing practices or benefit designs
- Agents and brokers
- Drug coverage and formulary-related compliance
What Has CMS Found In Initial Issuer Compliance Reviews?

1. Inadequate understanding of Marketplace requirements
2. Policies and procedures not tied to Marketplace requirements
3. Inadequate oversight of FDRs
What Has CMS Found in Initial Issuer Compliance Reviews?

4. Failed to meet notice accessibility requirements

5. Did not maintain current and accurate provider directories

6. Failed to comply with agent/broker training and registration requirements

7. Did not ensure that agent/broker compensation was equal inside and outside the Exchange
What’s Happening Now?

2015 Compliance Reviews

Standard vs. Expedited
Desk review vs. Onsite
Systems and documents
Interviews
Oversight of FDRs
What’s Happening Next?

Good faith compliance policy will end after the 2015 calendar year

CMS expects greater understanding of Marketplace requirements

Issuers must be in compliance with all requirements
How Will It Affect CMS Oversight And Enforcement?

- Potential focus on “problem areas”
- Higher expectations for corrections
- Technical assistance
- Coordination with states
What Should Issuers Do?

Demonstrate effective corrections

Work with Account Managers

Maintain communication with CMS - Medicare, Medicaid and Marketplaces
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Next Steps

• Applications are being accepted through December 1 for the 2016 program.

• Learn more at law.pitt.edu/hcc
Thank you

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End Notes

1 [http://healthaffairs.org/blog/2015/10/05/what-state-policies-best-foster-insurance-market-competition/]


4 [http://www.healthlawadvisor.com/2015/03/02/higher-bar-for-good-faith-compliance-in-second-year-of-exchange-operations/]