LOCKE LORD® QUICK Study
Health Care Practice
August 17, 2011

Rulemaking Continues for Health Insurance Exchanges

By: Denise Hanna

Federal rulemaking for state-based health insurance exchanges (Exchanges) is in full swing. Just a month ago, the U.S. Department of Health and Human Services (HHS) released a proposed rule that would establish the federal standards for States electing to establish and operate an Exchange and for qualified health plans eligible to be offered on the Exchange. On August 12, HHS and the Internal Revenue Service (IRS) released three new proposed rules that, together, would establish a single, streamlined process for individuals and their families to determine if they are eligible to purchase Exchange health plans and the amount of any tax credits and cost-sharing reductions that would reduce their cost of coverage. The same application process, using the same income and other criteria, would identify individuals eligible for Medicaid under the new rules that take effect in 2014.

Eligibility for Exchange Coverage and Federal Subsidies

Under the Eligibility Rule, an Exchange would determine whether individuals and families are eligible: 1) to be enrolled in qualified health plans offered on the Exchange; and 2) to participate in any "insurance affordable programs" created under the Affordable Care Act. In general, to be eligible for Exchange coverage, an individual must be a citizen or national of the United States who resides in the service area of the Exchange, and is not incarcerated. Family members who live outside of the service area may opt to purchase coverage from an Exchange operating where they reside. The application for Exchange coverage also would seek income information and to determine the availability of employer-sponsored health coverage to the applicant. This allows the Exchange, upon the applicant's request, to concurrently determine if the applicant and his/her family are eligible for premium tax credits, cost-sharing reductions, Medicaid or CHIP or, if available, a state-established Basic Health Program — all of which are now referred to as "insurance affordability programs."

The primary taxpayer's household income must be within the range of 100 - 400 percent of the federal poverty level (FPL) to be eligible for premium tax credits which are advanced directly to the health insurer. In addition, an applicant for federal tax credits must not be eligible (whether or not enrolled) for employer-sponsored coverage that satisfies the Affordable Care Act's minimum essential benefit requirements and provides minimum value (*i.e.*, the insurer responsible for at least 60 percent of the plan's benefit costs), unless such coverage is considered unaffordable. Unaffordable coverage requires the applicant to contribute more than 9.5 percent of his/her modified adjusted gross income (MAGI) to the premium costs for the employer-sponsored coverage. An applicant also would be ineligible for federal tax credits if the applicant is eligible for a government-sponsored health plan such as Medicaid, CHIP or the Basic Health Plan.

Locke Lord QuickStudy is provided solely for educational and informational purposes. It is not intended to constitute legal advice or to create an attorney-client relationship. Readers should obtain legal advice specific to their enterprise and circumstances in connection with each of the topics addressed. If you would like to be removed from our mailing list, please contact us at either unsubscribe@lockelord.com or Locke Lord Bissell & Liddell LLP, 111 South Wacker Drive, Chicago, Illinois 60606, Attention: Marketing. If we are not so advised, you will continue to receive the *Locke Lord QuickStudy. Attorney Advertising*

© 2011 Locke Lord Bissell & Liddell LLP

To qualify for direct subsidies to reduce their out-of-pocket cost-sharing obligations under an Exchange plan, Exchange applicants must satisfy the requirements applicable to tax credits and have MAGI limited to 100 - 250 percent of the FPL.

Eligibility for Medicaid in 2014

The Exchange must conduct screening for Medicaid and CHIP eligibility for all applicants requesting a determination of eligibility for any insurance affordable programs, and must transmit to state agencies the income and verification information for individuals who might qualify for public programs. The Medicaid Program Rule addresses the expansion of Medicaid coverage in 2014 by simplifying the eligibility rules and providing an enhanced federal match for individuals who are eligible for Medicaid only by virtue of the new rules. Beginning in 2014, most individuals (*i.e.*, U.S. citizens and legal immigrants) under age 65 whose household incomes are at or below 133 percent of FPL, will be eligible for Medicaid. Children (under age 19) and, in some states, pregnant mothers living in households with higher incomes, also will be eligible.

Pursuant to the Medicaid Program Rule, states would re-categorize all existing Medicaid-eligible individuals into the following three groups, converting all state financial requirements to a percentage of MAGI: 1) Parents and other adult caretakers of dependent children; 2) pregnant women; and 3) children under 19 years old. The *newly eligible* for Medicaid under the Affordable Care Act would be comprised of: 1) adults falling into any of the foregoing categories whose incomes are greater than the state-law MAGI limit but less than or equal to 133 percent of FPL; and 2) childless adults with incomes at or below 133 percent of FPL. For these individuals who become newly eligible for Medicaid in 2014, the federal government's matching share would be 100 percent in calendar years 2014 through 2016, and gradually decline to 90 percent by 2020 where it will remain indefinitely.

Calculation of Premium Tax Credits

The Premium Tax Credit Rule would establish the rules for determining whether an individual satisfies the income and other requirements for advance credit payments and the calculation of such payments. In all cases, the tax credit amount would be computed as a portion of the premium cost for a benchmark plan (not necessarily, the applicant's actual coverage), defined as the second lowest cost silver plan offered on the Exchange. The Premium Tax Credit Rule also details how the Exchange should determine the affordability of alternative employer-sponsored coverage available to an applicant for tax credits.

The latest proposed Exchange rules further inform states of the specific functions that Exchanges must perform and help consumers understand how they will access and qualify for the new health insurance options created by the Affordable Care Act. Ironically, these proposals were released on the same day that the 11th Circuit dealt a blow to the Affordable Care Act by striking down the individual mandate as unconstitutional, but leaving the remainder of the law intact. Locke Lord continues to follow health reform developments. Please contact your Locke Lord professional if you have questions about the Exchange rules or other health reform developments.

For more information on the matters discussed in this *Locke Lord QuickStudy*, please contact the author:

Denise Hanna | T: 202-220-6992 | dhanna@lockelord.com