

## § 155.270

### § 155.270 Use of standards and protocols for electronic transactions.

(a) *HIPAA administrative simplification.* To the extent that the Exchange performs electronic transactions with a covered entity, the Exchange must use standards, implementation specifications, operating rules, and code sets that are adopted by the Secretary in 45 CFR parts 160 and 162 or that are otherwise approved by HHS.

(b) *HIT enrollment standards and protocols.* The Exchange must incorporate interoperable and secure standards and protocols developed by the Secretary in accordance with section 3021 of the PHS Act. Such standards and protocols must be incorporated within Exchange information technology systems.

[77 FR 11718, Feb. 27, 2012, as amended at 78 FR 54135, Aug. 30, 2013]

### § 155.280 Oversight and monitoring of privacy and security requirements.

(a) *General.* HHS will oversee and monitor the Federally-facilitated Exchanges and non-Exchange entities required to comply with the privacy and security standards established and implemented by a Federally-facilitated Exchange pursuant to § 155.260 for compliance with those standards. HHS will oversee and monitor State Exchanges for compliance with the standards State Exchanges establish and implement pursuant to § 155.260. State Exchanges will oversee and monitor non-Exchange entities required to comply with the privacy and security standards established and implemented by a State Exchange pursuant to § 155.260.

(b) *Audits and investigations.* HHS may conduct oversight activities that include but are not limited to the following: audits, investigations, inspections, and any reasonable activities necessary for appropriate oversight of compliance with the Exchange privacy and security standards. HHS may also pursue civil, criminal or administrative proceedings or actions as determined necessary.

[78 FR 54135, Aug. 30, 2013]

## 45 CFR Subtitle A (10-1-13 Edition)

### Subpart D—Exchange Functions in the Individual Market: Eligibility Determinations for Exchange Participation and Insurance Affordability Programs

#### § 155.300 Definitions and general standards for eligibility determinations.

(a) *Definitions.* In addition to those definitions in § 155.20, for purposes of this subpart, the following terms have the following meaning:

*Applicable Children's Health Insurance Program (CHIP) MAGI-based income standard* means the applicable income standard as defined at 42 CFR 457.310(b)(1), as applied under the State plan adopted in accordance with title XXI of the Act, or waiver of such plan and as certified by the State CHIP Agency in accordance with 42 CFR 457.348(d), for determining eligibility for child health assistance and enrollment in a separate child health program.

*Applicable Medicaid modified adjusted gross income (MAGI)-based income standard* has the same meaning as “applicable modified adjusted gross income standard,” as defined at 42 CFR 435.911(b), as applied under the State plan adopted in accordance with title XIX of the Act, or waiver of such plan, and as certified by the State Medicaid agency in accordance with 42 CFR 435.1200(b)(2) for determining eligibility for Medicaid.

*Federal poverty level* or *FPL* means the most recently published Federal poverty level, updated periodically in the FEDERAL REGISTER by the Secretary of Health and Human Services under the authority of 42 U.S.C. 9902(2), as of the first day of the annual open enrollment period for coverage in a QHP through the Exchange, as specified in § 155.410.

*Indian* means any individual as defined in section 4(d) of the Indian Self-Determination and Education Assistance Act (Pub. L. 93-638).

*Insurance affordability program* has the same meaning as “insurance affordability program,” as specified in 42 CFR 435.4.

*MAGI-based income* has the same meaning as it does in 42 CFR 435.603(e).

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*Minimum value* when used to describe coverage in an eligible employer-sponsored plan, means that the employer-sponsored plan meets the standards for coverage of the total allowed costs of benefits set forth in § 156.145.

*Modified Adjusted Gross Income (MAGI)* has the same meaning as it does in 26 CFR 1.36B-1(e)(2).

*Non-citizen* means an individual who is not a citizen or national of the United States, in accordance with section 101(a)(3) of the Immigration and Nationality Act.

*Qualifying coverage in an eligible employer-sponsored plan* means coverage in an eligible employer-sponsored plan that meets the affordability and minimum value standards specified in 26 CFR 1.36B-2(c)(3).

*State CHIP Agency* means the agency that administers a separate child health program established by the State under title XXI of the Act in accordance with implementing regulations at 42 CFR 457.

*State Medicaid Agency* means the agency established or designated by the State under title XIX of the Act that administers the Medicaid program in accordance with implementing regulations at 42 CFR parts 430 through 456.

*Tax dependent* has the same meaning as the term dependent under section 152 of the Code.

*Tax filer* means an individual, or a married couple, who indicates that he, she or they expects—

(1) To file an income tax return for the benefit year, in accordance with 26 U.S.C. 6011, 6012, and implementing regulations;

(2) If married (within the meaning of 26 CFR 1.7703-1), to file a joint tax return for the benefit year;

(3) That no other taxpayer will be able to claim him, her or them as a tax dependent for the benefit year; and

(4) That he, she, or they expects to claim a personal exemption deduction under section 151 of the Code on his or her tax return for one or more applicants, who may or may not include himself or herself and his or her spouse.

(b) *Medicaid and CHIP*. In general, references to Medicaid and CHIP regulations in this subpart refer to those regulations as implemented in accord-

ance with rules and procedures which are the same as those applied by the State Medicaid or State CHIP agency or approved by such agency in the agreement described in § 155.345(a).

(c) *Attestation*. (1) Except as specified in paragraph (c)(2) of this section, for the purposes of this subpart, an attestation may be made by the application filer.

(2) The attestations specified in § 155.310(d)(2)(ii) and § 155.315(f)(4)(ii) must be provided by the tax filer.

(d) *Reasonably compatible*. For purposes of this subpart, the Exchange must consider information obtained through electronic data sources, other information provided by the applicant, or other information in the records of the Exchange to be reasonably compatible with an applicant's attestation if the difference or discrepancy does not impact the eligibility of the applicant, including the amount of advance payments of the premium tax credit or category of cost-sharing reductions.

[77 FR 11718, Feb. 27, 2012, as amended at 78 FR 42314, July 15, 2013]

**§ 155.302 Options for conducting eligibility determinations.**

(a) *Options for conducting eligibility determinations*. The Exchange may satisfy the requirements of this subpart—

(1) Directly or through contracting arrangements in accordance with § 155.110(a), provided that any contracting arrangement for eligibility determinations for Medicaid and CHIP is subject to the standards in 42 CFR 431.10(c)(2); or

(2) Through a combination of the approach described in paragraph (a)(1) of this section and one or both of the options described in paragraph (b) or (c) of this section, subject to the standards in paragraph (d) of this section.

(b) *Medicaid and CHIP*. Notwithstanding the requirements of this subpart, the Exchange may conduct an assessment of eligibility for Medicaid and CHIP, rather than an eligibility determination for Medicaid and CHIP, provided that—

(1) The Exchange makes such an assessment based on the applicable Medicaid and CHIP MAGI-based income standards and citizenship and immigration status, using verification rules