



August 18, 2011

Rules Issued on Exchanges, Premium Credits, and Medicare/CHIP Issues

The agencies have issued three new sets of rules for health insurance Exchanges addressing premium credits for coverage, access to coverage for individuals and employer requirements for small-group coverage, and coordinated changes to the Medicaid and Children's Health Insurance Program (CHIP) eligibility and enrollment processes. The rules address health care reform's requirements for streamlined processes to determine eligibility and enrollment in Exchange plans and build on the previously issued [Exchange rules](#) intended to create a framework to help states set up Exchanges. Continued guidance relating to Exchanges is expected to be issued in several phases with many issues yet to be addressed. See the [Fact Sheet](#) and [Press Release](#) for an overview on the three new Exchange rules.

The three new proposed Exchange rules address the following:

- **Exchange Eligibility and Employer Standards:** There are new rules for consumers enrolling in health plans and getting help to pay for health coverage through premium tax credits and cost-sharing reductions. Small employers participating in the Small Business Health Options Program (SHOP) will be able to offer their employees a choice of health plans and access to new tax credits. Under the rules, HHS proposes to establish a system through which an individual may apply for and receive a determination of eligibility for enrollment in an exchange plan and for insurance affordability programs, such as the premium tax credit. In addition, the agencies are seeking comments on the timing and reporting of information needed to verify whether an employed applicant is eligible for an advance payment of the premium tax credit and cost-sharing reductions for exchange coverage, and how exchanges can best interact and communicate with employers to verify information regarding employer-sponsored coverage. See the [Fact Sheet](#) for more information.
- **Health Insurance Premium Tax Credit:** Individuals and families will receive premium tax credits to help defray insurance costs. The regulations provide guidance to individuals who enroll in qualified health plans through Exchanges and claim the credit, and to employers and employer-provided health plans that are impacted by the credit in a number of ways. The credit will apply for the first time in 2014, and will be available to individuals who have incomes below 400% of the federal poverty level and for those with access to employer-sponsored coverage that is determined to be "unaffordable." If the coverage is deemed unaffordable and the employee receives a premium credit, then a penalty is assessed on the employer for that employee. The proposed regulation clarifies and confirms that the

determination of the affordability of employer coverage is made solely with respect to whether self-only coverage exceeds 9.5% of household income. However, future proposed guidance is expected to include a safe harbor that would allow employers to base the affordability determination on employee wages instead of household income. Furthermore, if an exchange subsequently determines that the employee is eligible for a premium credit on the basis of household income, the employee would receive the credit but the employer would not be assessed a penalty. According to the IRS, "Giving employers the ability to base their affordability calculations on their employees' wages (which employers know) instead of employees' household income (which employers generally do not know) is intended to provide a more workable and predictable method of facilitating affordable employer-sponsored coverage for the benefit of both employers and employees." See the [Fact Sheet](#) for more information.

- **Medicaid Eligibility:** Coordinating the Exchange with Medicaid and CHIP eligibility is intended to simplify enrollment for qualified individuals and reduce the administrative burden on states. See the [Fact Sheet](#) for more information.

Insurance Exchange Support for States - On July 11, 2011, the U.S. Department of Health & Human Services (HHS) released [rules](#) to help states set up Exchanges. The rules give states flexibility to work with agents, provide producer listings on its website, and include agents in "Navigator" programs as well as choose which insurance plans will qualify for an Exchange. Exchanges will have flexibility to determine what role agents and brokers will play, and can allow agents and brokers to assist consumers with applications for advance payments of the premium tax credit and cost-sharing reductions and enroll individuals, employers, and employees in qualified health plans.

So far, more than half the states have taken action to begin building an Exchange and HHS has awarded Exchange Establishment grants in the hopes of accelerating that progress. In 2010, HHS awarded 49 states and the District of Columbia \$50 million to begin planning their Exchanges. HHS has now awarded an additional \$185 million to 13 states and the District of Columbia to help them build Exchanges which will allow eligible individuals, families, and small businesses to shop for coverage starting in 2014. HHS expects to make more [grant awards](#) in the coming months.

In a [letter](#) to Governors, HHS lays out a partnership effort that will allow states to work with HHS to set up Exchanges. The letter solicits comments from states on how the partnership model can build on the flexibility states have when designing an Exchange.

Outreach Campaign and Public Comment - The Administration is also conducting an outreach campaign and asking for public comment on the three proposed rules from employers, consumers, state leaders, and health care providers and insurers. In addition to accepting written public comments through October 31, 2011, the agencies will hold forums on the Exchanges in various states (Atlanta, GA; Chicago, IL; Denver, CO; New York, NY; Portland, OR; and Sacramento, CA). The agencies expect to modify the proposed rules based on feedback received.

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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