



THE  
MELTZER  
GROUP

## Compliance Corner

December 3, 2013

### In This Issue:

- HHS Announces Delay of Online FF-SHOP Enrollment
- U.S. Supreme Court Accepts Review of Challenges to PPACA's Contraceptive Coverage Mandate
- HHS Issues Proposed Rules Related to Benefit and Payment Parameters
- More Guidance on Transition to PPACA-compliant Policies
- State Updates: HI, IL
- Acronyms Glossary

### Health Care Reform Updates

#### HHS Announces Delay of Online FF-SHOP Enrollment

On Nov. 27, 2013, HHS announced that the online enrollment feature in the federally facilitated Small Business Health Options Program (FF-SHOP) is delayed until November 2014. Small employers may still use [www.healthcare.gov](http://www.healthcare.gov) to view carriers and plan options. To enroll, the employer may contact an agent or broker and complete a paper application. As a reminder, a small employer wanting to claim the Small Business Health Care Tax Credit must purchase coverage through an exchange to continue to be eligible for that credit. HHS also announced that in order for FF-SHOP coverage to begin by Jan. 1, 2014, the enrollment application must be submitted by Dec. 23, 2013, which is extended from the previous deadline of Dec. 15, 2013.

[HHS Announcement](#)  
[CMS FAQs](#)

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#### U.S. Supreme Court Accepts Review of Challenges to PPACA's Contraceptive Coverage Mandate

On Nov. 28, 2013, the U.S. Supreme Court agreed to hear religious constitutional challenges to the PPACA requirement that employers provide health insurance that includes birth control and related medical services at zero cost sharing. As background, PPACA requires non-grandfathered, non-excepted group health plans to provide certain women's preventive services – including contraceptive coverage and services – without cost-sharing when services are delivered by in-network

providers. The contraceptive coverage requirement applied for plan years beginning on or after Aug. 1, 2012. The government did provide an exemption for qualifying religious employers, as well as a temporary safe harbor for non-exempt, nonprofit organizations with religious objections (for plan years beginning before Aug. 1, 2013). There have been many challenges to the contraceptive coverage mandate, claiming that the mandate violates the First Amendment of the Constitution (free exercise of religion) and the Religious Freedom Restoration Act (RFRA, which provides protection from governmental burden on a person's exercise of religion).

In agreeing to hear the challenges, the Supreme Court accepted appeals from the U.S. Courts of Appeals for the Third and Tenth Circuits. The employers in these cases are for-profit companies that do not qualify for the exemption available to qualifying religious employers or the temporary safe harbor for non-exempt, nonprofit organizations with religious objections. The Third and Tenth Circuits reached different conclusions on the First Amendment and RFRA challenges, paving the way for the Supreme Court to weigh in on the case. In doing so, the Supreme Court is expected to consider the religious rights claims of for-profit employers, and their individual business owners, under both the First Amendment and the RFRA. The Supreme Court will hear arguments this spring, with a decision coming most likely in early summer 2014.

## **Supreme Court Order Granting Petitions**

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## **HHS Issues Proposed Rules Related to Benefit and Payment Parameters**

On Nov. 25, 2013, HHS issued proposed rules related to benefit and payment parameters for 2015. Included in the proposed rules were the reinsurance fee rates for 2015 as well as information about the actuarial value (AV) calculator for 2015.

As background regarding the reinsurance fee, beginning in 2014, each state that operates a health insurance exchange is required to establish a temporary reinsurance program for the individual market, to which health insurers and group health plans are required to contribute. The reinsurance program will be in operation from 2014 through 2016, operating basically as insurance for insurers; that is, it will shift the risk of covering high expenses from the primary insurer to a reinsurer. Beginning in 2014, all health insurers and third-party administrators (referred to in the regulations as "contributing entities") must make contributions to support reinsurance payments to non-grandfathered plans of individual market insurers that cover high-cost individuals. HHS had previously established that the fee for 2014 would be \$63 per covered life. These proposed rules set the reinsurance fee at \$44 for 2015.

Also introduced in these proposed rules is a 2015 AV Calculator, with associated methodology. The proposed methodology and AV Calculator remain largely the same as the 2014 versions. However, some minor changes were made to increase functionality. These minor changes include allowing more plan designs (i.e., those with separate medical/drug deductibles and separate medical/drug maximum out-of-pocket limits) to use the AV Calculator and adjusting the way services are applied to deductibles (allowing services to be applied to the deductible first, and then copayments).

### **Fact Sheet**

### **Regulations**

### **Proposed 2015 AV Calculator**

### **Proposed 2015 AV Calculator Methodology**

### **Draft User Guide to Proposed 2015 AV Calculator**

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## More Guidance on Transition to PPACA-compliant Policies

On Nov. 21, 2013, CMS Director Cohen issued a bulletin and memo further explaining the department's Market Transition Policy previously announced on Nov. 14, 2013. See the Nov. 19, 2013, edition of *Compliance Corner* for background on this policy.

This most recent guidance provides standardized notices for insurers to use if the insurer is choosing to continue coverage into 2014 that would otherwise have been terminated or cancelled due to being out of compliance with certain mandated health care reform requirements going into effect beginning Jan. 1, 2014. The notices are only applicable to non-grandfathered plans renewed for policy years starting between Jan. 1, 2014, and Oct. 1, 2014, in the individual and small group markets. Further, in order for an insurance carrier to extend the policies under this transition policy, the state insurance commissioner must permit the continuation of such policies.

As of Dec. 2, 2013, the following states have determined that they will allow insurers to make the transition policy available to policyholders. Insurers may still choose to discontinue the pre-2014 policies if they wish. The states allowing the transition relief include: Florida, Hawaii, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Michigan, Nebraska, New Hampshire, New Jersey, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, South Dakota, Tennessee, Texas, Virginia and Wisconsin.

As of Dec. 2, 2013, the following states have determined that they will not allow insurers to make the transition policy available to policyholders. Insurers do not have the option of continuing pre-2014 policies due to the decision made by the state insurance commissioner in these states. The states not allowing the transition relief include: California, Connecticut, District of Columbia, Georgia, Indiana, Massachusetts, Minnesota, Nevada, New York, Oklahoma, Rhode Island, Vermont, Washington and West Virginia.

States not listed have not made a determination as of Dec. 2, 2013.

### Bulletin

## State Updates

### Hawaii

On Nov. 13, 2013, Gov. Abercrombie signed SB 1, the Hawaii Marriage Equality Act, into law. The new law grants same-sex couples the same rights, benefits, protections and responsibilities under state law that are granted to opposite-sex couples, including marriage. The law was effective Dec. 2, 2013. The state previously recognized same-sex reciprocal beneficiaries and civil unions. Those relationships will continue, with the partners having the option to convert the relationship to marriage.

Employers who sponsor a fully insured group policy, which is issued in Hawaii, will be required to offer coverage to same-sex spouses under the same terms and conditions as opposite-sex spouses. By contrast, a self-insured plan is generally exempt from state laws in this respect because ERISA generally pre-empts those state laws. We would caution, though, that the term "spouse" will be interpreted to include both same-sex spouses and opposite-sex spouses. So, if a summary plan description or plan document simply says that "spouses" are eligible for coverage (without reference to gender), then that will generally be interpreted to include same-sex spouses as eligible. Plan documents should be reviewed in that regard. It is important to

note that because federal law under the Defense of Marriage Act (DOMA) does not require a self-insured plan to define a spouse as a man or a woman, a plan can always be more generous.

The cost of coverage provided to a same-sex spouse under an employer-sponsored plan will be excluded from income for Hawaii state income tax purposes. The coverage should be tax advantaged in the same manner as it is for opposite-sex spouses. As a reminder, following the Supreme Court decision in *U.S. v. Windsor*, the cost of coverage for a same-sex spouse is also excludable from income on the federal level.

[SB 1, Hawaii Marriage Equality Act](#)  
[Hawaii Marriage Equality Act FAQs](#)  
[Press Release](#)

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## Illinois

On Nov. 20, 2013, Gov. Quinn signed SB 10, the Religious Freedom and Marriage Fairness Act, into law, making Illinois the 16th state to legalize same-sex marriage. Effective June 1, 2014, the new law grants same-sex spouses with equal status, benefits, protections, rights and responsibilities as opposite-sex spouses.

The state previously recognized same-sex civil unions. Those relationships will continue with the partners having the option to convert the relationship to marriage.

Employers who sponsor a fully insured group policy issued in Illinois will be required to offer coverage to same-sex spouses under the same terms and conditions as opposite-sex spouses. By contrast, a self-insured plan is generally exempt from state laws in this respect because ERISA generally pre-empts those state laws. We would caution, though, that the term “spouse” will be interpreted to include both same-sex spouses and opposite-sex spouses. So, if a summary plan description or plan document simply says that “spouses” are eligible for coverage (without reference to gender), then that will generally be interpreted to include same-sex spouses as eligible. Plan documents should be reviewed in that regard. It is important to note that because federal law under the Defense of Marriage Act (DOMA) does not require a self-insured plan to define a spouse as a man or a woman, a plan can always be more generous.

The cost of coverage provided to a same-sex spouse under an employer-sponsored plan will be excluded from income for Illinois state income tax purposes. The coverage should be tax advantaged in the same manner as it is for opposite-sex spouses. As a reminder, following the Supreme Court decision in *U.S. v. Windsor*, the cost of coverage for a same-sex spouse is also excludable from income on the federal level.

[SB 10](#)  
[Press Release](#)

## Frequently Asked Question

There is not an FAQ in this edition due to the Thanksgiving holiday. The next FAQ will be in the Dec. 17 *Compliance Corner*.

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## Acronyms Glossary

[Click here to view a glossary of commonly used acronyms.](#)

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