

Volume 26, No. 3

March 2012

# Small Business Notes

Minnesota Department of Employment  
and Economic Development

## **U.S. Department of Health and Human Services (HHS) Publishes Rule on Creation of Insurance Exchanges under Patient Protection and Affordable Care Act**

### *In this issue:*

- ▶ **U.S. Department of Health and Human Services (HHS) Publishes Rule on Creation of Insurance Exchanges under Patient Protection and Affordable Care Act**

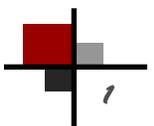
On March 27 HHS published in the Federal Register the final rule for establishment and operation of the Affordable Insurance Exchanges required to be established by January 1, 2014. These exchanges, in each state, will provide competitive marketplaces to allow employers and individuals to compare various health insurance options on the basis of price, quality, coverage, and other factors. [A pre-official release of the same rule was published in the Federal Register for March 12, 2012.]

The full text of the rule runs in excess of six hundred PDF pages and details the entities which can become an exchange: (1) and entity incorporated in and subject to the laws of one or more states, that has demonstrated expertise in individual and small group insurance markets; or (2) the state Medicaid Agency or another state agency to include a non-profit entity established by the state. It details the duties and responsibilities of an exchange and the mechanics of its operations.

Of particular interest to small employers is the section that requires an exchange to establish Small Business Health Options Program (SHOP) that will assist qualified employers and facilitate the enrollment of employees in qualified health plans (all terms defined in the rule). For example, one requirement of a SHOP is that it provide premium aggregation services for small employers under which the SHOP would provide each employer with a monthly bill identifying the amount of the employer contribution, the employee contribution, and the total amount due to the insurance issuers from the employers. The SHOP would also actually collect the total amount due and make payments to insurance plans for all enrollees.

In reading the rule, small businesses will want to pay particular attention to two definitional issues. First, the rule incorporates the definition of "small employer" found in the Public Health Service Act: not more than 100 employees. The rule commentary notes that many comments were received in the comment period addressing the issue of how employees should be counted in determining employer size. The proposed rule utilized counting all full and part time employees but comment responses offered a number of other suggestions to include allowing states individually to determine the applicable method.

*Continued.....*



Past issues of  
Small Business Notes  
are available on the  
Department of  
Employment and  
Economic Development  
website at  
[www.positivelyminnesota.com](http://www.positivelyminnesota.com)

In its commentary, HHS indicated “Because of the range of comments received to the proposed rule and because the method of counting employees has implications that extend beyond the operation of the SHOP, we are not finalizing at this time a rule for determining employer size. We are considering future rulemaking to address the method of determining employer size for purposes of deciding whether an employer is a small employer or a large employer.”

Second, the final rule incorporates by reference the definition of “employee” found in the U.S. Department of Labor’s ERISA rules at 29 CFR 2510.3-3 (c) (1) and (2). That section makes very significant exclusions:

(c) Employees. For purposes of this section:

- (1) An individual and his or her spouse shall not be deemed to be employees with respect to a trade or business, whether incorporated or unincorporated, which is wholly owned by the individual or by the individual and his or her spouse, and
- (2) A partner in a partnership and his or her spouse shall not be deemed to be employees with respect to the partnership.

HHS has reprinted, posted on March 12, 2012, its earlier newsletter on “Affordable Insurance Exchanges: Choices, Competition and Clout for Small Businesses” which addresses the operation of exchanges. That newsletter is available at [www.healthcare.gov](http://www.healthcare.gov), click on Newsroom, then Factsheets.

Of course, all matters relating to the Patient Protection and Affordable Care Act must await the U.S. Supreme Court’s decision on the constitutionality of parts of the act. Oral arguments on that issue have concluded March 28 and the Court’s decision is expected in June.

---

*Small Business Notes is published to offer timely, accurate, and useful information on topics of concern to small businesses in Minnesota. It is for general information purposes only. It is not legal advice and should not be relied on for resolution or evaluation of legal issues or questions. Readers are advised to consult with their private legal advisors for specific legal advice on any legal issues they may have.*

*Information in Small Business Notes on tax matters, both federal and state, is not tax advice and cannot be used for the purposes of avoiding federal or state tax liabilities or penalties or for the purpose of promoting, marketing or recommending any entity, investment plan or other transaction. Readers are advised to consult with their private tax advisors for specific tax advice on any tax related issues they may have.*

Copyright © 2012  
Minnesota Department  
of Employment and  
Economic Development



**Department of Employment and Economic Development**

1<sup>st</sup> National Bank Building ■ 332 Minnesota, Suite E200 ■ Saint Paul, MN 55101-1351 USA ■ [www.positivelyminnesota.com](http://www.positivelyminnesota.com)  
651-259-7114 ■ Toll Free: 800-657-3858 ■ Fax: 651-296-5287 ■ TTY/TDD: 651-282-5909

*An Equal Opportunity Employer and Service Provider*

