

HHS Release Final Rule on State Health Insurance Exchanges

On March 12, 2012, the Department of Health and Human Services (HHS) released its final rule concerning state Health Insurance Exchanges (Exchanges), a critical component of the Patient Protection and Affordable Care Act (ACA) legislated to commence in 2014. By providing a single place for consumers to search for and compare health plans; ask questions regarding coverage; check eligibility for programs and tax credits; and, ultimately enroll in a health plan, the Exchanges are designed to both facilitate the process of purchasing health insurance and make it more affordable.¹ HHS expects the new rule will likely assist states in the design of an Exchange that works best for their respective residents and offers greater consumer choice, while also driving down costs through increased competition.²

The final rule offers states significant flexibility in the design and operation of their Exchanges. The rule combines the policies from two previously published Notices of Proposed Rulemaking, which provide states with more options through which to customize their Exchanges with respect to member eligibility, health plan participation, and the overall operation of the Exchange.³ Flexibility is also a main focus in a state's operation of the Small Business Health Options Programs (SHOPs), programs required under the ACA offering insurance options for small employers within the state Exchanges.⁴ Through SHOPs, employers will be able to choose the level of coverage they will offer to their employees, and states will be able to determine the size of the small group market participating in SHOPs.⁵ In addition, small employers who purchase coverage through SHOPs may be eligible for a tax credit beginning in 2014.⁶

Despite the numerous advantages the final rule offers, reactions from the industry have been mixed. Several consumer groups have expressed satisfaction with the flexibility offered under the final rule, stating it appropriately shifts policy focus to the state level and away from the federal government.⁷ Consumer groups have also given positive comments regarding the requirement that at least one member of an Exchange governing board must be a consumer representative.⁸ Conversely, critics have expressed concern with the final rule's provision pertaining to Web-based plans offered through the Exchange.⁹ The concern arises from

fear that consumers will not receive adequate and appropriate information about such plans because they are not complemented by any measure of regulation in the final rule.¹⁰ The National Association of Insurance and Financial Advisors commended the final rule for recognizing brokers' and agents' roles in the Exchanges, but expressed disappointment that the group was not chosen to serve as the state-licensed navigators of Exchanges.¹¹ While America's Health Insurance Plans was cautiously optimistic about the final rule, the Republican Governors' Association expressed sharp criticism of it, stating that the rule "*extend[s] the federal government's reach into the states and will cost the states millions of dollars annually to operate.*"¹² Although the rule does not address how the federal government will establish Exchanges in states that decline to do so, HHS plans to issue a separate rule regarding "*reinsurance, risk corridors and risk adjustment*" for health plans offered in the Exchanges.¹³

Under the ACA, states are required to have an Exchange in operation by January 1, 2014.¹⁴ Though states may elect not to create these Exchanges and allow the federal government to do so in their place, they must provide the Secretary of HHS with a decision by January 1, 2013 of whether or not they will implement an independently designed Exchange.¹⁵ Under this timeline interested states have less than a year to review the feasibility of implementing the final rule's requirements. To date, 14 states have established an Exchange and another three have announced plans to establish their own; the rest have made minimal progress on the issue.¹⁶ Only two states, Louisiana and Arkansas, have actively refused to implement exchanges within their states. The outcome of the current Supreme Court case will likely influence states' further involvement.¹⁷

While the final rule is still uncertain, especially given the current Supreme Court case regarding the constitutionality of the individual mandate and the ACA, states waiting for stability may not have enough time to implement an Exchange by the 2014 deadline. Beyond constitutional issues, states that are displeased with the final rule may still have an opportunity to change the legislation. Part of the rule has been issued on an interim final basis, and HHS will consider additional public comments for 45 days on a number of issues, including: options for making eligibility determinations; certain

Medicaid and Children's Health Insurance Program (CHIP) regulations; eligibility standards for cost-sharing reductions; and, states' ability to allow brokers and agents to assist certain individuals with applications for the premium tax credit and applicable cost-sharing reductions.¹⁸

- 1 "Key Features of the Law: Insurance Choices: Affordable Insurance Exchanges" U.S. Department of Health and Human Services, January 25, 2012, <http://www.healthcare.gov/law/features/choices/exchanges/index.html> (Accessed 3/20/12).
- 2 "Policies Give States More Flexibility to Establish Affordable Insurance Exchanges" U.S. Department of Health and Human Services, News Release (March 12, 2012), Accessed at <http://www.hhs.gov/news/press/2012pres/03/20120312a.html> (Accessed 3/20/12).
- 3 "Affordable Insurance Exchanges: Choices, Competition and Clout for States" U.S. Department of Health and Human Services, March 12, 2012 <http://www.healthcare.gov/news/factsheets/2011/07/exchanges07112011a.html> (Accessed 3/20/12); "HIX Final Rule Released" By Margaret Dick Tocknell, HealthLeaders Media, March 13, 2012, <http://www.healthleadersmedia.com/page-1/HEP-277640/HIX-Final-Rule-Released> (Accessed 3/20/12).
- 4 "Affordable Insurance Exchanges: Choices, Competition and Clout for States" U.S. Department of Health and Human Services, March 12, 2012, <http://www.healthcare.gov/news/factsheets/2011/07/exchanges07112011a.html> (Accessed 3/20/12).
- 5 "Affordable Insurance Exchanges: Choices, Competition and Clout for States" U.S. Department of Health and Human Services, March 12, 2012, <http://www.healthcare.gov/news/factsheets/2011/07/exchanges07112011a.html> (Accessed 3/20/12).
- 6 "Affordable Insurance Exchanges: Choices, Competition and Clout for States" U.S. Department of Health and Human Services, March 12, 2012, <http://www.healthcare.gov/news/factsheets/2011/07/exchanges07112011a.html> (Accessed 3/20/12).
- 7 "Stakeholders Reach to Final Rule on Health Insurance Exchanges" California Healthline, March 13, 2012, <http://www.californiahealthline.org/articles/2012/3/13/stakeholders-react-to-final-rule-on-health-insurance-exchanges.aspx>

- (Accessed 3/20/12).
- 8 "Stakeholders Reach to Final Rule on Health Insurance Exchanges" California Healthline, March 13, 2012, <http://www.californiahealthline.org/articles/2012/3/13/stakeholders-react-to-final-rule-on-health-insurance-exchanges.aspx> (Accessed 3/20/12).
- 9 "Stakeholders Reach to Final Rule on Health Insurance Exchanges" California Healthline, March 13, 2012, <http://www.californiahealthline.org/articles/2012/3/13/stakeholders-react-to-final-rule-on-health-insurance-exchanges.aspx> (Accessed 3/20/12).
- 10 "Stakeholders Reach to Final Rule on Health Insurance Exchanges" California Healthline, March 13, 2012, <http://www.californiahealthline.org/articles/2012/3/13/stakeholders-react-to-final-rule-on-health-insurance-exchanges.aspx> (Accessed 3/20/12).
- 11 "Stakeholders Reach to Final Rule on Health Insurance Exchanges" California Healthline, March 13, 2012, <http://www.californiahealthline.org/articles/2012/3/13/stakeholders-react-to-final-rule-on-health-insurance-exchanges.aspx> (Accessed 3/20/12).
- 12 "Stakeholders Reach to Final Rule on Health Insurance Exchanges" California Healthline, March 13, 2012, <http://www.californiahealthline.org/articles/2012/3/13/stakeholders-react-to-final-rule-on-health-insurance-exchanges.aspx> (Accessed 3/20/12).
- 13 "Stakeholders Reach to Final Rule on Health Insurance Exchanges" California Healthline, March 13, 2012, <http://www.californiahealthline.org/articles/2012/3/13/stakeholders-react-to-final-rule-on-health-insurance-exchanges.aspx> (Accessed 3/20/12).
- 14 "Health Reform Source: Implementation Timeline" Kaiser Family Foundation, 2012, <http://healthreform.kff.org/Timeline.aspx> (Accessed 3/20/12).
- 15 "Health Reform Source: Implementation Timeline" Kaiser Family Foundation, 2012, <http://healthreform.kff.org/Timeline.aspx> (Accessed 3/20/12).
- 16 "Health Reform: State Action Toward Creating Health Insurance Exchanges, as of March 1, 2012" Kaiser Family Foundation, March 1, 2012, http://statehealthfacts.kff.org/comparemactable.jsp?ind=962&cat=17&utm_source=hrs&utm_medium=web&utm_campaign=timeline (Accessed 3/20/12).
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