LEGISLATIVE BRIEF

Health Care Reform: Additional Proposed Guidance on State Insurance Exchanges and Premium Tax Credit

Starting in 2014, the Patient Protection and Affordable Care Act (PPACA) will require states to operate health insurance exchanges (Exchanges) in order to provide a marketplace where individuals and small businesses will be able to purchase affordable health insurance coverage. According to the Department of Health and Human Services (HHS), the Exchanges will enhance competition in the health insurance market, improve choice of affordable health insurance and give small businesses the same purchasing clout as large businesses.

On July 15, 2011, HHS issued proposed regulations targeted at helping states design and implement their Exchanges. On Aug. 17, 2011, HHS, along with the Treasury Department, released **additional proposed rules** to further encourage states' development of the Exchanges. This additional proposed guidance focuses on the following topics:

- Exchange eligibility and enrollment standards for individuals and small employers;
- Calculation of the health insurance premium tax credit for coverage purchased through an Exchange; and
- Expanded access to affordable coverage through Medicaid, CHIP and the Exchanges.

The proposed guidance issued by HHS and the Treasury Department is **not final**. HHS and the Treasury Department are accepting public comments and expect to modify their guidance based on feedback from the public.

This Alan Benoy Insurance Services Legislative Brief provides an overview of the additional proposed guidance. More information on the Exchanges is available at: www.healthcare.gov/news/factsheets/exchanges08122011a.html.

EXCHANGE ELIGIBILITY AND ENROLLMENT STANDARDS

Individuals and small employers **with up to 100 employees** will be eligible to participate in the Exchanges. However, states may limit employers' participation in the Exchanges to businesses with up to 50 employees until 2016. Beginning in 2017, states may allow businesses with more than 100 employees to participate in the Exchanges.

The proposed guidance contains standards for applying for and enrolling in qualified health plans (QHPs) and insurance affordability programs through an Exchange. The standards aim to accomplish three main goals:

- Expand access to private health insurance;
- Create a seamless system of coverage so that individuals can access the coverage they are eligible for, whether it is private coverage, Medicaid or CHIP, without having to submit information to multiple programs;
- Utilize technology to make it easier to determine the appropriate type of coverage, with a minimum amount of paperwork and red tape.

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Beginning in 2014, a Small Business Health Options Program (SHOP) will provide a way for small employers to offer their employees a choice of health plans like those offered by large employers. Also, starting in 2014, small employers purchasing coverage through a SHOP may be eligible for a **tax credit of up to 50% of their premium payments** (35% through 2013) if they have 25 or fewer employees, pay employees an average annual wage of less than $50,000 and subsidize at least 50 percent of the premium. Only employers purchasing coverage through a SHOP are eligible for the larger tax credit.

The guidance proposes eligibility standards for SHOP participation, such as the following:

- To qualify to participate in a SHOP, a small employer must elect to make, at a minimum, all full-time employees eligible for one or more QHPs in the small group market offered through a SHOP.
- An employer participating in a SHOP may continue to participate if it ceases to be a small employer solely because of an increase in the number of employees. In such instances, the employer will continue to be treated as a qualified employer and may continue its participation until the employer either fails to meet the other eligibility criteria or elects to no longer participate in a SHOP.
- Employers participating in a SHOP must provide information to their employees about the methods for selecting and enrolling in a QHP.
- Employers participating in a SHOP must provide employees hired outside of the initial or annual open enrollment period with a specified period to seek coverage in a QHP beginning on the first day of employment and information about the enrollment process.
- Employers participating in a SHOP must provide the SHOP with information about individuals or employees whose eligibility status for coverage purchased through the employer in the SHOP has changed.

HEALTH INSURANCE PREMIUM TAX CREDIT

Taxpayers with household incomes between 100% and 400% of the Federal Poverty Level (FPL) will be eligible for premium tax credits for coverage purchased through an Exchange if they are not eligible for other qualifying coverage. Tax credits are available to qualified individuals offered (but not enrolled in) employer-sponsored coverage if the coverage is "unaffordable" or does not provide "minimum value." Coverage is unaffordable if the premium for self-only coverage exceeds 9.5% of household income, and coverage does not provide minimum value if it fails to cover at least 60% of allowed costs.

Under PPACA's "play or pay" rules that go into effect in 2014, employers with at least 50 full-time equivalent employees that do not offer health coverage or offer health coverage that is either unaffordable or does not provide minimum value will face penalties if one or more of their full-time employees obtains a premium credit through an Exchange.

The Treasury Department's proposed guidance describes how the tax credit is calculated and provides some special rules, as described below.

Calculation of Credit

The guidance provides that the credit is generally equal to the difference between the premium for the "benchmark plan" and the taxpayer's "expected contribution." The benchmark plan is the second lowest-cost plan that would cover the family at the "silver" level of coverage. The expected contribution is a specified percentage of the taxpayer's household income, which goes up as income increases. It starts at 2% of income for families at 100% of the FPL and goes up to 9.5% of income for families at 400% of the FPL. The credit is then capped at the selected plan's premium, so that a taxpayer does not receive a credit larger than the amount paid for coverage.

Consider the following examples provided by the Treasury Department:

Example 1: Family of Four with Income of $50,000, Purchases Benchmark Plan

The premium tax credit is generally set based on the benchmark plan. The family's expected contribution is a percentage of the family's household income.

- Income as a Percentage of FPL: 224%
- Expected Family Contribution: $3,570
- Premium for Benchmark Plan: $9,000
- Premium Tax Credit: $5,430 ($9,000 - $3,570)
- Premium for Plan Family Chooses: $9,000
- Actual Family Contribution: $3,570

Example 2: Family of Four with Income of $50,000, Purchases Less Expensive Plan

If a family chooses a plan that is less expensive than the benchmark plan, the family will generally pay less, thereby creating an incentive to choose a less costly plan and reducing overall health care costs.

- Income as a Percentage of FPL: 224%
- Expected Family Contribution: $3,570
- Premium for Benchmark Plan: $9,000
- Premium Tax Credit: $5,430 ($9,000 - $3,570)
- Premium for Plan Family Chooses: $7,500
- Actual Family Contribution: $2,070 ($7,500 - $5,430)

Example 3: Family of Four with Income of $50,000, Parents are between the ages of 55 and 64

Because premiums are generally higher for older individuals, the premium tax credit also is higher for these individuals.

- Income as a Percentage of FPL: 224%
- Expected Family Contribution: $3,570
- Premium for Benchmark Plan: $14,000
- Premium Tax Credit: $10,430 ($14,000 - $3,570)
- Premium for Plan Family Chooses: $14,000
- Actual Family Contribution: $3,570

Special Rules

Advance payments of the premium tax credit can be made directly to an insurance company on a taxpayer's behalf. The advance payments are then reconciled against the taxpayer's premium tax credit on his or her income tax return. Repayments are subject to caps based on income levels.

In addition, the Treasury Department intends to issue more guidance defining "minimum value" in a way that preserves the existing system of employer-sponsored coverage, but that does not permit employers to avoid their responsibilities under PPACA. For purposes of applying the employer responsibility provisions, the Treasury Department also anticipates that future guidance will provide a safe harbor permitting employers to base the affordability calculation on wages that they pay to employees, rather than on employees' household income.

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EXPANDED ACCESS TO COVERAGE - MEDICAID, CHIP AND EXCHANGES

The proposed guidance expands and simplifies Medicaid eligibility and encourages a seamless system of affordable health coverage by linking Medicaid and CHIP with the Exchanges. It also includes some options for states to access new federal funding associated with expanded Medicaid eligibility. For example, the guidance proposes to:

- Expand Medicaid coverage to adults with incomes up to 133% of the FPL with new federal funding matching rates;
- Replace complex Medicaid and CHIP eligibility rules with simple income-based rules and systems for processing applications; and
- Provide a high degree of coordination between Medicaid, CHIP and the Exchanges.

Source: Departments of Health and Human Services and Treasury