HHS Releases Health Insurance Exchange Regulations

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On Monday July 11, 2011, the U.S. Department of Health and Human Services (HHS) published two Notices of Proposed Rulemaking (NPRM). The first proposed rule outlines a framework to assist states in setting up state-based health insurance exchanges created by the Affordable Care Act (ACA). The second NPRM addresses underwriting standards related to reinsurance, risk corridors, and risk adjustment rules.

State-based exchange plans must be approved by HHS no later than January 1, 2013. The proposed rule allows for conditional approval if the State is advanced in its preparation but cannot demonstrate complete readiness by that date. The proposed rule also allows states that are not ready for 2014 to apply to operate an exchange for 2015 or later. The Federal Government will establish a federally operated exchange in states that do not set up a state-based exchange by 2014.

Qualified Health Plans

Health plans offered through the Exchange must be certified as Qualified Health Plans (QHPs). To be certified, health plans must meet certain minimum standards. The proposed rule gives states some flexibility in establishing many of the standards for health plans offered in their particular exchange.

- The proposed rule allows exchanges to work with local health insurers on structuring qualified health plan designs and set the standards for each qualified health plan. Standards such as network adequacy standards, marketing standards, and others would be set by states.
- The ACA established three risk-mitigation programs; a temporary reinsurance program, risk corridor rules, and a permanent risk adjustment system. These programs are designed to spread the financial risk across all plans offered by participating insurers so that carriers cannot compete based on individual and plan health risk.
- States also continue to have the authority to regulate health insurance plans sold outside the state exchange. It is anticipated that states will design rules which will restrict the ability of insurers to offer health plans offered outside the exchange with advantageous underwriting, rating or other provisions.

Small Business Health Options Program (SHOP)

Beginning in 2014, exchanges will operate a Small Business Health Options Program (SHOP). The SHOP will offer qualified plans to small employers. Through the SHOP, employers will choose the level of coverage from standardized plan options offered by participating insurance carriers (bronze, silver, gold or platinum plans). Small employers will be able to offer the employees plan choices from multiple insurers and plans. The ACA defines small groups as employers with less than 100 employees; however, states can choose to set the size of the small group market at 50 until 2016. Starting in 2017, states may let businesses with more than 100 employees buy large group coverage through the SHOP.

The Exchange and Larger Employers

Employers with more than 100 employees will not be purchasing coverage from an exchange (at least not until after 2017), however, large employers will still interact with the exchanges. The exchanges will be responsible for certifying low and middle income individuals who qualify for subsidies for the purchase of individual insurance.

The exchanges will also be involved in the administration of employer penalties that may apply in the case of employers who do not provide affordable coverage to full-time employees. In general, affordable employer coverage is defined as coverage that costs the employee less than 9.5% of their household income to participate and meets a minimum coverage standard.

Summary

As we approach 2014, small employers who offer health benefits to their employees will need to analyze benefit options available through the exchanges. Large employers will need to understand how subsidies available to individuals may, or may not, impact their employees, and their employer sponsored plans.