

§ 600.410 Competitive contracting process.

(a) *General requirement.* In order to receive initial HHS certification as described in § 600.120, the State must assure in its BHP Blueprint that it complies with the requirements set forth in this section.

(b) *Contracting process.* The State must:

(1) Conduct the contracting process in a manner providing full and open competition consistent with the standards of 45 CFR 92.36(b) through (i);

(2) Include a negotiation of the elements described in paragraph (d) of this section on a fair and adequate basis; and

(3) Consider the additional elements described in paragraph (e) of this section.

(c) *Initial implementation exceptions.*

(1) If a State is not able to implement a competitive contracting process described in paragraph (b) of this section for program year 2015, the State must include a justification as to why it cannot meet the conditions in paragraph (b), as well as a description of the process it will use to enter into contracts for the provision of standard health plans under BHP.

(2) The State must include a proposed timeline that implements a competitive contracting process, as described in paragraph (b) of this section, for program year 2016.

(3) Initial implementation exceptions are subject to HHS approval consistent with the BHP Blueprint review process established in § 600.120, and may only be in effect for benefit year 2015.

(d) *Negotiation criteria.* The State must assure that its competitive contracting process includes the negotiation of:

(1) Premiums and cost sharing, consistent with the requirements at §§ 600.505 and 600.510(e);

(2) Benefits, consistent with the requirements at § 600.405;

(3) Inclusion of innovative features, such as:

(i) Care coordination and care management for enrollees, with a particular focus on enrollees with chronic health conditions;

(ii) Incentives for the use of preventive services; and

(iii) Establishment of provider-patient relationships that maximize patient involvement in their health care decision-making, including the use of incentives for appropriate health care utilization and patient choice of provider.

(e) *Other considerations:* The State shall also include in its competitive process criteria to ensure:

(1) Consideration of health care needs of enrollees;

(2) Local availability of, and access, to health care providers to ensure the appropriate number, mix and geographic distribution to meet the needs of the anticipated number of enrollees in the service area (including but not limited to services provided by essential community providers, as defined in 45 CFR 156.235) so that access to services is at least sufficient to meet the access standards applicable under 42 CFR part 438, subpart D, or 45 CFR 156.230 and 156.235;

(3) Use of a managed care process, or a similar process to improve the quality, accessibility, appropriate utilization, and efficiency of services provided to enrollees;

(4) Performance measures and standards focused on quality of care and improved health outcomes as specified in § 600.415;

(5) Coordination between other health insurance affordability programs to ensure enrollee continuity of care as described in § 600.425; and

(6) Measures to prevent, identify, and address fraud, waste and abuse and ensure consumer protections.

(f) *Discrimination.* Nothing in the competitive process shall permit or encourage discrimination in enrollment based on pre-existing conditions or other health status-related factors.

§ 600.415 Contracting qualifications and requirements.

(a) *Eligible offerors for standard health plan contracts.* A State may enter into contracts for the administration and provision of standard health plans under the BHP with, but not limited to, the following entities:

(1) Licensed health maintenance organization.

(2) Licensed health insurance insurer.

§ 600.420

42 CFR Ch. IV (10–1–14 Edition)

(3) Network of health care providers demonstrating capacity to meet the criteria set forth in § 600.410(d).

(4) Non-licensed health maintenance organizations participating in Medicaid and/or CHIP.

(b) *General contract requirements.* (1) A State contracting with eligible standard health plan offerors described in paragraph (a) of this section must include contract provisions addressing network adequacy, service provision and authorization, quality and performance, enrollment procedures, disenrollment procedures, noticing and appeals, provisions protecting the privacy and security of personally identifiable information, and other applicable contract requirements as determined by the Secretary to the extent that the service delivery model furthers the objectives of the program.

(2) All contracts under this part must include provisions that define a sound and complete procurement contract, as required by 45 CFR 92.36(i).

(3) To the extent that the standard health plan is health insurance coverage offered by a health insurance issuer, the contract must provide that the medical loss ratio is at least 85 percent.

(c) *Notification of State election.* To receive HHS certification, the State must include in its BHP Blueprint the standard set of contract requirements described in paragraph (b) of this section that will be incorporated into its standard health plan contracts.

§ 600.420 Enhanced availability of standard health plans.

(a) *Choice of standard health plans offerors.* (1) The State must assure that standard health plans from at least two offerors are available to enrollees under BHP. This assurance shall be reflected in the BHP Blueprint, which if applicable, shall also include a description of how it will further ensure enrollee choice of standard health plans.

(2) If a State is not able to assure choice of standard health plan offerors, the State may request an exception to the requirement set forth in paragraph (a)(1) of this section, which must include a justification as to why it cannot assure choice of standard health plan offeror as well as demonstrate

that the State has reviewed its competitive contracting process to determine the following:

(i) Whether all contract requirements and qualifications are required under the federal framework for BHP;

(ii) Whether additional negotiating flexibility would be consistent with the minimum statutory requirements and available BHP funding; and

(iii) Whether potential bidders have received sufficient information to encourage participation in the BHP competitive contracting process.

(b) *Use of regional compacts.* (1) A State may enter into a joint procurement with other States to negotiate and contract with standard health plan offerors to administer and provide standard health plans statewide, or in geographically specific areas within the States, to BHP enrollees residing in the participating regional compact States.

(2) A State electing the option described in paragraph (b)(1) of this section that also contracts for the provision of a geographically specific standard health plan must assure that enrollees, regardless of residency within the State, continue to have choice of at least two standard health plans.

(3) A State electing the option described in paragraph (b)(1) of this section must include in its BHP Blueprint all of the following:

(i) The other State(s) entering into the regional compact.

(ii) The specific areas within the participating States that the standard health plans will operate, if applicable.

(A) If the State contracts for the provision of a geographically specific standard health plan, the State must describe in its BHP Blueprint how it will assure that enrollees, regardless of location within the State, continue to have choice of at least two standard health plan offerors.

(B) [Reserved]

(iii) An assurance that the competitive contracting process used in the joint procurement of the standard health plans complies with the requirements set forth in § 600.410.

(iv) Any variations that may occur as a result of regional differences between the participating states with respect to benefit packages, premiums and cost