Health Headlines

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CMS Issues Final Rule on Implementing Affordable Insurance Exchanges

On March 12, 2012, CMS issued a final rule that provides a framework to assist states in establishing Affordable Health Insurance Exchanges (Exchanges)—a crucial element to the implementation of health reform under the Patient Protection and Affordable Care Act (ACA). The final rule finalizes two previously issued Notices of Proposed Rule Making (NPRM): (i) a NPRM issued on July 15, 2011 addressing proposed state requirements and standards for establishing Exchanges and (ii) a NPRM issued on August 17, 2011 regarding proposed standards for eligibility and enrollment standards in qualified health plans through the Exchange. According to CMS, Exchanges, which will be operational starting in 2014, are "one-stop marketplaces" that will enable consumers and small businesses to select quality, affordable private health insurance plans that fit their health needs. They will perform a variety of functions, including certifying health plans to be offered in the Exchange, operating a website that will allow consumers to compare qualified health plans, operating a toll-free hotline for consumers, determining Exchange eligibility, and facilitating enrollment. ACA contains provisions that, among other things, give states the opportunity to establish, operate, and enforce Exchanges.

The final rule attempts to implement this and other ACA provisions by adopting standards for:

- The establishment and operation of an Exchange;
- Health insurance plans that participate in the Exchange;
- Eligibility and enrollment in Exchange health insurance plans and insurance affordability programs; and
- Employer eligibility in the Small Business Health Options Program (SHOP).

The final rule gives states flexibility to structure their respective Exchanges as a non-profit entity, independent public agency, or existing public agency. States also have the choice to partner with other states in establishing Exchanges or create multiple Exchanges to cover different regions in the state. The final rule also adopts flexible standards for operating Exchanges and certifying Health Plans. The ACA requires approval by HHS of states' Exchange operation plans by January 1, 2013. However, the final rule provides for "conditional approval" if a state is "advanced in its preparation but cannot demonstrate complete readiness by January 1, 2013."

In implementing the Exchange eligibility provisions of the ACA, the final rule outlines standards and processes for determining eligibility through "a streamlined, coordinated, and web-based system." Exchanges are directed to rely on existing electronic sources as much as possible to verify information submitted by consumers during the eligibility process. Exchanges are permitted to collaborate with state Medicaid agencies in the conduct of consumer eligibility determinations. To facilitate enrollment in qualified health plans, standards are also adopted for Exchanges to grant awards to "Navigators," which are entities responsible for reaching out to consumers and employers to, among other things, raise public awareness about qualified health plans and assist consumers in selecting a qualified health plan.

Finally, the final rule adopts standards and rules for the operations of Exchanges of SHOPs, a program that allows small employers to choose the level of coverage they will offer to their employees as dictated by the employers' budgetary and

other needs. SHOPs, which will begin in 2014, are intended to allow small employers to offer coverage from multiple insurers, in the same manner as large corporation and government employee plans.

The final rule is available here. CMS's fact sheet regarding the final rule is available **here**.

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