

INSURANCE LAW ALERT

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Department of Health and Human Services Proposes Rules for Insurance Exchanges

On July 11, 2011, the federal Department of Health and Human Services (“HHS”) released yet another proposed rule to implement the Patient Protection and Affordable Care Act: Establishment of Exchanges and Qualified Health Plans.

The proposal would permit a qualified person and any dependents to enroll in a qualified health plan (“QHP”) upon loss of other minimum essential coverage. Such a loss includes any event triggering loss of eligibility for other minimum essential coverage. The loss of coverage that the proposed rule contemplates also includes termination of employer contributions for a qualified individual or dependent who has coverage that is not COBRA continuation coverage by any current or former employee, exhaustion of COBRA continuation coverage, reaching a lifetime limit on all benefits in a grandfathered plan, and termination of Medicaid or CHIP.

This proposal provides greater flexibility to the states in implementing the new insurance exchanges and leaves most key decisions up to them, although it does establish some minimum standards for every exchange, including limits on the role of insurance companies and agents. Those who profit from the sale of insurance, *i.e.*, the carriers themselves, as well as agents and brokers, cannot control a majority of the seats on the board of directors of any exchange. The board members are required to have experience in health care purchasing or some other area of health care policy. The rule does define minimum requirements for participation of insurers in exchanges and offers qualified health plans, as well as provider standards for participation of small employers. Importantly, the rule mandates minimum standards for web-based state insurance exchanges.

While the PPACA requires HHS to operate a federal exchange in any state that does not establish its own exchange, the new proposal provides some leeway for states that need additional time or help with some aspects of their exchanges. In 2013, HHS is expected either to certify that the state will have its own exchange in place by 2014 or, as a federal fallback, step into direct operation. The proposed regulation provides a third option, *i.e.*, “conditional approval” for states that have not met all of HHS’s criteria by 2013, but are still likely to be ready by 2014. The proposed regulation also allows HHS to address certain parts of the state’s exchange without taking over the day-to-day supervision. For instance, states can turn to the federal government for assistance with enrollment procedures and other information-technology issues.

The proposed rule apparently does not address all the exchange provisions in the PPACA. Additional guidance on the establishment and operation of state exchanges is anticipated in forthcoming proposed rules. ■

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