



Request for Comment Regarding Proposed Exchange Regulations

Agency: Joint agency request by the Minnesota Departments of Commerce, Human Services and Health.

Summary: The Patient Protection and Affordable Care Act (ACA), Public Law 111-148 enacted on March 23, 2010, and modified by the Health Care and Education Reconciliation Act, Public Law 111-152 enacted on March 30 2010, requires a Health Benefit Exchange (“Exchange”) to be operational in each state by January 1, 2014. In general, a Health Benefit Exchange is an organized, competitive marketplace to facilitate the comparison, choice, and purchase of health insurance coverage for individual consumers, including Medicaid enrollees.

Proposed Rules:

On July 15, 2011, the U.S. Department of Health and Human Services (HHS) issued two proposed rules regarding the establishment of an Exchange:

1. Establishment of Exchanges and Qualified Health Plans (CMS-9989-P)
2. Standards Related to Reinsurance, Risk Corridors and Risk Adjustment (CMS-9975-P)

Note: On September 27, 2011 HHS extended the comment deadline to October 31, 2011 on the proposed rules released on July 15, 2011. As such, they are included as part of this Request for Comment.

On August 27, 2011 HHS issued three additional proposed rules that address how individuals will obtain health insurance across the continuum of coverage set forth in the ACA:

1. Exchange Functions in the Individual Market; Eligibility Determinations; Exchange Standards for Employers (CMS-9974-P)
2. Medicaid Program; Eligibility Changes under the Affordable Care Act of 2010 (CMS-2349-P)
3. Health Insurance Premium Tax Credits (REG-131491-10)

These proposed regulations can be found on the Center for Consumer Information and Insurance Oversight (CCIIO) website: <http://cciio.cms.gov/resources/regulations/index.html#hie>.

Request for Information: On September 9, 2011, the Centers for Medicare and Medicaid Services (CMS) issued a request for information regarding section 1331 of the ACA, which provides States with the option to establish a Basic Health Program. This option permits States to enter into contracts to offer one or more “standard health plans” providing at least the essential health benefits described in section 1302(b) of the ACA to eligible individuals in lieu of offering such individuals coverage with the assistance of premium tax credits through the Exchange.

This request for information can be found on the CCIIO website: <http://cciio.cms.gov/resources/comments/index.html>.

This is a request for comment regarding the aforementioned proposed regulations and requests for information to assist the Departments in preparing a formal response.

Date Requested: On or before 3pm central time on Tuesday, October 18, 2011.

How to Send Comments: Send written comments to HealthBenefit.Exchange@state.mn.us and write “Exchange” in the subject line of the email.

Request for Comments: This request identifies a broad set of content areas of interest related to the proposed regulations and request for information. Commenters may respond to one or more of the following content areas, or provide comment on components of the proposed rules or request for information not specifically listed. To assist us in compiling comments, please cite the specific section of the proposed rules or request for information you are referencing.

1. Establishment of Exchanges and Qualified Health Plans (CMS-9989-P)

The proposed rule includes requirements that States must meet if they elect to establish and operate an Exchange, as well as standards related to selection and oversight of qualified health plans (QHPs), standards for participation in the Small Business Options Program, and minimum federal requirements for QHPs sold through the Exchange. Comments are requested on all parts of the proposed rule, including but not limited to:

- Exchange establishment
- Exchange functions
- Individual enrollment
- Small Business Health Options Program (SHOP)
- Accreditation and certification standards for Qualified Health Plans (QHPs) and QHP issuers

2. Standards Related to Reinsurance, Risk Corridors and Risk Adjustment (CMS-9975-P)

The proposed rule includes standards related to transitional state-based reinsurance programs for the individual health insurance market, minimum federal standards for state-based risk adjustment program and standards that must be met by QHPs related to a temporary federal risk corridor program. Comments are requested on all parts of the proposed rule, including but not limited to:

- Reinsurance
- Risk corridor
- Risk adjustment
- Timing of Reinsurance and Risk Adjustment

3. Exchange Functions in the Individual Market; Eligibility Determinations; Exchange Standards for Employers (CMS-9974-P)

The proposed rule focuses on eligibility determinations for participation in an Exchange, insurance affordability programs, Qualified Health Plans, and standards for employer participation in Small Business Health Options (SHOP) Exchanges. Comments are requested on all parts of the proposed rule.

4. Medicaid Program; Eligibility Changes under the Affordable Care Act of 2010 (CMS-2349-P)

The proposed rules implement standards for the Medicaid program and eligibility changes under the ACA. Comments are requested on all parts of the proposed rule, including but not limited to:

- The proposed rules base the Medicaid household on the income tax return filer and that person's tax dependents. This new approach results in a change in household composition for Medicaid

and applies to children, pregnant women, parents, caretaker relatives, and some non-elderly adults starting in 2014. In 2014, individuals who are not currently counted in a person's Medicaid household, including stepparents, stepchildren, stepsiblings, and children ages 21 and over who are claimed as tax dependents, will be counted and their Modified Adjusted Gross Income (MAGI) will also be counted for purposes of determining an individual's Medicaid eligibility. Please comment on issues that may arise from this approach to household composition. (See NPRM II (B) (3) and §435.603.)

- A separate proposed rule applies to a child under the age of 21 who is claimed as a tax dependent by a parent with whom the child does not live. Starting in 2014, the noncustodial taxpayer's Medicaid household will include this child as a tax dependent. The Medicaid household of the parent with whom the child lives will not include that child and the child's Medicaid household will consist of the family members with whom the child lives. Please comment on issues that may arise from these changes. (See NPRM II (B) (3) and §435.603.)
- For individuals who do not file tax returns and are not claimed as tax dependents on another tax return, the proposed rules largely follow current Medicaid household composition policies – family members who live together are a household. Please comment on issues that may arise from this two-pronged approach to household composition. (See NPRM II (B) (3) and §435.603.)
- The proposed rules require States to obtain information from Federal agencies to verify eligibility for Medicaid through an electronic service. Agencies are prohibited from requiring an applicant to provide documentation of income unless the information cannot be obtained electronically or the electronic information received is not reasonably compatible with information provided by the individual. What issues or concerns might this raise with regard to information such as income that cannot be verified through data matches with trusted third party electronic data sources? (See NPRM II (G) and §435.940 – 435.956.)

5. Health Insurance Premium Tax Credit (REG-131491-10)

The ACA allows for advanceable refundable premium tax credits to help individuals and families purchase coverage in Exchanges. The tax credits are designed on a sliding scale basis. The ACA also provides for advance determinations of tax credit eligibility by Exchanges. Taxpayers may receive advance payments of credits, paid on a monthly basis to the health plan in which they are enrolled. The law specifies that advance payments will be reconciled with actual credits for the tax year. The IRS specifically seeks comments related to the information collection process and the clarity and quality of the information collected. Comments are requested on all parts of the proposed rule, including but not limited to:

- Eligibility for premium tax credits
- Government-sponsored minimum essential coverage
- Employer-sponsored minimum essential coverage
- Computing the premium assistance credit amount
- Reconciling the premium tax credit with advance payments
- Information reporting by Exchanges

6. Request for Information Regarding State Flexibility to Establish a Basic Health Program under the Affordable Care Act (CMS-9980-NC)

Section 1331 of the ACA provides States with the option to establish a Basic Health Program. This option permits States to enter into contracts to offer one or more “standard health plans” providing at least the essential health benefits described in section 1302(b) of the ACA to eligible individuals in lieu of offering such individuals coverage with the assistance of premium tax credits through the Exchange. Comments are requested on all parts of the request for information, including but not limited to:

- General provisions
- Basic health program standards and insurers
- Contracting process
- Coordination with other State programs
- Amount of payment
- Eligibility
- Federal oversight