

# State Exchange Final Regulations Released



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The U.S. Department of Health and Human Services (HHS) released its final rule on state health insurance exchanges March 12th. The Affordable Care Act (ACA) requires states to be able to demonstrate that they can operate an exchange by January 1, 2013. Under the final rule, HHS may grant conditional approval to states that have made progress toward the implementation of an exchange by January 2013.

The federal government will set up a federally administered exchange in states that either choose not to implement a state based exchange, or are not ready by the deadline. HHS will also allow states that initially have an exchange run by the federal government to introduce their state based exchange and take over administration of the federal exchange after 2014.

## Exchange Basics

Under the ACA, states are to set up insurance exchanges that will regulate and provide a marketplace for individual health insurance and small group plans sold in that state. States may set up separate exchanges for the individual and small group market, or they may combine both markets in one exchange. The states will then approve which carriers will be certified to sell individual and small group plans through the exchange. Underwriting and pricing of these policies is subject to rules contained in the ACA.

Initially group insurance on the exchange will be available to employers up to 100 employees, but states have the option to limit groups to those with 50 employees or fewer. It appears that many states are currently planning for state exchange plans to limit employer participation to those with fewer than 50 employees. The ACA permits states to extend exchange coverage to larger employers beginning in 2017.

The state or federal exchanges will also administer the premium tax credits available to certain qualifying individuals. Beginning in 2014, individuals with incomes less than 400% of the federal poverty level who do not have affordable employer sponsored

insurance available may qualify for federal tax credits to be used toward the purchase of individual health insurance.

## Status of State Based Exchange Development

According to the National Conference of State Legislatures (NCSL), as of December 31, 2011, 30 states have enacted an executive order or legislation in preparation for the development of an exchange.

Thirty-three states have received nearly \$670 million in establishment grants to develop their exchanges, according to HHS. In a reflection of the political debate surrounding the ACA, and the uncertainty states face if they choose not to develop a state based exchange, 11 of the states participating in the lawsuit against the ACA to be heard by the Supreme Court have also taken exchange development grants from HHS.


## Final Regulations

As with the previously proposed rules, the final regulations continue to give states significant flexibility in the design and administration of their state based exchange. For example:

- States have the option of establishing the exchange as a non-profit entity, an independent government agency or as part of an existing state office.
- States may also join a multi-state effort to set up a regional exchange or create multiple exchanges within their borders for different areas of the state.
- The final rule gives states the authority to determine the number and type of health plans available in an exchange, and what standards they must meet, including the definition of required essential health benefits.

## Summary

A number of states have taken significant steps toward the development of a state based exchange, and will likely be operational by January 2014. However, many states have chosen to either delay, or



forego altogether, implementation pending the outcome of the Supreme Court's decision and the results of this year's election. Clearly, these states will not have time to develop and implement a state based exchange by 2014. If significant portions of the ACA are still enforced in 2014 as currently written, the individual and small group market exchange, and the administration of premium tax credits, will be handled by the federal exchange until the state chooses to implement their own system. Considering the short amount of time left before January 2014, it is likely there will be a patchwork of state and federally run exchanges across the country for the foreseeable future.