

The TL;DR On 2024 NBPP

As of 4/20/2023 | By Joshua Brooker

Plans MUST have a Network

FFE | SBE-FP | SBE | § 156.230

- All QHPs, SADPs, and SHOP QHPs MUST have a provider network* (no reference based)
- "limited exception at § 156.230(a)(4) for certain SADP issuers that sell plans in areas where it is prohibitively difficult for the issuer to establish a network of dental providers" (pg. 416)
 - For PY2023 only limit counties in AK and MT met the exception (pg. 413)

Non-Payment Notices

FFE | SBE-FP | SBE | § 156.270(f)

- FFE & SBE-FP Carriers have 10 business days to send a notice of delinquency (pg. 447)

Reducing Plan Name Guesswork

FFE | SBE-FP | SBE | § 156.225(c)

- Requires carriers to use plan names without being misleading or omitting facts. (pg. 395)

Reducing RX Guesswork

FFE | SBE-FP | SBE | § 156.201

- CMS identified that carriers in the past "may not be including specific drugs at appropriate cost-sharing tiers" "some issuers may be including brand name drugs in the generic drug cost-sharing tier, while others include generic drugs in the preferred or non-preferred brand drug cost-sharing tiers" (pg. 333)
- The final rule REQUIRES standard plans to have drugs in the CORRECT tier (pg. 333)
- For standard plans, "issuers should enter zero cost preventive drugs for tier one, generic drugs for tier two, preferred brand drugs for tier three, non-preferred drugs for tier four, specialty drugs for tier five, and medical services drugs for tier six"

Standard to Nonstandard Plan Ratios (pg. 335)

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- There will no longer be a standardized option in the “non-expanded bronze” metal level.
- PY2024 Carriers will be able to have 4 nonstandard for each standard option offered.
- PY2025+ Carriers will be able to offer 2 nonstandard for every standard.
- Plans can have a standard option for each TYPE and combination of Dental and Vision benefits. (pg. 359)
 - For example. A gold standard plan could be structured as follows, assuming one standard and four nonstandard plans in each category. (80 plans)

	Plan Only	Plan + 🦷	Plan + 👁️	Plan+ 🦷 & 👁️
HMO	5	5	5	5
PPO	5	5	5	5
EPO	5	5	5	5
POS	5	5	5	5

- Obviously, carriers aren’t likely to offer all designs, but they CAN squeeze in plans where they want to.
- CMS projects that there will be 17.3% fewer plans to sift through for PY 2024 with this change.

Plan Error Appeals – The app, not the individual

FFE | SBE-FP | SBE | § 155.420(d)(12)

- Previously, the burden fell on families to “adequately demonstrate to the Exchange that a material error related to plan benefits, service area, or premium influenced the qualified individual's or enrollee's, or their dependent’s, decision to purchase a QHP through the Exchange”
- CMS is adjusting the scope of 155.420 to apply to the application instead of the enrollment.
- This key change would allow enrollments associated with a plan display error to impact all applications associated with the plan and proof to be submitted by the plan itself. (pg. 280)
- Example
 - Consumer A gets a packet in the mail that their cards don’t match what they thought they were enrolled in (different copays, different deductible...etc.)
 - Consumer A calls CMS to make a complaint where an inquiry is started.
 - The plan confirms there is a discrepancy between HC.gov and the plan itself.
 - The plan MUST notify all enrollees of a material difference, and the plan/CMS can internally satisfy the SEP DMI Burden of proof.

- Consumer B gets a notice of material difference and decides to change their plan, subsequently exercising the SEP that they are afforded.
- The term “Material plan errors” includes cost-sharing, plan benefits, service area, and/or premiums. It DOES NOT extend to inaccurate formularies or provider networks. (pg. 284)

Loss of MCAID/CHIP SEP Given 90 Days

FFE | SBE-FP | SBE | Starting 1/1/2024

- Individuals who lose Medicaid or CHIP will have 90 Days instead of the 60 days associated with other loss of MEC SEPs
- FFE & SBE-FP states will implement this on 1/1/2024, but SBEs are allowed to implement sooner. (pg. 273)

SEP Coverage Start Dates

FFE | SBE-FP | SBE

- WHAT: Persons with a midmonth loss of MEC will be able to chose either the first of the month that it occurs, or the first of the month following the loss of MEC.
- HOW: Request **must** be made using the following guidelines
 - Reported during the 60 days **before** the event as a future loss of coverage.
 - Must select a plan on or before the last day of the month preceding the loss of MEC.
 - Example, someone is leaving an employer and losing coverage July 15th, so long as they notify the marketplace between 5/16 – 6/30 AND select a plan between 6/1 – 6/30 they can have coverage on 7/1.

SEP Clarifies Any vs. All

FFE | SBE-FP | SBE

- Technical correction that confirms that if **ANY** member of the tax household is eligible for an SEP, this will trigger an SEP for **ALL** in the household. (Page 257)

Automatic Move from Bronze to Silver

FFE | SBE-FP | SBE

- WHAT: During OEP, returning households in a bronze plan, can be routed to Silver
- HOW: The following tests must pass for a change to be honored.
 - The PY 2024 Premiums for the Silver must be less than the Bronze (pg. 239)
 - Insurers must supply network IDs and exchange compares “the future year silver

plan's provider network against the future year bronze plan's provider network"
Can only move if networks are identical (pg. 241)

Income DMI & Self Attestation

FFE | SBE-FP | SBE

- DMI for proof of income will be extended to 150 days.
- If households have no prior IRS return data, FFE will accept attestation without DMI.
- If hh has prior return and income on app is higher, FFE will accept attestation without DMI.
- If hh income on app is "more than a reasonable threshold less than the income from IRS" there will be a DMI. (This is no different than current practice).

APTC Even After No Taxes Filed (2-yrs)

FFE | SBE-FP | SBE | Expected PY2025

- Prior to the COVID-19 PHE, CMS would not allow APTC access if the applicant had received APTC in the prior tax year and failed to reconcile with the IRS. Since the PHE, CMS has waived this provision.
- Rule allows two consecutive years of no IRS PTC reconciliation before APTC is denied. (pg. 221)
- HHS and IRS resume FTR as soon as opps is ready. Expected for PY2025

Consumer Must Attest to App Accuracy

FFE | SBE-FP | SBE | § 155.220(j)(2)(ii)

- **WHAT:** Requires A/Bs to get an attestation that the app was reviewed and confirmed accurate by the consumer. (pg. 183)
- **HOW:** Either a verbal recording of the attestation, or an ACTIVE confirmation.
 - Digital: Could be a response to an email, or an e-signature on a digital form.
 - In-Person: Signed document (like SOAs)
 - Other: A response to a text or a signed and returned letter would work as well.
 - It cannot be a notice (email/mail or otherwise) that does not require a response.
 - The active component is what removes any ambiguity of he said she said.
 - They do not dictate which way you record the attestation, so implement it in the best way for your unique workflows.
- Must keep for at least 10 years.
- § 155.220(j)(2)(ii)(A) is their new standard that defines adequate documentation.
 - Opinion: there is a difference between someone attesting that their statements made were accurate and attesting that they physically saw the inputs. For verbal auths (like phone calls) it is best practice to record the call to avoid any liability.

For written auths, it is best practice to provide a copy of the app post OEP for the consumers records and to ensure that regulators see you exceeded your duty.

- Pg 196 Response says, "Consumer is in the best position to project their future income."
 - Pg. 198 also states CMS does not initiate actions against A/Bs who act in good faith when providing best estimates of income.
 - I'd ask the AICPA if they agree with this statement regarding accurate estimates of MAGI.

Consumer Consent

FFE | SBE-FP | SBE | § 155.220(j)

- WHAT: Requires A/Bs to get CONSENT of consumer to act on their behalf.
- HOW: You can use the same methods as attestation with additional to get consent, but document must include the following:
 - NEEDS
 - Date Consent is Given, Name of Consumer(s) (needed for all individuals on app and primary applicant can attest for all)
 - Name of Rep(s)/Agency depending on office setup
 - Scope of consent. (pg. 203)
 - Assist with an app for Financial Assistance. Enrolling in QHPs. Shopping for other non-exchange products
 - Dedicated rep vs. multiple CSRs representing entity.
 - Methods of contact (Available in person at home and/or office, phone/email contacts, website resources)
 - Duration of consent, and how to rescind consent.
- Store for 10 years
- It can be a state Department of Insurance AOR/BOR if the form meets the above requirements.

CMS Regs to hold Bad Actors Accountable

- CMS COMPLIANCE AUTHORITY (pg. 173): "under § 155.220(g) and (h) for HHS to suspend or terminate an agent's, brokers, or web-broker's Exchange agreement(s) in circumstances that involve fraud or abusive conduct or where there are sufficiently severe findings of non-compliance."
- BURDEN (pg. 176): "established a framework for termination of an agent's, broker's, or web-broker's Exchange agreement(s) for cause in situations where, in HHS' determination, a specific finding of noncompliance or pattern of noncompliance is sufficiently severe."

Navigators Come Knocking

FFE | SBE-FP | SBE | §§ 155.210, 155.215, and 155.225

- WHAT: Repeals § 155.210(d)(8) to allow Navigators and assistors to enroll individuals during door-to-door educational drop ins. (pg. 169)
- FRAUD: Regarding the risk of fraud, CMS updated the privacy and security requirements (pg. 171) and require a consent form before assisters can collect **any** PII.
- INCOME: CMS rebuked statements from commenters about the knowledge of navigators. (pg. 173) “Assisters are required to know and understand the Exchange-related components of the PTC [and] are required to provide referrals to licensed tax advisers...”
- YOU CAN TOO: “there is no current Federal prohibition on door-to-door enrollments by agents and brokers in the FFEs” (pg. 173) Now, whether this is an efficient way to support the community is another story entirely.

26 yr Olds Are Extended

FFE | SBE-FP | SBE | Starts PY2024 | § 155.420(d)(12)

- Technical update to prohibit carriers in the IFP market from terminating coverage until the end of the plan year for dependent children who turn 26 (or the maximum age under State law). Some carriers were already providing this benefit, but this update is to standardize the market. (pg. 287)
- This continues both coverage and APTC through the end of the plan year.
- Auto redetermination will route the 26 to a stand-alone enrollment with the same plan.