



**THE STATE OF NEW HAMPSHIRE
INSURANCE DEPARTMENT**

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Roger A. Sevigny
Commissioner

**BULLETIN
Docket No.: INS-14-014-AB**

Alexander K. Feldvebel
Deputy Commissioner

TO: All New Hampshire Licensed Health Carriers and Dental Insurers

FROM: Roger A. Sevigny 

DATE: May 8, 2014

**RE: 2015 QHP Certification – Supplemental Bulletin
Guaranteed Availability of Coverage on and off Marketplace**

This Bulletin supplements the Insurance Department's 2015 Qualified Health Plan (QHP) certification bulletin, No. INS-14-010-AB, issued April 4, 2014.¹ The purpose of this Bulletin is to explain the Department's legal interpretation of two provisions of the Affordable Care Act (ACA) relating to guaranteed availability of coverage and to a carrier's obligation to charge the same premium rate for any particular QHP if the carrier chooses to offer that QHP both on and off the federally operated New Hampshire Insurance Marketplace ("Marketplace"). The Department's legal interpretation of the interaction of these two provisions has not changed, but the Department has not previously issued a written explanation. Issuers seeking QHP certification will need to adhere to this guidance in order to have their plans certified for calendar years 2015 and later.

The ACA requires that issuers offering QHPs agree "to charge the same premium rate for each qualified health plan of the issuer without regard to whether the plan is offered through an Exchange or whether the plan is offered directly from the issuer or through an agent." ACA section 1301(a)(1)(C)(iii), codified at 42 U.S.C. 18021(a)(1)(C)(iii). In addition, federal law requires health insurance issuers offering coverage in the individual or group market to make coverage available to all individuals or employers who apply. See ACA Section 1201, Public Health Service Act section 2702, Guaranteed Availability of Coverage, codified at 42 U.S.C. 300gg-1. The federal regulation implementing the guaranteed availability requirement states that, beginning January 1, 2014, "a health insurance issuer that offers health insurance coverage in the individual or group market in a state must offer to any individual or employer in the state all products that are approved for sale in the applicable market, and must accept any individual or employer that applies for any of those products." 45 CFR 147.104(a).

In the Department's view, the intent of the "same premium rate" requirement is to prevent pricing practices that disfavor Marketplace purchasers or that drive business away from the Marketplace. However, this language does not *require* a carrier to offer or market each QHP off the Marketplace, except to the extent necessary to satisfy the guaranteed issue requirement. Just

¹ Link: <http://www.nh.gov/insurance/media/bulletins/2014/documents/14-010-ab.pdf>

as it is up to a carrier to decide whether to offer plans on the Marketplace, the decision of whether to offer any particular individual market plan outside of the Marketplace is a decision that is left to the carrier.² For all persons eligible to use the Marketplace, the guaranteed issue requirement is met by the carrier's Marketplace offering, and the carrier has no obligation to offer the QHP outside the Marketplace as well. However, for the limited category of persons who are not eligible to use the Marketplace, the carrier must make the plan available upon request in order to satisfy the guaranteed issue requirement.

The ACA provisions do not preclude a carrier from offering off-Marketplace plans that are priced higher because the contracted provider reimbursement rates are higher for off-Marketplace plans than they are for Marketplace-only plans. Under the CMS rule implementing the single risk pool requirement, a carrier must develop a market-wide index rate "based on the total combined EHB claims experience of all enrollees in non-grandfathered plans in the risk pool." 78 Fed. Reg. at 13422. The premium rate for any given plan may not vary from the resulting adjusted market-wide index rate, except for a number of factors including "the plan's provider network" and "delivery system characteristics." 45 CFR Part 156.80 (d)(2)(ii). When the Department reviews proposed off-Marketplace plans, it will consider a higher provider reimbursement rate to constitute a different delivery system characteristic for purposes of making plan-specific adjustments to the market-wide index rate.

Under the Department's interpretation of federal law, health insurance carriers in New Hampshire may choose to designate their proposed individual market QHPs as "Marketplace-only" plans, provided all of the following criteria are met:

- Any carrier offering a Marketplace-only individual market plan must comply with the guaranteed issue requirement under 42 U.S.C. 300gg-1 and 45 CFR 147.104(a), by accepting for coverage any individual who applies for the plan through the Marketplace. In addition, the carrier must make the Marketplace-only plans available off-Marketplace to any individual who demonstrates that he or she is not eligible to use the Marketplace, but is otherwise eligible to purchase the plan.
- No carrier offering a Marketplace-only plan may offer an off-Marketplace plan where the Department has found that the intended purpose of the legislation, as outlined above, is not met. Generally, the Department will not approve any off-Marketplace plan, if the premium rates are lower than they would be if the same plan were being offered as a Marketplace-only plan. Such business practices would negatively affect the market by driving up Marketplace prices and the cost of government subsidies, driving consumers away from the Marketplace, and impairing access to the advance premium tax credits and cost-sharing protections.
- The cost implications of buying an off-Marketplace plan instead of an on-Marketplace plan with similar covered services and cost-sharing provisions must be clearly explained to consumers. For any off-Marketplace plan that is substantially similar to a Marketplace-only plan in terms of covered services and cost-sharing provisions, but has

² In the small group market, a carrier must actively market all plans it offers. RSA 420-G:6, III. This requirement does not apply in the individual market.

higher provider reimbursement rates, and hence, higher premium rates, the policy documents and any advertising for the off-Marketplace plan must indicate that a substantially similar plan is available on the Marketplace involving provider contracts at lower reimbursement rates and, if applicable, at a lower premium. These disclosures must make clear how varying provider contract terms will affect the insured's out of pocket obligations.

SERFF Filing Instructions

With this guidance, the instructions for the Plan/Benefits Template, Chapter 10, p. 9, for the QHP/Non-QHP field are amended as follows:

a. On the Exchange—A carrier should choose this designation if the plan will be offered inside the Exchange only; however, for the limited category of persons who are not eligible to use the Exchange, the carrier must make the plan available upon request in order to satisfy the guaranteed issue requirement.

b. Off the Exchange— A carrier should choose this designation if the plan will be offered outside of the Exchange only. This includes all non-QHPs, including plans that are substantially the same as a QHP offered through the Exchange for purposes of the risk corridor program (See 45 CFR §153.500 for more details).

c. Both— A carrier should choose this designation if the plan will be offered both inside and outside of the Exchange. Selecting this option creates two separate plan variations in the Cost Share Variance worksheet when the worksheet is created: one on-exchange plan and one off-exchange plan.

If a carrier is not offering a plan as “Both,” the carrier must submit two separate binders, one for on-Exchange QHP plans and one for non-QHP off-Exchange plans.

Contact Information

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