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Final Rules on Health Insurance Exchanges

Health and Human Services (HHS) has announced [policies](#) to assist states in building Affordable Insurance Exchanges. These state-based competitive Exchanges are intended to perform a variety of functions, including certifying health plans as “qualified health plans,” operating a website and toll-free hotline for consumer support, providing grant funding to entities called “Navigators” for consumer assistance, and facilitating enrollment in qualified health plans.

Exchanges are scheduled to be operational beginning January 1, 2014. The healthcare law provides that a state’s plan to operate an Exchange must be approved by HHS no later than January 1, 2013. However, the [final rule](#) allows for conditional approval if the state is advanced in its preparation but cannot demonstrate complete readiness by January 1, 2013. Conditional approval may be granted if an Exchange demonstrates that it is “likely to be fully operationally ready” by October 1, 2013 (to meet the open enrollment requirement). If they still aren’t ready by 2014, then the federal government steps in. States can then still apply to assume oversight later.

Some states immediately started working toward an Exchange when the law was passed in 2010. Others have been much slower to react and still others are refusing to act until the Supreme Court rules on constitutional challenges to the law. Previously, HHS awarded 49 states and the District of Columbia \$50 million to begin planning their Exchanges, and as announced recently, 33 states and the District of Columbia have received over \$667 million in Establishment Grants to begin building their Exchanges.

The recently released final rule is the latest in an ongoing series of steps to help states develop Exchanges. The Exchange final rule includes standards for:

- The establishment and operation of an Exchange
- Health insurance plans that participate in an Exchange
- Determinations of an individual’s eligibility to enroll in Exchange health plans and in insurance affordability programs
- Enrollment in health plans through Exchanges
- Employer eligibility for, and participation in, the Small Business Health Options Program (SHOP)

Exchanges will initially be open only to those in the individual and small group insurance markets. States can set the size of the small group market at either “1 to 50” or “1 to 100” employees until 2016. In 2016, Exchanges must allow employers with up to 100 employees to participate.

Beginning in 2017, states are authorized (but not required) to make health coverage under the Exchanges available to employer groups larger than 100. Employers are permitted but not required to obtain coverage for their employees through an Exchange. But an employer that chooses to obtain coverage through an Exchange must elect to make all of its full-time employees eligible for one or more qualified health plans offered through the Exchange.

Exchanges will provide subsidized health coverage for individuals with household incomes below 400 percent of the federal poverty level (FPL). Subsidized health coverage will also be available through the Exchanges for qualified individuals (also on the basis of household income below 400 percent of FPL) who are full-time employees and do not have the opportunity to elect "affordable" health coverage from their employer. Exchanges (or their designees) will determine whether an individual is eligible to obtain coverage through the Exchange or qualifies for Medicaid, the Children's Health Insurance Program (CHIP) or certain other governmental programs. Exchanges also will have to determine whether an individual is eligible for advance payment of an income-based premium tax credit or cost-sharing reductions, based in part on a finding that his or her employer does not provide minimum essential coverage, or provides coverage that is not affordable, or does not meet the minimum value standard. When the Exchange determines an applicant is eligible to receive advance payments, the Exchange is required to notify the employer and identify the employee. The Exchange will verify whether an applicant is enrolled in an eligible employer-sponsored plan by generally accepting his or her attestation without further verification.

More guidance is expected as the deadlines for Exchanges approach, including rules on federally facilitated Exchanges, verification by Exchanges that an individual requesting premium tax credit or cost-sharing reductions is enrolled in eligible employer-sponsored coverage, and the finalization of a number of interim final rules. HHS has also released a comprehensive regulatory [impact analysis](#) assessing the costs and benefits of Exchanges. For more information on Exchanges, visit <http://www.healthcare.gov/exchanges>.

Employers are advised to continue to monitor health reform developments. Should you have questions about this or any aspect of federal health insurance reform, contact your Conner Strong & Buckelew account representative toll free at 1-877-861-3220. For a complete list of Legislative Updates issued by Conner Strong & Buckelew, visit our online Resource Center.



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