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Final Regulations Issued on Health Insurance Exchanges

Beginning in 2014, individuals and small businesses will be able to purchase private health insurance through state-based competitive marketplaces known as Affordable Health Insurance Exchanges (Exchanges). On March 12, 2012, the U.S. Department of Health and Human Services (HHS) released a final rule on the Exchanges, to be published in the Federal Register on March 27, 2012.

SCOPE OF THE EXCHANGE REGULATIONS

The final rule combines policies from two separate Notices of Proposed Rulemaking (NPRMs) published in summer 2011. It sets forth:

- The minimum federal standards that states must meet if they elect to establish and operate an Exchange, including the standards related to individual and employer eligibility for and enrollment in the Exchange and insurance affordability programs;
- Minimum standards that health insurance issuers must meet to participate in an Exchange and offer qualified health plans (QHPs); and
- Basic standards that employers must meet to participate in the Small Business Health Options Program (SHOP).

Consistent with the scope of the Exchange establishment and eligibility proposed rules, this final rule does not address all of the Exchange provisions in the Affordable Care Act. Instead, more details will be provided in future guidance and rulemaking, where appropriate.

EXCHANGE FUNCTIONS

Exchanges will perform a variety of functions, including:

- Certifying health plans as QHPs to be offered in the Exchange;
- Operating a website to facilitate comparisons among qualified health plans for consumers;
- Operating a toll-free hotline for consumer support, providing grant funding to entities called "Navigators" for consumer assistance, and conducting outreach and education to consumers regarding Exchanges;
- Determining eligibility of consumers for enrollment in qualified health plans and for insurance affordability programs (premium tax credits, Medicaid, CHIP and the Basic Health Plan); and
- Facilitating enrollment of consumers in qualified health plans.

FLEXIBILITY FOR STATES

HHS intends to give states substantial discretion in designing and operating their Exchanges. Standardization between states is provided where the Affordable Care Act requires or where there are compelling practical, efficiency or consumer protection reasons. Also, the federal government will establish an Exchange in each state that refuses to do so.

The final rule allows states that set up their own Exchanges to have flexibility in a number of areas. For example, states will be able to decide whether their Exchange should be operated by a non-profit organization or a public agency, how to select plans to participate and whether to collaborate with HHS with respect to certain functions. In addition, a state can choose to operate its Exchange in partnership with other states through a regional Exchange or it can operate multiple Exchanges that cover distinct areas within the state.

APPROVAL OF STATE EXCHANGE PLANS

The Affordable Care Act provides that a state's plan to operate an Exchange must be approved by HHS no later than **Jan. 1, 2013**. However, the final rule allows for conditional approval if the state is advanced in its preparation but cannot demonstrate complete readiness by Jan. 1, 2013. The final rule also allows states that are not ready for 2014 to apply to operate the Exchange for 2015 or any subsequent year.

QUALIFIED HEALTH PLANS

Health plans offered through the Exchange must be certified as "qualified health plans" or QHPs. To be certified by the Exchange, health plans must meet minimum standards that are primarily defined in the law. The final rule gives Exchanges the flexibility to establish additional standards for health plans offered in their Exchanges.

Number and Type of Health Plan Choices

The final rule allows Exchanges to work with health insurers on structuring QHP choices. This could mean that the Exchange allows any health plan meeting the standards to participate or that the Exchange creates a competitive process for health plans to gain access to customers on the Exchange.

Standards for Health Plans

The final rule allows Exchanges, working with state insurance departments, to set specific standards to ensure that each QHP gives consumers access to a variety of providers within a reasonable amount of time. Exchanges will also establish marketing standards that prohibit discrimination against people with illnesses. It also gives Exchanges flexibility to set the timeframes in which health issuers need to become accredited for their quality performance.

Eligibility and Enrollment

The Exchange final rule establishes a web-based system through which an individual may apply for and receive a determination of eligibility for enrollment in a QHP through the Exchange and for insurance affordability programs. One goal of this system is reducing administration by eliminating the need for individuals to submit information to multiple programs. The final rule requires Exchanges to coordinate with Medicaid, CHIP and the Basic Health Program when making eligibility determinations.

The Exchanges will use an integrated enrollment system to allow individuals to enroll in health coverage. The final rule outlines the enrollment process, which will incorporate websites and toll-free call centers, along with other consumer tools. Exchanges may also decide whether to use the single application that will be made available or design one on their own that is comparable. The final rule imposes high standards for the privacy and security of personal information during the eligibility and enrollment processes.

NAVIGATOR STANDARDS

The final rule also provides standards for Exchanges to build partnerships with and award grants to entities known as "Navigators." Navigators are intended to work with employers and employees, consumers and self-employed individuals to:

- Conduct public education activities to raise awareness about QHPs;

- Distribute fair and impartial information about enrollment in QHPs, premium tax credits and cost-sharing reductions;
- Assist consumers in selecting QHPs;
- Provide referrals to an applicable consumer assistance program or ombudsman in the case of grievances, complaints, or questions regarding health plans or coverage; and
- Provide information in a manner that is culturally and linguistically appropriate.

Exchanges will award grants to Navigators. The final rule directs states to choose at least two Navigator organizations, one of which must be a community- or consumer-focused non-profit organization.

SMALL BUSINESS HEALTH OPTIONS PROGRAM (SHOP)

The Affordable Care Act directs each state that chooses to operate an Exchange to establish insurance options for small businesses through a Small Business Health Options Program (SHOP). States that choose to operate an Exchange may merge the SHOP with the individual market Exchange.

The SHOP will allow employers to choose the level of coverage they will offer and offer the employees choices of all QHPs within that level of coverage. SHOP Exchanges can also allow employers to select a single plan to offer its employees, like is typically done today. The final rule allows minimum participation rules to be met through coverage in any SHOP plan, not a single one.

Exchanges will decide how a SHOP is structured. Specifically, the final rule provides flexibility with regard to the size of small businesses that can participate in SHOP. States can set the size of the small group market at either 1 to 50 or 1 to 100 employees until 2016. In 2016, employers with between 1 and 100 employees can participate in a SHOP. And, starting in 2017, states have the option to let businesses with more than 100 employees buy large group coverage through the SHOP.

Starting in 2014, small employers purchasing coverage through SHOP may be eligible for a tax credit of up to 50 percent of their premium payments if they have 25 or fewer employees, pay employees an average annual wage of less than $50,000, offer all full-time employees coverage, and pay at least 50 percent of the premium.

Source: Department of Health and Human Services