



Date: September 30, 2024

From: Center for Consumer Information and Insurance Oversight and Center for Clinical Standards and Quality, Centers for Medicare & Medicaid Services

Title: Standardized Disclaimer Guidance (§ 155.221(b)(2))

Subject: Direct Enrollment (DE) Entity Display of Standardized Disclaimer on Non-Exchange Websites

I. Background and Purpose

In the Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2020 Final Rule,¹ HHS finalized 45 C.F.R. § 155.221(b)(2) to require Direct Enrollment (DE) Entities, including Classic and Enhanced Direct Enrollment Entities (collectively referred to as “DE Entities” in this document),² in Federally-facilitated Exchange (FFE) and State Based Exchange on the Federal Platform (SBE-FP)³ states (collectively referred to as “Exchange” or “Exchanges” in this document) to prominently display a standardized disclaimer in the form and manner provided by the Department of Health and Human Services (HHS) on their non-Exchange websites. We explained that we would provide further details on the text and other display details for the standardized disclaimer in guidance, but noted its purpose will be to assist consumers in distinguishing between DE Entity website pages that display Qualified Health Plans (QHPs) and those that display non-QHPs, and for which products Advance Payments of the Premium Tax Credit (APTC) and cost-sharing reductions (CSRs) are available, during a single shopping experience.⁴ We explained that 45 C.F.R. § 155.221(b)(2), in conjunction with §§ 155.221(b)(1)-(3),⁵ is intended to provide flexibility for DE Entities to market valuable additional coverage that complements QHP coverage, while also allowing HHS to establish important parameters around the manner and type of non-QHPs that DE Entities may market as part of a single shopping experience with QHPs.⁶ We explained that we believe marketing some products in conjunction with QHPs may cause consumer confusion, especially as

¹ See 84 FR 17454 at 17523-17524 (April 25, 2019).

² Consistent with 45 C.F.R. § 155.221(a), to the extent permitted by applicable State law, Exchanges may permit the following entities to assist consumers with DE in QHPs offered through the Exchange in a manner that is considered to be through the Exchange: (1) QHP issuers that meet the applicable requirements in 45 C.F.R. §§ 155.221 and 156.1230, and (2) web-brokers that meet the applicable requirements in 45 C.F.R. §§ 155.220 and 155.221.

³ See 45 C.F.R. § 155.221(i).

⁴ See 84 FR 17523.

⁵ 45 C.F.R. § 155.221(b)(1) requires DE Entities to display and market QHPs and non-QHPs on separate website pages on their non-Exchange websites, and § 155.221(b)(3) provides that DE Entities must limit marketing of non-QHPs during the Exchange eligibility application and QHP selection process in a manner that minimizes the likelihood that consumers will be confused as to which products and plans are available through the Exchange and which products and plans are not, except as permitted under § 155.221(c)(1).

⁶ See *supra* note 4.

it relates to the availability of financial assistance for QHPs purchased through the Exchanges.⁷ However, we also acknowledged that the convenience of being able to purchase additional products as part of a single shopping experience outweighs potential consumer confusion, if proper safeguards can be put in place.⁸

This document provides additional guidance by outlining the text for the standardized disclaimer and describing the form and manner in which DE Entities must prominently display the standardized disclaimer required under 45 C.F.R. § 155.221(b)(2).

In the Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2025 Final Rule,⁹ HHS finalized 45 C.F.R. § 155.221(j) extending the standardized disclaimer requirement in § 155.221(b)(2) to apply to DE entities participating in State Exchanges that do not use the Federal Platform and, consequently, to these State Exchanges that choose to implement a DE program. The HHS-provided language for the standardized disclaimer under § 155.221(b)(2) outlined in this document must be used as a minimum starting point but State Exchanges may add State-specific information to the disclaimers, provided the additional language does not conflict with the HHS-provided standardized disclaimer.

II. Guidance

DE Entities must display the following standardized disclaimer on their non-Exchange websites to comply with 45 C.F.R. § 155.221(b)(2). The disclaimer must read:

“You are now leaving the shopping experience for qualified health plans offered through the Marketplace. You must enroll in a qualified health plan offered through the Marketplace to receive financial assistance like tax credits or cost-sharing reductions that could reduce your costs (if eligible). You must complete a Marketplace eligibility application to determine if you are eligible for financial assistance or other insurance affordability programs like Medicaid or the Children’s Health Insurance Program (CHIP).

Tax credits may be applied to pediatric qualified dental plans offered through the Marketplace. Qualified dental plans are not eligible for cost sharing reductions through the Marketplace.” **(References to Qualified Dental Plans (QDPs) only need to be included if the DE Entity offers enrollment in standalone dental plans.)**

This disclaimer must be displayed by DE Entities on their own interstitial website page or on a pop-up window when a consumer navigates away from any website page or tab that markets or displays QHPs and QDPs, if applicable, offered through the Exchange (i.e., on-Exchange QHPs) to any website page or tab that markets or displays QHPs and QDPs, if applicable, offered outside the Exchange (i.e., off-Exchange QHPs) or non-QHPs. This disclaimer must be prominently displayed using the exact language provided by HHS. As used in this context, “prominently displayed” means that text must be written in a font size no smaller than the majority of the text on the webpage, and any display changes must be noticeable in the context of the website or tab (that is, DE Entity non-Exchange websites must use a font or graphic color that contrasts with the background of the webpage). The DE Entity may change the font color, size, or

⁷ Ibid.

⁸ Ibid.

⁹ See 89 FR 26218 at 26293-26292 (April 15, 2024).

graphic context of the information to ensure that it is noticeable to the user in the context of its website or other written material. Consistent with 45 C.F.R. § 155.205(c)(2)(iv), the text must also be displayed in the same non-English language as any language(s) the DE Entity maintains translations for on its website.

The interstitial website page or pop-up window must also hyperlink the following text and offer to return the consumer to the website page that provides information on QHPs and QDPs, if applicable, offered on the Exchange:

“Click here to return to the shopping experience for qualified health and dental plans offered through the Marketplace.” **(References to QDPs only need to be included if the DE Entity offers enrollment in standalone dental plans.)**

Alternatively, “Go back,” or a similar link or button, could be utilized, provided the link or button is noticeable to the user in the context of the DE Entity's website or tab and clearly indicates to the consumer how they can return to viewing QHPs and QDPs, if applicable, offered on the Exchange.

Similarly, the interstitial website page or pop-up window must hyperlink the following text to allow the consumer to advance to the page displaying off-Exchange QHPs or non-QHPs:

“Click here to view other options.”

Alternatively, “Continue,” or a similar link or button, could be utilized, provided the link or button is noticeable to the user in the context of the DE Entity’s website or tab and clearly indicates to the consumer how they can proceed with viewing off-Exchange options.

As described in the Direct Enrollment Website Display Bulletin,¹⁰ DE Entities must provide consumers with correct information, without omission of material fact, regarding the Exchanges, QHPs offered through the Exchanges, and insurance affordability programs, and refrain from marketing or conduct that is misleading.¹¹ Consistent with these requirements, DE Entities must continue to refrain from implying or stating that APTC or CSRs are available to defray the costs of any off-Exchange products.

¹⁰ Refer to the Direct Enrollment Website Display Bulletin (May 22, 2020) available at: <https://www.cms.gov/ccio/programs-and-initiatives/health-insurance-marketplaces/downloads/de-entity-standards-of-conduct-website-display.pdf>.

¹¹ See 45 CFR 155.220(j)(2)(i) and 45 CFR 156.1230(b)(2).