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DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Parts 155, 156, and 157

CMS-9989-CN

RIN 0938-AQ67

Patient Protection and Affordable Care Act; Establishment of Exchanges and Qualified Health Plans; Exchange Standards for Employers; Correction

AGENCY: Department of Health and Human Services.

ACTION: Final rule; correction.

SUMMARY: This document corrects technical and typographical errors that appeared in the final rule, interim final rule, published in the **Federal Register** on March 27, 2012, entitled "Patient Protection and Affordable Care Act; Establishment of Exchanges and Qualified Health Plans; Exchange Standards for Employers."

EFFECTIVE DATE: These corrections are effective on May 29, 2012.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 2012-6125 of March 27, 2012, (77 FR 18310) there were technical and typographical errors that are identified and corrected in the "Correction of Errors" section below. The provisions in this correction notice are effective as if they had been included in the document published on March 27, 2012. Accordingly, the corrections are effective on May 29, 2012.

II. Summary of Errors

On page 18327, in the preamble discussion of standards for consumer assistance tools, there are errors in references to the regulations text. The cross references to §155.200(a) and §155.200(b) are incorrect, and are being corrected to read §155.205(a) and §155.205(b), respectively, which are the provisions discussing the Exchange call center and Web site.

On page 18331, the preamble explains that Exchanges cannot require Navigators to have agent and broker licenses. However, one sentence implies that any licensure standards for Navigators would cause Navigators to be agents and brokers, which is inaccurate. The sentence also incorrectly implies that establishing any licensure standards would not be allowed, which would conflict with §155.210(c)(1)(iii). Therefore, we are adding the word “such” to the following sentence to refer specifically to agent and broker licensure. We are also adding the word “in,” immediately preceding the citation, which was accidentally omitted before. The revised sentence will read as follows: “Thus, establishing such licensure standards for Navigators would mean that all Navigators would be agents and brokers, and would violate the standard set forth in §155.210(c)(2) of the final rule that at least two types of entities must serve as Navigators.”

On page 18336, the preamble discusses the potential for future standards related electronic notices and coordination of notices between Medicaid, CHIP, and the Exchanges. We indicate that future rulemaking will be issued for these standards. We are correcting these references to state that future guidance will be released to provide more information on electronic notices and notices coordination.

On page 18341, in preamble discussion of privacy and security standards, we are correcting two errors. First, the definition of personally identifiable information in §155.260(a)

of the proposed rule published on July 15, 2011, was not included in the final rule in order to align the definition with a memorandum released by the Office of Management and Budget. In the preamble, the cross reference to §155.260(a), which does not exist in the final rule, is replaced with “as defined in the Office of Management and Budget Memorandum M-07-16.”

Second, on page 18341, the preamble uses the term “personally identifiable health information.” The privacy and security section of the final rule applies to “personally identifiable information.” Personally identifiable health information is a subset of this term, and is not the focus of the rule, as stated in the preamble. The word “health” was accidentally included, because the privacy and security principles from which the rule derives its language applies specifically to personally identifiable health information. However, the Exchanges final rule applies to the broader set of all personally identifiable information. We are making the correction in the preamble and also in the regulations text.

On page 18344, in the preamble discussion of privacy and security standards, we are correcting two cross references that were not updated from the references in the proposed rule regarding the codification of section 1413(c) of the Affordable Care Act. To align the cross references with the correct final rule provisions, the reference to §155.260(b)(3) is being changed to §155.260(a)(6) and the reference to §155.260(c) is being changed to §155.260(e). We are also removing the word “section,” which was used in addition to the symbol “§,” thus removing the redundancy.

On page 18396, in the preamble discussion of the Small Business Health Options Program, the text incorrectly states that “...a SHOP must provide a premium calculator to qualified employers.” The premium calculator should be made available to the employees; therefore, we are correcting “qualified employers” to “qualified employees.”

On pages 18413 and 18414, in the preamble discussion of decertifying qualified health plans, the text refers twice to the special enrollment period in the case of QHP decertification in §155.410, but should reference §155.420, which is the section outlining special enrollment periods.

On page 18429, the preamble discusses the effective date of termination at the end of the 3-month grace period for individuals receiving advance payments of the premium tax credit. The regulations text states that a QHP issuer must terminate the individual's coverage at the end of the first month of the 3-month grace period. However, the preamble is inconsistent in stating that the QHP issuer "can" terminate coverage on the first day of the second month of the grace period. The regulations text accurately reflects the policy stating that QHP issuers must terminate on the last day of the first month of the grace period. Therefore, we are correcting the preamble to be consistent with the regulations text by changing the word "can" to "must" and by aligning the termination date with the regulations text.

On page 18450, we presented regulatory changes to §155.260(d), which outlines specifics for Exchanges in developing written policies and procedures regarding the collection, use, and disclosure of personally identifiable information. This paragraph was intended to be consistent with paragraph (a) of §155.260, which also applies to the creation of personally identifiable information. In this notice, we are adding the word "creation" to §155.260(d).

On page 18456, we presented regulatory changes to §155.315(f)(5)(i). Due to changes during drafting, the reference to paragraph (i) is incorrect, and was intended to refer to paragraph (g) of that section. We are correcting this reference.

On page 18461, we presented regulatory changes to §155.345(g)(3), which states that an Exchange cannot request "information of documentation" that an individual already provided to

a different insurance affordability program. This was a typographical error that should read “information or documentation,” to be consistent with preamble text and accurately communicate the standard.

On page 18464, we presented our regulatory changes to §155.430(c)(2), which directs Exchanges to send termination information to the QHP issuer and HHS “promptly and without undue delay.” This timeliness standard is consistent with the reporting of enrollment established in §155.400(b)(1). However, we mistakenly added another qualification in §155.430(c)(2) that such information be reported “at such time and in such manner as HHS may specify.” The latter phrase is not necessary in light of the more specific standard that such information be reported promptly and without undue delay.

On page 18467, we presented our regulatory changes to §155.1020(a) with respect to rate increase justifications. We inadvertently left out the word “increase,” and are adding it to the regulations text to be consistent across provisions and aligned with the preamble, and to more clearly communicate our intent.

On page 18468, in §155.1080(b), we inadvertently used the word “meet” instead of “meets,” which results in incorrect subject-verb agreement, and are amending this to be correct.

On page 18469, in §156.20, in the definition of “Level of coverage”, we mistakenly defined the term “level of coverage” by referring to section 1302(d)(2) of the Affordable Care Act. The bronze, silver, gold, and platinum levels of coverage are defined in section 1302(d)(1) of the Affordable Care Act; therefore, we are correcting this error.

III. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a rule take effect in accordance

with section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)) and section 553(d) of the APA ordinarily requires a 30-day delay in the effective date of final rules after the date of their publication in the **Federal Register**. These requirements may be waived if an agency finds for good cause that the delay is impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the findings and its reasons in the rule issued.

This notice merely corrects technical and typographic errors in the Exchanges final rule that was published on March 27, 2012 and becomes effective on May 29, 2012. The changes are not substantive to the Exchanges policy. Therefore, we believe that undertaking further notice and comment procedures to incorporate these corrections and delaying the effective date of these changes is unnecessary. In addition, we believe it is important for the public to have the correct information as soon as possible, and believe it is contrary to the public interest to delay the dissemination of it. For the reasons stated above, we find there is good cause to waive notice and comment procedures and the 30-day delay in the effective date for this correction notice.

IV. Correction of Errors

In FR Doc. 2012-6125 of March 27, 2012, (77 FR 18310), make the following corrections:

A. Correction of Errors in the Preamble

1. On page 18327, in the third column—

A. In the first full paragraph, in line 6, the cross reference to “§155.200(a)” is corrected to “§155.205(a)”.

B. In the second full paragraph, in line 2, the cross reference to “§155.200(b)” is corrected to “§155.205(b)”.

2. On page 18331, in the third column; in the second full paragraph, in line 12, add the word “such” before the word “licensure” and the word “in” before “§155.210(c)(2)”.
3. On page 18336, in the second column; in the last paragraph—
 - A. In lines 7 and 8, the phrase “future rulemaking” is corrected to read “future guidance.”
 - B. In line 10, the phrase, “Future rulemaking” is corrected to read “Future guidance”.
4. On page 18341—
 - A. In the second column; in the third paragraph, in lines 26 and 27, the term “personally identifiable health information” is corrected to read “personally identifiable information.”
 - B. In the third column; in the first partial paragraph, in line 4, the reference to “§155.260(a)” is replaced with “the Office of Management and Budget Memorandum M-07-16.”
5. On page 18344, in the second column; in the third paragraph, in lines 11 and 12, the references to “§155.260(b)(3) and §155.260(c)” are corrected to “§155.260(a)(6) and §155.260(e)”.
6. On page 18396, in the third column; in the second to last paragraph, in lines 9 and 10, the term “qualified employers” is corrected to “qualified employees.”
7. On page 18413, in the third column; in the last paragraph, in the first line, the cross reference to “§155.410” is corrected to “§155.420”.
8. On page 18414, in the first column; in the first partial paragraph, in the first line, the reference to “§155.410” is corrected to “§155.420.”
9. On page 18429, in the first column; in the first paragraph, the first sentence is corrected to read, “We clarify in final §156.270(g) that if an individual exhausts the grace period without settling all outstanding premium payments, then the QHP issuer must terminate coverage

retroactively to the last day of the first month of the grace period.”

B. Correction of Errors in the Regulations Text

§155.260 [Corrected]

1. On page 18450—

A. In the first column; in §155.260, in paragraphs (a)(3)(i), (a)(3)(ii), (a)(3)(iii), (a)(3)(iv), and (a)(3)(v), the term “personally identifiable health information” is corrected to read “personally identifiable information”.

B. In the second column; in §155.260, in paragraph (a)(3)(vi) and (a)(3)(vii), the term “personally identifiable health information” is corrected to read “personally identifiable information”.

C. In the third column, in §155.260 (d) introductory text, in line three, add the word “creation” before the word “collection”.

§155.315 [Corrected]

2. On page 18456, in the first column; in §155.315(f)(5)(i), in line 6, the reference to “paragraph (i)” is corrected to read “paragraph (g)”.

§155.345 [Corrected]

3. On page 18461, in the second column, in §155.345(g)(3), in line 1, the words, “Not request information of” are corrected to read “Not request information or”.

§155.430 [Corrected]

4. On page 18464, in the first column; in §155.430(c)(2), in lines 3 and 4, the words “, at such time and in such manner as HHS may specify,” are removed.

§155.1020 [Corrected]

5. On page 18467, in the second column; in §155.1020(a), in line 10, the word

“increase” is added before the word “justifications” such that the end of that sentence reads:

“...for which the U.S. Office of Personnel Management will provide a process for the submission of rate increase justifications.”

§155.1080 [Corrected]

6. On page 18468, in the second column; in §155.1080(b), in line 6, the word “meet” is corrected to “meets”.

§156.20 [Corrected]

7. On page 18469, in the first column; in the definition of Level of coverage, in line 3, the reference to “section 1302(d)(2) of the Affordable Care Act” is corrected to read “section 1302(d)(1) of the Affordable Care Act”.

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Dated: May 22, 2012

Jennifer Cannistra,

Executive Secretary to the Department.

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