

## Washington State Legislature



# Memo

**To:** Members of the Joint Select Committee on Health Reform Implementation  
**From:** Mich'l Needham, Senate Committee Services and Jim Morishima, Office of Program Research  
**Date:** 10/10/2011  
**Re:** Follow-up from September 28: Summary of selected federal rules

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Members of the Joint Select Committee on Health Reform Implementation,

At the meeting on September 28 in Spokane, several of you asked us for more information on the proposed federal rules implementing federal health care reform. As you can imagine, there are a plethora of rules on the subject. Attached to this e-mail are links to a couple of Robert Wood Johnson Foundation reports summarizing the rules relevant to the Joint Select Committee on Health Reform Implementation's work. Also, attached to this e-mail are links and PDFs containing the actual text of selected proposed rules. Please let staff know if you have any questions about any of these documents.

### **I. Robert Wood Johnson Foundation (RWJF) Reports:**

#### **A. Overview and Analysis of Exchange, Medicaid and IRS Regulations**

**Summary** (taken from the RWJF web site): This report analyzes three federal draft regulations that, taken together, offer new insight into how consumers and employees of small businesses will obtain health insurance across the continuum of coverage options proposed in the Patient Protection and Affordable Care Act (ACA).

Two of the regulations, issued by the U.S. Department of Health and Human Services (HHS), focus on Medicaid and Children's Health Insurance Program (CHIP) eligibility and enrollment procedures, as well as eligibility for exchanges, insurance affordability programs and Qualified Health Plans. The third proposed rule, issued by the Internal Revenue Service, provides guidance on determining eligibility for and calculating the amount of premium tax credits offered through the exchange. The regulations provide a new level of detail that will inform state planning efforts; guide the design and implementation of business processes, IT and administrative systems; and, ultimately, impact consumer experience with state exchanges and Medicaid.

<http://www.rwjf.org/files/research/72795manattregulations20110902.pdf>

#### **B. HHS Proposed Rules on Exchange Implementation Requirements**

**Summary** (taken from the RWJF web site): This report highlights the provisions that will impact state planning and implementation of exchanges. The report examines the aspects of the HHS proposed rules that provide more detail on the Small Business Health Options Program (SHOP), enrollment periods and effective dates in the individual market, and the exchange establishment process and criteria. This brief discusses the regulations and commentary that clarify the ACA or provides new insight into the collective thinking dominating the discussion on exchanges.

<http://www.rwjf.org/files/research/20110812manattanalysis.pdf>

## **C. Analysis of HHS Proposed Rules on Reinsurance, Risk Corridors and Risk Adjustment**

**Summary** (taken from the RWJF web site): This brief examines the proposed rules that apply standards for reinsurance, risk corridors and risk adjustment. The proposed rules apply standards in order to lessen the financial risk issuers and state health benefit exchanges face under the ACA and to mitigate the impact of adverse selection. The intention is for issuers to compete for customers based on cost and quality, rather than attracting the healthiest, lowest cost enrollees.

<http://www.rwjf.org/files/research/72682hhswakelystatenetwork201109.pdf>

## **II. Actual Text of the Proposed Federal Rules**

### **A. Text of the HHS Proposed Rules on the Establishment of Exchanges and Qualified Health Plans**

**Summary** (taken from the text of the proposed rule): This proposed rule would implement the new Affordable Insurance Exchanges (“Exchanges”), consistent with title I of the Patient Protection and Affordable Care Act of 2010 (Pub. L. 111–148) as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152), referred to collectively as the Affordable Care Act. The Exchanges will provide competitive marketplaces for individuals and small employers to directly compare available private health insurance options on the basis of price, quality, and other factors. The Exchanges, which will become operational by January 1, 2014, will help enhance competition in the health insurance market, improve choice of affordable health insurance, and give small businesses the same purchasing clout as large businesses.

<http://www.regulations.gov/#!documentDetail;D=HHS-OS-2011-0020-0001>

### **B. Text of the HHS Proposed Rules on Exchange Eligibility**

**Summary** (taken from the text of the proposed rule): This proposed rule would implement certain functions of the new Affordable Insurance Exchanges (“Exchanges”), consistent with title I of the Patient Protection and Affordable Care Act of 2010, as amended by the Health Care and Education Reconciliation Act of 2010, referred to collectively as the Affordable Care Act. The Exchanges will provide competitive marketplaces for individuals and small employers to directly compare available private health insurance options on the basis of price, quality, and other factors. The Exchanges, which will become operational by January 1, 2014, will help enhance competition in the health insurance market, improve choice of affordable health insurance, and give small businesses the same purchasing clout as large businesses. The specific Exchange functions proposed in this rule include: Eligibility determinations for Exchange participation and insurance affordability programs and standards for employer participation in SHOP.

<http://www.regulations.gov/#!documentDetail;D=HHS-OS-2011-0024-0001>

## **C. Text of the HHS Proposed Rules on Medicaid Eligibility**

**Summary** (taken from the text of the proposed rule): This proposed rule would implement provisions of the Patient Protection and Affordable Care Act of 2010 and the Health Care and Education Reconciliation Act of 2010 (collectively referred to as the Affordable Care Act). The Affordable Care Act expands access to health insurance through improvements in Medicaid, the establishment of Affordable Insurance Exchanges (“Exchanges”), and coordination between Medicaid, the Children’s Health Insurance Program (CHIP), and Exchanges. This proposed rule would implement sections of the Affordable Care Act related to Medicaid and CHIP eligibility, enrollment simplification, and coordination.

In addition, this proposed rule also sets out the increased Federal Medical Assistance Percentage (FMAP) rates and the related conditions and requirements that will be available for State medical assistance expenditures relating to “newly eligible” individuals and certain medical assistance expenditures in “expansion States” beginning January 1, 2014, including a proposal of three alternative

methodologies to use for purposes of applying the appropriate FMAP for expenditures in accordance with section 2001 of the Affordable Care Act.

<http://www.regulations.gov/#!documentDetail;D=CMS-2011-0139-0002>

#### **D. Text of the HHS Proposed Rules on Reinsurance, Risk Corridors, and Risk Adjustment**

**Summary** (taken from the text of the proposed rule): This proposed rule would implement standards for States related to reinsurance and risk adjustment, and for health insurance issuers related to reinsurance, risk corridors, and risk adjustment consistent with title I of the Patient Protection and Affordable Care Act as amended by the Health Care and Education Reconciliation Act of 2010, referred to collectively as the Affordable Care Act. These programs will mitigate the impact of potential adverse selection and stabilize premiums in the individual and small group markets as insurance reforms and the Affordable Insurance Exchanges (“Exchanges”) are implemented, starting in 2014. The transitional State-based reinsurance program serves to reduce the uncertainty of insurance risk in the individual market by making payments for high-cost cases. The temporary Federally-administered risk corridor program serves to protect against uncertainty in the Exchange by limiting the extent of issuer losses (and gains). On an ongoing basis, the State-based risk adjustment program is intended to provide adequate payments to health insurance issuers that attract high-risk populations (such as individuals with chronic conditions).

<http://www.regulations.gov/#!documentDetail;D=HHS-OS-2011-0022-0001>

#### **E. Text of the IRS Proposed Rules on Premium Tax Credits**

**Summary** (taken from the text of the proposed rule): This document contains proposed regulations relating to the health insurance premium tax credit enacted by the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010, as amended by the Medicare and Medicaid Extenders Act of 2010, the Comprehensive 1099 Taxpayer Protection and Repayment of Exchange Subsidy Overpayments Act of 2011, and the Department of Defense and Full-Year Continuing Appropriations Act, 2011. These proposed regulations provide guidance to individuals who enroll in qualified health plans through Affordable Insurance Exchanges and claim the premium tax credit, and to Exchanges that make qualified health plans available to individuals and employers.

<http://www.regulations.gov/#!documentDetail;D=IRS-2011-0024-0001>