

Proposed Rule on State Exchanges Released

The Patient Protection and Affordable Care Act (ACA) mandates that each state design and implement an Affordable Insurance Exchange (Exchange) that individuals and small businesses can use to purchase affordable and substantive private health insurance.¹ On July 11, 2011, the Centers for Medicare and Medicaid Services (CMS) issued proposed rules for these Exchanges. The stated purpose of this proposed rule is: “(1) set forth the Federal requirements that States must meet if they elect to establish and operate an Exchange; (2) outline minimum requirements that health insurance issuers must meet to participate in an Exchange; and, (3) provide basic standards that employers must meet to participate in the Small Business Health Options Program (SHOP).”² Since the passage of the ACA, insurer lobbies, states, and consumer groups have been debating over each stakeholder’s role within an Exchange. The proposed rule lays the groundwork for compromise between the varying groups’ interests.³

The proposed rule allows each state to initiate the design, implementation and regulation of their Exchange.⁴ In response to states’ request for flexibility, the rule affords states already in the Exchange development process substantial discretion to continue with little interruption or redevelopment.⁵ States may choose to establish Exchanges as a non-for-profit organization; a hub for contracting with eligible entities; a regional Exchange; a set of subsidiary Exchanges; or many other options.⁶ This flexibility extends to the organization and election of SHOP plans as well, with employer plans being required to supply all the standards as individual plans.⁷ Some have suggested that excessive flexibility may be an attempt by the federal government to incentivize states into taking responsibility for designing and running their Exchange, as opposed to choosing to implement a Federal Exchange.⁸ While the proposed rule also allows for collaboration between HHS and State Exchanges, most encourages states to accept control over their Exchanges.⁹

Opinions regarding insurer participation are more disjointed. The proposed rule also addresses two key issues regarding the insurance industries’ role in Exchanges. First, the rule speaks to the role the insurance industry will play in Exchange administration and development. Second, the rule considers the level of

penetration the insurance industry will have in the Exchange marketplace. Many consumer groups express apprehension over insurance executives’ participation in Exchange oversight boards.¹⁰ However, representatives of the insurance industry highlight their expertise as essential to Exchanges’ success.¹¹ The proposed rule attempts to strike a balance between these two perspectives by allowing insurer involvement at the board levels, as long as a majority of voting governing board members do not have a financial conflict of interest. Additionally, a majority of the board must have relevant experience in healthcare financing, delivery, public health or health policy.¹² States will also be given the authority to establish more stringent rules regarding insurer participation and the flexibility to allow the sale of any qualified insurance plan on the Exchange.¹³ Although Exchanges are not set to begin until 2014, the proposed rule calls for a pre-commencement open-enrollment period.¹⁴

The regulation of initial, open, and annual Exchange enrollment parallels currently established enrollment regulations for employer health plans and Federal programs like the Medicare prescription drug benefit.¹⁵ The enrollment period design aims to encourage individuals to apply for insurance early, as opposed to an as needed basis.¹⁶ The proposed rule emphasizes an internet-based customer services requirement to ease enrollment, which may be significant, as the ACA 2014 individual mandate requiring nearly all Americans to carry coverage goes into effect.¹⁷ Additionally, CMS aims to reduce adverse selection with well-designed early enrollment.¹⁸

By January 1, 2013, States must submit to HHS proof that an Exchange will be available to their populations by the 2014 start date, although conditional approval may be granted to states showing progress. The final Exchanges will affect nearly nine million users in the first year alone, with anticipated growth to 23 million by 2018.¹⁹ In the situation where a state is not prepared by the January 1, 2013 assessment deadline, placement of a Federal Exchange will occur. If a state wishes to transition to a Federal Exchange after 2014, the state must collaborate with HHS over a 12-month period.²⁰ CMS accepted comments on the proposed rule for 75 days from publication (July 15, 2011) and will release a second proposed rule at a time yet to be determined.

The second version of the proposed rule promises to contain more clarification and guidance by CMS regarding Exchanges.²¹

- 1 “HHS and States Move to Establish Affordable Insurance Exchanges, Give Americans the Same Insurance Choices as Members of Congress” US Department of Health & Human Services, July 11, 2011, <http://www.hhs.gov/news/press/2011pres/07/20110177a.html> (Accessed 7/13/2011)
- 2 “Patient Protection and Affordable Care Act: Establishment of Exchanges and Qualified Health Plans-Proposed Rule” 45 CFR Parts 155 and 156, CMS-9989-P, July 11, 2011, p. 6.
- 3 “After Much Scrutiny, HHS Releases Health Insurance Exchange Rules” By Julie Appleby and Christopher Weaver, Kaiser Health News, July 11, 2011, <http://www.kaiserhealthnews.org/Stories/2011/July/11/Health-Insurance-Exchange-Regulations-Released.aspx> (Accessed 7/13/2011).
- 4 “After Much Scrutiny, HHS Releases Health Insurance Exchange Rules” By Julie Appleby and Christopher Weaver, Kaiser Health News, July 11, 2011, <http://www.kaiserhealthnews.org/Stories/2011/July/11/Health-Insurance-Exchange-Regulations-Released.aspx> (Accessed 7/13/2011).
- 5 “Patient Protection and Affordable Care Act: Establishment of Exchanges and Qualified Health Plans-Proposed Rule” 45 CFR Parts 155 and 156, CMS-9989-P, July 11, 2011, p.6.
- 6 “Patient Protection and Affordable Care Act: Establishment of Exchanges and Qualified Health Plans-Proposed Rule” 45 CFR Parts 155 and 156, CMS-9989-P, July 11, 2011, p.18.
- 7 “Health Blogs Buzzing About Insurance Exchanges” By Andrew Villegas, Kaiser Health News, July 13, 2011, <http://capsules.kaiserhealthnews.org/index.php/2011/07/health-blogs-buzzing-about-insurance-exchanges> (Accessed 7/13/2011).
- 8 “Implementing Health Reform: Health Insurance Exchanges,” By Timothy Jost, Health Affairs, July 12, 2011, <http://healthaffairs.org/blog/2011/07/12/implementing-health-reform-health-insurance-exchanges/> (Accessed 7/13/2011).
- 9 “Patient Protection and Affordable Care Act: Establishment of Exchanges and Qualified Health Plans-Proposed Rule” 45 CFR Parts 155 and 156, CMS-9989-P, July 11, 2011, p.18; “After Much Scrutiny, HHS Releases Health Insurance Exchange Rules,” By Julie Appleby and Christopher Weaver, Kaiser Health News, July 11, 2011, <http://www.kaiserhealthnews.org/Stories/2011/July/11/Health-Insurance-Exchange-Regulations-Released.aspx> (Accessed 7/13/2011).
- 10 “After Much Scrutiny, HHS Releases Health Insurance Exchange Rules,” By Julie Appleby and Christopher Weaver, Kaiser Health News, July 11, 2011, <http://www.kaiserhealthnews.org/Stories/2011/July/11/Health-Insurance-Exchange-Regulations-Released.aspx> (Accessed 7/13/2011).
- 11 “After Much Scrutiny, HHS Releases Health Insurance Exchange Rules,” By Julie Appleby and Christopher Weaver, Kaiser Health News, July 11, 2011, <http://www.kaiserhealthnews.org/Stories/2011/July/11/Health-Insurance-Exchange-Regulations-Released.aspx> (Accessed 7/13/2011).
- 12 “Implementing Health Reform: Health Insurance Exchanges,” By Timothy Jost, Health Affairs, July 12, 2011, <http://healthaffairs.org/blog/2011/07/12/implementing-health-reform-health-insurance-exchanges/> (Accessed 7/13/2011).
- 13 “After Much Scrutiny, HHS Releases Health Insurance Exchange Rules,” By Julie Appleby and Christopher Weaver, Kaiser Health News, July 11, 2011, <http://www.kaiserhealthnews.org/Stories/2011/July/11/Health-Insurance-Exchange-Regulations-Released.aspx> (Accessed 7/13/2011).
- 14 “After Much Scrutiny, HHS Releases Health Insurance Exchange Rules,” By Julie Appleby and Christopher Weaver, Kaiser Health News, July 11, 2011, <http://www.kaiserhealthnews.org/Stories/2011/July/11/Health-Insurance-Exchange-Regulations-Released.aspx> (Accessed 7/13/2011).
- 15 “After Much Scrutiny, HHS Releases Health Insurance Exchange Rules,” By Julie Appleby and Christopher Weaver, Kaiser Health News, July 11, 2011, <http://www.kaiserhealthnews.org/Stories/2011/July/11/Health-Insurance-Exchange-Regulations-Released.aspx> (Accessed 7/13/2011).
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- 17 “Patient Protection and Affordable Care Act: Establishment of Exchanges and Qualified Health Plans-Proposed Rule” 45 CFR Parts 155 and 156, CMS-9989-P, July 11, 2011, p.40-42.
- 18 “After Much Scrutiny, HHS Releases Health Insurance Exchange Rules,” By Julie Appleby and Christopher Weaver, Kaiser Health News, July 11, 2011, <http://www.kaiserhealthnews.org/Stories/2011/July/11/Health-Insurance-Exchange-Regulations-Released.aspx> (Accessed 7/13/2011).
- 19 “After Much Scrutiny, HHS Releases Health Insurance Exchange Rules” By Julie Appleby and Christopher Weaver, Kaiser Health News, July 11, 2011, <http://www.kaiserhealthnews.org/Stories/2011/July/11/Health-Insurance-Exchange-Regulations-Released.aspx> (Accessed 7/13/2011).
- 20 “Patient Protection and Affordable Care Act: Establishment of Exchanges and Qualified Health Plans-Proposed Rule” 45 CFR Parts 155 and 156, CMS-9989-P, July 11, 2011, p. 25.
- 21 “Patient Protection and Affordable Care Act: Establishment of Exchanges and Qualified Health Plans-Proposed Rule” 45 CFR Parts 155 and 156, CMS-9989-P, July 11, 2011, p. 6.



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Robert James Cimasi, MHA, ASA, FRICS, MCBA, AVA, CM&AA, serves as President of **HEALTH CAPITAL CONSULTANTS (HCC)**, a nationally recognized healthcare financial and economic consulting firm headquartered in St. Louis, MO, serving clients in 49 states since 1993. Mr. Cimasi has over thirty years of experience in serving clients, with a professional focus on the financial and economic aspects of healthcare service sector entities including: valuation consulting and capital formation services; healthcare industry transactions including joint ventures, mergers, acquisitions, and divestitures; litigation support & expert testimony; and, certificate-of-need and other regulatory and policy planning consulting.

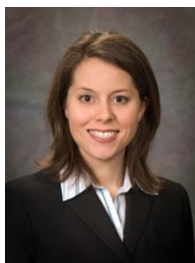
Mr. Cimasi holds a Masters in Health Administration from the University of Maryland, as well as several professional designations: Accredited Senior Appraiser (ASA – American Society of Appraisers); Fellow Royal Intuition of Chartered Surveyors (FRICS – Royal Institute of Chartered Surveyors); Master Certified Business Appraiser (MCBA – Institute of Business Appraisers); Accredited Valuation Analyst (AVA – National Association of Certified Valuators and Analysts); and, Certified Merger & Acquisition Advisor (CM&AA – Alliance of Merger & Acquisition Advisors). He has served as an expert witness on cases in numerous courts, and has provided testimony before federal and state legislative committees. He is a nationally known speaker on healthcare industry topics, the author of several books, the latest of which include: *“The U.S. Healthcare Certificate of Need Sourcebook”* [2005 - Beard Books], *“An Exciting Insight into the Healthcare Industry and Medical Practice Valuation”* [2002 – AICPA], and *“A Guide to Consulting Services for Emerging Healthcare Organizations”* [1999 John Wiley and Sons].

Mr. Cimasi is the author of numerous additional chapters in anthologies; books, and legal treatises; published articles in peer reviewed and industry trade journals; research papers and case studies; and, is often quoted by healthcare industry press. In 2006, Mr. Cimasi was honored with the prestigious *“Shannon Pratt Award in Business Valuation”* conferred by the Institute of Business Appraisers. Mr. Cimasi serves on the Editorial Board of the Business Appraisals Practice of the Institute of Business Appraisers, of which he is a member of the College of Fellows.



Todd A. Zigrang, MBA, MHA, ASA, FACHE, is the Senior Vice President of **HEALTH CAPITAL CONSULTANTS (HCC)**, where he focuses on the areas valuation and financial analysis for hospitals and other healthcare enterprises. Mr. Zigrang has significant physician integration and financial analysis experience, and has participated in the development of a physician-owned multi-specialty MSO and networks involving a wide range of specialties; physician-owned hospitals, as well as several limited liability companies for the purpose of acquiring acute care and specialty hospitals, ASCs and other ancillary facilities; participated in the evaluation and negotiation of managed care contracts, performed and assisted in the valuation of various healthcare entities and related litigation support engagements; created pro-forma financials; written business plans; conducted a range of industry research; completed due diligence practice analysis; overseen the selection process for vendors, contractors, and architects; and, worked on the arrangement of financing.

Mr. Zigrang holds a Master of Science in Health Administration and a Masters in Business Administration from the University of Missouri at Columbia, and is a Fellow of the American College of Healthcare Executives. He has co-authored *“Research and Financial Benchmarking in the Healthcare Industry”* (STP Financial Management) and *“Healthcare Industry Research and its Application in Financial Consulting”* (Aspen Publishers). He has additionally taught before the Institute of Business Appraisers and CPA Leadership Institute, and has presented healthcare industry valuation related research papers before the Healthcare Financial Management Association; the National CPA Health Care Adviser's Association; Association for Corporate Growth; Infocast Executive Education Series; the St. Louis Business Valuation Roundtable; and, Physician Hospitals of America.



Anne P. Sharamitaro, Esq., is the Vice President of **HEALTH CAPITAL CONSULTANTS (HCC)**, where she focuses on the areas of Certificate of Need (CON); regulatory compliance, managed care, and antitrust consulting. Ms. Sharamitaro is a member of the Missouri Bar and holds a J.D. and Health Law Certificate from Saint Louis University School of Law, where she served as an editor for the Journal of Health Law, published by the American Health Lawyers Association. She has presented healthcare industry related research papers before Physician Hospitals of America and the National Association of Certified Valuation Analysts and co-authored chapters in *“Healthcare Organizations: Financial Management Strategies,”* published in 2008.