

CMS Releases Final Rule on Health Exchanges

On August 28, 2013, the Centers for Medicare and Medicaid Services (CMS) and the U.S. Department of Health and Human Services (HHS) updated policies regarding the Health Insurance Marketplaces or Affordable Insurance Exchanges (Exchanges), from the proposed rules published on January 22, 2013 and June 19, 2013.ⁱ For additional information regarding the June 19 proposed rule, refer to the July 2013 edition of HC Topics.ⁱⁱ This final rule updates provisions from the Patient Protection and Affordable Care Act (ACA) and the proposed rule regarding various standards affecting the Exchanges and the state Small Business Health Options Program (SHOP).ⁱⁱⁱ The general purpose of these regulations is to, “...safeguard federal funds and to protect consumers by ensuring that issuers, Marketplaces, and other entities comply with federal standards meant to ensure consumers have access to quality, affordable health insurance.”^{iv} The release of the final regulations is timely, preceding the implementation of the Exchanges slated for October 1, 2013. For further details regarding the evolution of these policies since the passage of the ACA, refer to past issues of HC topics.^v

The recently released rules finalize details on a variety of topics related to the Exchanges and SHOPS that were introduced in the proposed rule and appeals rule published earlier this year, though most changes are minor in scope.^{vi} Among the disparate topics discussed in the final rule are methods of oversight for various aspects of the Exchanges, as well as protection for consumers who are shopping for, and purchasing insurance.^{vii} The former designates HHS as an overseer of all federally-funded and non-Marketplace entities, while individual states are responsible for ensuring compliance of all state-based individual and small-group insurance market entities with traditional privacy and security requirements.^{viii}

Consumer protection in the new Exchange marketplace was recently added to the final regulation in response to a report released by Jackson Hewitt, noting that over one quarter of all Americans today—a large proportion of which are African American or Hispanic—don’t have a checking account, i.e., are “unbanked”, and will be unable to pay for health insurance using the traditional method of checking account deduction.^{ix} The final rule

responded to a variety of comments in favor of allowing consumers a variety of payment methods, noting that a list of payment methods will be specified in the final rule that each Qualified Health Plan (QHP) must allow at a minimum.^x In another victory for consumers, the final rule also establishes training and disclosure obligations for brokers; agents; and, other issuer application assisters. Required training would review privacy and security standards to protect consumers’ personal identity information. In addition, all web-based brokers or agents must comply with strict website disclosure requirements under the final rule.^{xi}

Included the assorted topics addressed in the final rule are requirements for SHOP, e.g., functionality; state flexibility; and, information sharing between SHOPS and federally funded Exchanges, as well as regulations regarding eligibility determinations for consumers.^{xii} The rule discusses privacy and security requirements of Exchanges when dealing with incomplete applications, and reviews a federally-guided appeals process that remains largely unchanged from the regulations noted in the proposed rule.^{xiii} It has been noted that confusion will likely still exist for some aspects of the appeals process, e.g., reconciliation of the appeals process between Medicaid; Children’s Health Insurance Program (CHIP); and, the Exchange, as well as for large employers. SHOP eligibility appeals under the ACA allow flexibility and will remain largely up to the determination of each state.^{xiv}

Although some uncertainty exists regarding the functionality of the Exchange program when open enrollment in Exchanges begins on October 1, preliminary data notes some positive observations regarding exchange premiums. A recently released analysis of proposed insurance premiums across 17 states and the District of Columbia indicated that although premiums show significant variance across different states, they generally remain lower than expected estimates.^{xv} These findings concur with an earlier report released by the Obama Administration, which reported that although choices and availability of health plans would vary by region, prices will remain competitive for consumers.^{xvi} While some regulations have yet to be finalized before Exchanges go live on January 1, 2014, the preliminary data and

regulations noted in the recently released final rule appear to be a promising start for this phase of ACA

implementation.

ⁱ For proposed rules, refer to Federal Register, Vol. 78, No. 14, p. 5494-4724 and Vol. 78, No. 118, p. 37032-37095

ⁱⁱ “New Consumer Health Insurance Exchange Options Likely to Vary by State”, Health Capital Topics, Vol. 6, Issue 7 (July 2013)

ⁱⁱⁱ “Patient Protection and Affordable Care Act; Program Integrity: Exchange, SHOP, and Eligibility Appeals: Final Rule”, by the Centers for Medicare and Medicaid Services, August 28, 2013, p. 1

^{iv} “Program Integrity Rule”, by Centers for Medicare and Medicaid Services, <http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/pi-final-8-28-2013.html> (Accessed September 14, 2013)

^v Various aspects of the Exchange implementation have been discussed in the following HC Topics Newsletters: March 2013; July 2012; April 2012; and, November 2010.

^{vi} “Implementing Health Reform: Final Rule on Program Integrity: Exchange, SHOP, and Eligibility Appeals”, by Timothy Jost, Health Affairs Blog, August 29, 2013, <http://healthaffairs.org/blog/2013/08/29/implementing-health-reform-final-rule-on-program-integrity-exchange-shop-and-eligibility-appeals/> (Accessed September 16, 2013)

^{vii} *Ibid*, Centers for Medicare and Medicaid Services (Accessed September 14, 2013)

^{viii} *Ibid*, Centers for Medicare and Medicaid Services (Accessed September 14, 2013)

^{ix} “Uninsured + Unbanked = Unenrolled: How Health Insurance Companies May Exclude 1 in 4 Eligible Americans from ACA Coverage—and What the Federal Government can do to Stop it”, by Brandes et al., Jackson Hewitt Tax Service, May 2013, p. 1-2

^x *Ibid*, by the Centers for Medicare and Medicaid Services, August 28, 2013, p. 216

^{xi} “Department of Health and Human Services (HHS) Publishes Final Rule on Exchanges, SHOPS, and Eligibility Appeals”, by Kathleen McDermott and Holly C. Barker, The National Law Review, 2013, <http://www.natlawreview.com/article/department-health-and-human-services-hhs-publishes-final-rule-exchanges-shops-and-el> (Accessed September 16, 2013)

^{xii} *Ibid*, Centers for Medicare and Medicaid Services (Accessed September 14, 2013); *Ibid*, by Kathleen McDermott and Holly C. Barker, The National Law Review, 2013

^{xiii} *Ibid*, by Kathleen McDermott and Holly C. Barker, The National Law Review, 2013

^{xiv} *Ibid*, by Kathleen McDermott and Holly C. Barker, The National Law Review, 2013

^{xv} “An Early Look at Premiums and Insurer Participation in Health Insurance Marketplaces, 2014”, by Cox et al., The Henry Kaiser Family Foundation, September 2013, p. 8

^{xvi} “Early Results: Competition, Choice, and Affordable Coverage in the Health Insurance Marketplace in 2014”, by The Obama Administration, May 30, 2013, p. 4



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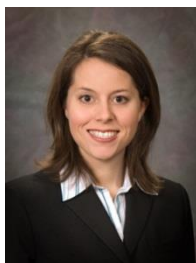
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