

PUBLICATION

CCIIO Releases Federally-Facilitated Exchange Guidance

Authors: Sheila P. Burke, Alisa L. Chestler

May 18, 2012

Until the Supreme Court rules otherwise, the Affordable Care Act (ACA) requires each state to implement a Health Insurance Exchange for the sale of individual and small group insurance plans by January 1, 2014. If a state chooses not to establish an Exchange, the U.S. Department of Health and Human Services (HHS) will implement a Federally-Facilitated Exchange (FFE) for the state or will work with the state to create a Federal-State Partnership Exchange (Partnership Exchange). With enrollment beginning October 1, 2013, states increasingly face a number of decisions associated with their Exchanges. By January 1, 2013, the Secretary of HHS will determine whether a state will have an Exchange operable in time to meet certain deadlines.

In March 2012, HHS released a final rule and interim final rule regarding the implementation of state Exchanges (the State Exchange Rule). The State Exchange Rule focused exclusively on the state-run exchanges and provided little guidance on FFEs or Partnership Exchanges. (Comments on the State Exchange Rule were due May 11, 2012.) ACA directed the Secretary to establish and operate an FFE in any state that does not elect to operate a state Exchange. In an attempt to find "middle ground," HHS also stated that it will allow states to form a Partnership Exchange whereby that state will partner with HHS to run an Exchange.

On May 16, 2012, the Center for Consumer Information and Insurance Oversight (CCIIO) issued the General Guidance of Federally-Facilitated Exchanges (the Guidance) on how both the FFEs and Partnership Exchanges will operate. Additionally, CCIIO provided the Draft Blueprint for Approval of Affordable State-based and State Partnership Insurance Exchanges (the Draft Blueprint) providing very general procedural information on how a state will declare its intent with respect to the three Exchange models, state-run, Partnership Exchange or FFE. It is notable that both documents were not released as regulations. CCIIO Director Steve Larsen noted on a teleconference announcing the Guidance and Draft Blueprint that CCIIO believes the State Exchange Rule contained all the legal requirements of an Exchange and it was unnecessary to formalize the interpretation or workings of the FFE.

The Guidance describes the general approach HHS will take with regards to implementing and operating FFEs and focuses on the major business functions where there is no state partnership. The four main categories are (1) plan management, (2) accreditation and quality reporting, (3) eligibility and enrollment in the individual market and (4) key features of the Federally-Facilitated Small Health Options Program. The Guidance makes clear that FFEs will also regulate in areas traditionally exclusively presided over by state Insurance Departments. For example, any insurer who wishes to offer a Qualified Health Plan (QHP) through the FFE must meet both applicable state requirements as well as any QHP certification standards as set by the FFE.

HHS articulated four "guiding principles" for FFEs based on comments received by stakeholders: (1) commitment to consumers - consumer access to quality, affordable healthcare; (2) market parity - harmonize market requirements inside and outside an FFE; (3) leveraging the traditional state role - capitalizing on existing state policies capabilities and infrastructure; and (4) engagement with states and other stakeholders.

The Guidance encourages the states to partner with HHS in performing a number of functions, including consumer support and outreach. In the absence of such partnership, HHS intends to perform these duties for

that state. This would entail establishing the ACA-mandated Navigator program that awards grants to qualified entities to assist consumers and small businesses in obtaining health insurance coverage. Furthermore, the Guidance notes that HHS "expects" licensed agents and brokers will continue to assist consumers in accessing insurance and will work with them to promote enrollment through the Exchanges.

The Guidance indicates that the federal government intends to support the operations of the FFE by developing and implementing a system to calculate and collect user fees from participating issuers. The details on these payments is due to be released in Fall 2012.

The Draft Blueprint, which accompanied the Guidance, describes in some detail the responsibilities to be borne by the states and the federal government depending on the type of Exchange that is chosen. It sets forth the process for declaring the type of Exchange model a state intends to pursue. For those states intending to operate a state-run exchange or a Partnership Exchange, they must submit a complete Exchange Blueprint no later than 30 business days prior to the required approval date of January 1, 2013 (November 16, 2012). The Draft Blueprint is made up of two parts: a declaration and an Exchange application. Those states that do not intend to operate an Exchange are invited to submit a declaration letter but do not need to submit an application. The November timeline is notable in that it would clearly be required after (1) the Supreme Court is expected to issue a decision; and/or (2) the general elections for both the President of the United States and federal Congressional delegations.

If you have questions about the exchanges or the CCIIO Guidelines, please contact any of the attorneys and public policy advisers in our Insurance Regulatory or Health Law Practice Groups.