FEDERAL HEALTHCARE REFORM:

PATIENT PROTECTION AND AFFORDABLE CARE ACT
SUMMARY OF PROPOSED EXCHANGE REGULATION

Blue Cross Blue Shield of Rhode Island

In July, the U.S. Department of Health & Human Services ("HHS") issued proposed regulations on the Establishment of Exchanges and Qualified Health Plans. In August, HHS proposed regulations on Exchange Functions in the Individual Market/Eligibility as well on Medicaid Eligibility, and the Internal Revenue Service and Treasury Department issued a proposed regulation on the Premium Tax Credit. All are open for public comment until October 31st. The final regulations might be published approximately 3 to 6 months later.

This summary provides an overview of the key provisions of the proposed regulations ("proposed regulation" refers to the regulation on Exchange Establishment unless otherwise noted).

Summary:

An Exchange must facilitate purchase of health insurance coverage in Qualified Health Plans (products sold on the Exchange) and provide for the establishment of a Small Business Health Options Program ("SHOP"). The proposed regulation provides minimum standards for:

- States to establish Exchanges;
- Minimum Exchange functions;
- Eligibility determinations;
- Enrollment periods;
- Minimum SHOP functions;
- Certification of Qualified Health Plans (products sold in the Exchange); and
- Health Plan Quality Improvement.

The proposed regulation does <u>not</u> address:

- Actuarial value calculation, Essential health benefit definition, and other benefit design requirements; and
- Standards for health insurers selling through the Exchange related to quality.

Establishing the Exchange:

The proposed regulation provides that States must receive approval from HHS in writing prior to January 1, 2013 in order to operate an Exchange. Approval will be based upon the State's ability to carry out the required functions of an Exchange, ability to meet the information requirements of the law (e.g. submission of data to the IRS), agreement to operate a reinsurance program, and ability to cover the entire geographic area of the State.

HHS may grant an Exchange a conditional approval based on the level of work remaining to be completed during 2013. Also, a state may partner with HHS with some functions being conducted at the federal level.

State's must submit an Exchange Plan describing how it will meet the requirements above and demonstrate operational readiness in order to obtain HHS approval. If the State is seeking initial approval after January 1, 2013, the Exchange Plan must be in effect for 12 months prior to the first effective date of coverage.

If a State is not approved by January 1, 2013, HHS is required by law to establish an Exchange in the State. States may establish an Exchange after that date, but must coordinate with HHS to transition the Exchange functions.

Exchange Governance:	The Exchange may be established as an independent State agency or a non-profit entity established by the State. The State may elect to allow the Exchange to contract with third parties (which cannot be a health insurer or under common control with a health insurer) to carry out the responsibilities of the Exchange. The Exchange must have a clearly defined governing board that meets certain requirements for transparency (e.g. public meetings), represents consumer interests, has standards for conflicts of interest (e.g. the board cannot have a majority of members with conflicts such as being a broker or representative of an insurer), and must have members with relevant experience in healthcare. The Exchange may have independent governance for the SHOP. Note, the Exchange board is not prohibited from including representatives of insurers, brokers, and healthcare providers but a State may choose to exclude these groups from the board. The Exchange must regularly consult, on an on-going basis, with various stakeholders including insurers.
Regional Exchanges:	Two or more States (not necessarily contiguous) may establish a regional exchange upon approval of HHS. The regional exchange must have a single Exchange Plan.
Funding:	The Exchange cannot use federal funds for operation as of January 1, 2015. The Exchange may be funded through an assessment or user fee on insurers participating in the Exchange or through other mechanisms determined by the State. Any fees must be announced to participating insurers prior to the plan year.
Rate Justification:	The proposed regulation provides that an insurer must submit justification for any rate increase on a QHP to the Exchange prior to implementing the rate increase and that the Exchange must ensure that the insurer posts the justification on its website. Rate increases (both inside and outside the Exchange) must be considered by the Exchange in deciding whether a QHP will be made available on the Exchange. Comments indicate that this is not intended to be an approval process or to duplicate the rate review conducted by the State.
Individual Exchange:	The proposed regulation provides some key clarifications regarding the function of the Exchange in the individual market. The Exchange must: • Allow premiums to be paid directly to the insurer; • Accept the applicant's selection of a Qualified Health Plan ("QHP"), notify the insurer and transmit information necessary to facilitate enrollment; and • Use a single streamlined application for eligibility determinations and enrollment in QHPs, premium tax credits and cost-sharing subsidies, and State programs (Medicaid, CHIP, and the Basic Health Plan (if adopted by the State)).
Individual Exchange Open Enrollment:	The proposed regulation clarifies that individuals can only enroll during one of the following enrollment periods (addressing concerns of adverse selection): *Initial Enrollment Period* – will run from October 1, 2013 through February 28, 2014. *Annual Open Enrollment Period* – Will run annually from October 15th through December 7th for coverage effective January 1st of the following year. *Special Enrollment Periods* – for individuals who have certain "triggering events" enrollment will be allowed throughout the year.

Individual Eligibility & Subsidies	According to the Eligibility rule, the individual must reside or intend to reside in the Exchange's service area (here, the state). *This rule suggests that family members living in different Exchange service areas might be eligible to enroll in those different Exchanges – this will require additional clarification.* An individual is responsible for providing the Exchange with updated information with respect to the eligibility standards for enrollment and the subsidy, and is to do so within 30 days. Individuals with income ranging from 100% - 400% of the Federal Poverty Level will be eligible for a subsidy for the cost of premiums. An individual with income between 100% and 250% is also eligible for a reduced cost sharing and must enroll in a silver-level plan. The Exchange will annually determine the individual's eligibility for these subsidies and the amount. Carriers will receive the premium assistance funds directly from the US Treasury (regulations on the cost-sharing program have not yet been released). Individuals receiving more than they are entitled to will be liable for the excess; it does not appear that the Treasury will seek to recoup payments from insurers.
Individual Exchange – Termination of Coverage:	The proposed regulation specifies the circumstances that allow an insurer to terminate coverage for an enrollee. Of particular interest is that an individual who is receiving advance payment of the premium tax credit cannot be terminated for nonpayment until after a grace period of at least 3 months.
SHOP Exchange:	The proposed regulation provides some key clarifications regarding the function of the SHOP. • Regarding employer/employee choice: o The SHOP Exchange must provide employers with a "consumer choice" option under which the employer could select a level of coverage and allow employees to pick any QHP at that level (*recall QHPs will be offered at four actuarial value levels: bronze, silver, gold, and platinum*). o The SHOP Exchange may also offer other options to employers. HHS envisions that these options for employers could include: (1) allow employees to choose any QHP at any level, (2) allow the employer to select specific levels from which an employee may choose a QHP, (3) allow employers to select specific QHPs from different levels, or (4) allow employers to select a single QHP to offer employees. • Provide premium aggregation by billing and collecting from an employer the total amount due from an employer for all employees and remitting payment to the insurer(s). • All SHOP QHPs must make rate changes at the same time. If the State elects to merge the individual and small group markets, the SHOP may allow a small group employee to elect any QHP in the individual market that meets the requirements for small group plans relating to deductibles, out of pocket maximums, and other coverage requirements.

SHOP Eligibility:	A small employer is eligible to participate in the SHOP if it offers coverage to all full time employees. For small employers with worksites in multiple states, they can either: • Purchase coverage for all of their employees through the SHOP of the State where its principal place of business is located (regardless of the employees location); or • Purchase coverage through the SHOPs in the States they are located, allowing their employees to participate in the SHOP in the State where his/her primary worksite is located.
SHOP Enrollment Periods:	The proposed regulation provides for a rolling enrollment period for small employers. Each plan year must be 12 months. There will be an annual employer election period as well as an annual open enrollment period for employees. Employees employed after the specified enrollment period will be eligible based on uniform standards adopted by the SHOP.
Expansion to Large Group:	States may not allow enrollment of large employers in the Exchange until at least 2017. At that time, a large group may only purchase in the Exchange if it agrees to make a QHP available to all full time employees.
Certification of Qualified Health Plans:	A QHP is the benefit plan (or product) offered through the Exchange. The proposed regulations provide some interesting insights into certification of QHPs. Specifically: • QHPs must be certified by the Exchange by October 1, 2013, and be recertified annually thereafter by September 15th. • Accreditation is required, but the Exchange will provide a uniform period after certification for a health insurer offering a QHP to become accredited.
Navigators:	Exchanges must establish a Navigator program through a grant process. Navigators are responsible for increasing public awareness and education about QHP choices (in an impartial manner). Navigators may be trade, industry or professional associations, community groups, chambers of commerce, unions, and licensed insurance brokers that can demonstrate existing relationships with employers and consumers that are likely to be eligible for coverage through the Exchange. Navigators will be responsible for conducting public education activities, distributing fair and impartial information about QHPs and subsidies, facilitating enrollment through the Exchange, referring individuals to state agencies for assistance, etc. Navigators cannot be insurers or receive consideration from any health insurer in connection with enrollment.
Reinsurance, Risk Adjusters and Risk Corridors:	HHS also issued proposed regulations for the implementation of the temporary reinsurance and risk corridor programs as well as the permanent (on-going) risk adjuster program on July 11, 2011. These programs are designed to mitigate the impact of adverse selection as PPACA is implemented and to stimulate competition. A separate Fact Sheet will be issued discussing the proposed regulations on these programs.
References to Proposed Regulations	Establishment http://www.gpo.gov/fdsys/pkg/FR-2011-07-15/pdf/2011-17610.pdf Eligibility http://www.gpo.gov/fdsys/pkg/FR-2011-08-17/pdf/2011-20776.pdf Premium Tax Credit http://www.gpo.gov/fdsys/pkg/FR-2011-08-17/pdf/2011-20728.pdf Medicaid Program http://www.gpo.gov/fdsys/pkg/FR-2011-08-17/pdf/2011-20756.pdf

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