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REGULATORY BULLETIN 2014-5¹

TO: All Qualified Health Plan Issuers Participating in the Federal Health Insurance Marketplace

FROM: Germaine L. Marks
Director

DATE: July 18, 2014

RE: Segregation of Funds for Certain Abortion Services for Enrollees who Receive Federal Funds

The purpose of this Bulletin is to remind issuers of qualified health plans ("QHPs") that are sold in Arizona on the federal Health Insurance Marketplace ("Marketplace") that the Affordable Care Act ("ACA") (42 USC §18023), and regulations promulgated thereunder (45 CFR §156.280), require the segregation of funds for certain abortion services.

BACKGROUND

The ACA requires states to ensure that federal tax credits and cost-sharing reductions on the Marketplace are not used to pay for certain abortion services ("non-excepted abortion services"), except in cases of rape, incest, or when failure to provide the services would endanger the life of the mother. See 42 USC §18023. 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. The issuers must deposit the separate payments into separate allocation accounts, and use the payments allocated to those separate accounts exclusively to pay for non-excepted abortion services and services other than the non-excepted abortion services, respectively. The ACA delegates to state insurance regulators the responsibility for ensuring compliance with the 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."

¹ This Substantive Policy Statement is advisory only. A Substantive Policy Statement does not include internal procedural documents that only affect the internal procedures of the Agency, and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the Arizona Administrative Procedure Act. If you believe that this Substantive Policy Statement does impose additional requirements or penalties on regulated parties you may petition the agency under Arizona Revised Statutes Section 41-1033 for a review of the Statement.

The federal regulation implementing this provision of the ACA (45 CFR §156.280) provides that each QHP that participates in an exchange and offers coverage for non-excepted abortion services should, as a condition of participating in the exchange, submit a plan (“segregation plan”) to the State insurance commissioner that details its process and methodology for complying with the fund segregation requirements. To comply with this requirement, QHP issuers must submit the required documentation as outlined in 45 CFR §156.280(e)(5). 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.

FILING REQUIREMENT

Each issuer offering a QHP in Arizona on the Marketplace must submit to the Life & Health Division of the Department of Insurance a segregation plan that details its process and methodology for complying with the fund segregation requirements as provided in the regulation. The segregation plan should 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), and 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 services described in paragraph (d)(1) of this section 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 services described in paragraph (d)(1) of this section 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.

In addition to the segregation plan, the QHP issuer must provide an annual assurance statement attesting that the segregation plan complies with section 1303 of the ACA and applicable regulations.

The segregation plan and annual assurance statement should be submitted as Informational Filings via the System for Electronic Rate and Form Filing (SERFF) no later than November 1 each year. They may be submitted as separate filings at different times.

The Director may periodically verify the issuer’s processes and methodologies detailed in the segregation plans during financial and/or market conduct examinations.

Please direct any questions relating to this Regulatory Bulletin to Erin Klug, Life & Health Assistant Director at (602) 364-2393, or eklug@azinsurance.gov.