



## Health Care Reform Update



### **IMPORTANT NOTICE REGARDING HEALTHCARE REFORM** **Update #10** **March, 2013**

#### **HHS Finalizes Regulations Implementing Health Insurance Market Reforms**

The Department of Health and Human Services (HHS) issued final regulations on health care reform market rules regarding premium rates and review, risk pooling, guaranteed availability/renewability and catastrophic plans. The final regulations generally apply to insurers offering individual and non-grandfathered small group market health insurance both inside and outside the health insurance exchanges beginning in 2014. For the most part, the final regulations adopt the provisions that were initially proposed in November, 2012.

While the final regulations are primarily of interest to insurers, the rules which regulate risk pooling and rate setting will have impact on the plans that will be made available inside and outside of the exchanges, especially with regard to how much they will cost.

Below are some highlights we found relevant to plan sponsors:

#### **Rating Factors**

The final list of health insurance rating factors, family size, geography, age and tobacco, use will begin to apply to the individual and small group market policies effective January 1, 2014. Also note these same rating factors will apply to large employers starting in 2017, but only for large group employers who purchase coverage from the exchange in states where the exchanges are opened to large employers.

#### **Family Size**

Premiums for family coverage are to be developed by adding up the rates of covered family members, but insurers are limited to include no more than the three oldest "covered children" under age 21. HHS feels this method will help mitigate premium increases for larger families. The regulations do leave it up to states to decide the family members that must be included on a family policy, despite comments urging HHS to adopt a broad definition.

#### **Geography**

States may establish geographic rating areas based on specific geographic divisions, (counties or zip codes), They must be applied uniformly within a market and not vary by product. The standards have been modified in the final regulations to provide more flexibility to the states.

#### **Age**

The age bands will remain unchanged from the initial proposed three bands;

- Children under age 21 years old
- Adults 21 to 63 years old,
- Adults age 64 and older

#### **Tobacco**

The final regulations adopt the initial proposed requirement that insurers in the small group market can utilize a higher rating factor for a tobacco user, however, only when the tobacco user can avoid paying the



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higher rating by participating in a wellness program. The final regulations do add a definition (described as “transitional”), which includes legal use (other than religious or ceremonial) of any tobacco product on average four or more times per week within no longer than the last six months. States may increase the frequency of use and shorten the look-back period if they choose. If an enrollee is found to have reported false information about tobacco use, insurers may apply the tobacco rating factor retroactively; but coverage may not be denied or rescinded.

#### **Guaranteed Availability and Renewability**

There are some changes in these rules that will be of particular interest to employers in the small group market.

#### **Minimum Participation/Coverage**

In a significant change from the proposed regulations, the final regulations provide that insurers cannot deny coverage to small employers for failure to satisfy minimum participation or contribution requirements (i.e., coverage is guaranteed available). But the final regulations continue to allow an insurer to refuse to renew a group policy in the small group market if the employer fails to satisfy an employer contribution or group participation rule under applicable state law (i.e., coverage is not guaranteed renewable).

#### **Association Plans**

The final regulations do not allow insurers to limit coverage sold through bona fide associations only to the association members, although there is a statutory exception that allows insurers to refuse to renew coverage sold through bona fide associations to a non-member.

#### **Open and Special Enrollment**

The small group market generally will have a continuous open enrollment. To address adverse selection concerns, enrollment for small employers that fail to meet minimum participation or minimum coverage requirements may be limited to a restricted open enrollment period (November 15 through December 15). The regulations provide a one-time open enrollment period for individuals with a non-calendar-year plan to transition to a calendar-year plan on their renewal date in 2014. The final regulations also adopt additional triggers for “limited” open enrollment periods in the individual market that are equivalent to the exchange special enrollment periods (e.g., an individual and any dependent losing minimum essential coverage other than because of a failure to pay premiums timely). The final regulations establish 60-day special enrollment periods in the individual market but 30-day special enrollment periods in the small group market.

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