



TOPIC: **HHS Issues Final ACA Regulations – Establishment of Exchanges and Qualified Health Plans; Exchange Standards for Employers**

EXECUTIVE SUMMARY: On March 12, 2012, the Department of Health and Human Services (HHS) released a Final Rule implementing the Health Insurance Exchanges established under the Affordable Care Act. The final Rule sets forth the minimum federal standards for State Health Insurance Exchanges, including standards related to eligibility and enrollment; describes how health insurance issuers can participate in an Exchange and offer qualified health plans (QHPs); and explains how employers can purchase coverage in the state small business Exchanges (SHOP). The final Rule is similar to a proposed rule published in the summer of 2011. While this is a Final Rule, the guidance specifically states that further guidance will be issued regarding multiemployer and church plans. This issue of *Multi-Elert* will discuss this pronouncement.

PURPOSE: **INFORMATIONAL**

CATEGORY: **REGULATORY FINAL REGULATIONS**

ISSUER: **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

TARGET AUDIENCE: **HEALTH AND WELFARE FUND TRUSTEES AND PROFESSIONAL ADVISORS**

FORWARD COMMENTS TO: **Multi-Elert@nccmp.org**

REFERENCE: **VOL.XII, ISSUE 1**

FOR ADDITIONAL BACKGROUND SEE: **DEPARTMENT OF HEALTH AND HUMAN SERVICES
45 CFR Parts 155, 156, and 157, [CMS-9989-F]
RIN 0938-AQ67 - Patient Protection and Affordable Care Act;
Establishment of Exchanges and Qualified Health Plans;
Exchange Standards for Employers**

PASTE THIS LINK: **<http://cciio.cms.gov/resources/regulations/index.html#hie>**

CLICK ON: **March 12, 2012 - CMS-9989-F: Establishment of Exchanges and Qualified Health Plans; Exchange Standards for Employers**

HHS ISSUES “FINAL” EXCHANGE RULES, BUT PROMISES FURTHER GUIDANCE ON MULTIEMPLOYER PLAN ISSUES

On March 12, 2012, the Department of Health and Human Services (HHS) released a final Rule implementing the Health Insurance Exchanges established under the Affordable Care Act.¹ The final Rule sets forth the minimum federal standards for State Health Insurance Exchanges, including standards related to eligibility and enrollment; describes how health insurance issuers can participate in an Exchange and offer qualified health plans (QHPs); and explains how employers can purchase coverage in the state small business Exchanges (SHOP). The final Rule is similar to a proposed rule published in the summer of 2011.

Beginning January 1, 2014, states must establish Exchanges to provide health plan options in both the individual and small group markets. Exchanges serve as Internet gateways through which individuals purchase health coverage and can apply for Medicaid or the federal Premium Assistance Tax Credit. Exchanges must establish standards for the health plans offered through them, based on both federal guidelines for actuarial value and the state’s determination of a benchmark plan for “essential benefits.”

The final Exchange Rule provides only limited information about the interaction of multiemployer plans with the state Exchanges. However, the preamble to the final Rule, which summarizes the Department’s approach and its response to comments on the proposed rule, states in multiple sections that the Federal agencies intend to address our concerns about multiemployer plans in future guidance.

In the absence of a complete treatment of the issues raised by the NCCMP, it is difficult to identify the impact of the final Rule on multiemployer plans. Where multiemployer plans are addressed, the Rule provides the following vague information.

1. ***Purchasing coverage in the SHOP Exchange:*** The NCCMP requested that the definition of “qualified employer” include a multiemployer plan, and that a “qualified employee” include a participant in a multiemployer plan, so that a multiemployer plan could purchase coverage in a SHOP Exchange on behalf of its participants. HHS states that it does not think that the law supports the suggested changes in the definitions. Consequently, it would appear that multiemployer plans could not purchase coverage in the SHOP exchange in the same manner that an employer could (see page 19 of the regulations).

However, later in the Rule, HHS notes that a comment requested additional guidance as to multiemployer plans purchasing coverage through the SHOP, particularly with regard to determining the work site, establishing eligibility and enrollment procedures, billing and premium collection, and other administrative procedures. In response to this comment, HHS states that multiemployer plans can play a role as an aggregator of premium contributions and an arranger of coverage (see page 339 of the regulation). In both sections of the rule, HHS indicates that future guidance will address the role of multiemployer plans.

2. ***Being offered on the Exchange:*** HHS states that a small number of commenters suggested that “Taft-Hartley” plans should be available through a State Exchange. In

¹ http://www.ofr.gov/OFRUpload/OFRData/2012-06125_PI.pdf

response, HHS declined to expand the definition of health plan to include multiemployer plans, and stated that the standards for participation in an Exchange are equally applicable to any health insurance issuer seeking certification of health plans as QHPs. Consequently, it appears that a “Taft-Hartley” plan could not be offered as an option on a State Exchange (see page 20 of the regulation).

In a different section of the Rule, HHS states that a multiemployer plan that qualifies as a QHP may offer coverage in a SHOP Exchange, but must follow rules applicable to all QHPs (see page 338 of the regulation) Elsewhere in the Rule, HHS also states that all QHPs must be offered by health insurance issuers that are subject to guaranteed issue, which means QHPs could not limit participation to certain groups, such as church plan participants or union members (see page 400 of the regulation). After all of these sections, HHS states that future guidance will address multiemployer plans.

STILL MORE QUESTIONS THAN ANSWERS:

Many issues of critical importance to multiemployer plans, including the premium assistance tax credit, the free-rider penalty, and the 90-day waiting period, were not addressed in this final Rule on Exchanges. Future guidance on these issues will come from the Treasury Department or from the three agencies – DOL, HHS and Treasury – together.

The NCCMP has requested and will continue to request that the regulations concerning the Affordable Care Act provide necessary flexibility to allow the continued operation of multiemployer plans. This includes providing multiemployer plans with access to premium assistance tax credits, allowing them to offer supplemental coverage, and allowing them a level playing field with respect to purchasing coverage in the SHOP Exchanges. We will continue to follow these issues and report to you as developments change.

Additional information on this topic and how multiemployer plans can be affected by the Affordable Care Act is available on the NCCMP website, which can be found at <http://www.nccmp.org/>.

We strive to ensure that the information contained in this and every issue of Multi-Elert is correct to the extent information is available. Nevertheless, the NCCMP does not offer legal advice. Plan fiduciaries should rely on their own attorneys and other professional advisors for advice on the meaning and application of any Federal laws or regulations to their plans.

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If you have questions about the NCCMP, or about this or other issues of Multi-Elert, please contact the NCCMP, by phone at (202) 737-5315 or by e-mail at nccmp@nccmp.org.
