CMS Proposes New Regulation to Implement Health Insurance Exchanges Under the PPACA

The Centers for Medicare and Medicaid Services (CMS) recently proposed the Notice of Benefit and Payment Parameters (the Notice), which builds upon rules previously issued by CMS and provides further clarification regarding various aspects of the health insurance exchanges that are being implemented pursuant to the Patient Protection and Affordable Care Act (PPACA). The key aspects of the Notice are rules governing (i) premium-stabilization programs, (ii) advance payment of the premium tax credit and cost-sharing reductions for low- and moderate-income individuals, and (iii) user fees for federally facilitated exchanges (FFEs). The rules contained in the Notice are particularly relevant in Kansas and Missouri because neither state has chosen to set up its own exchange, meaning that the federal government will run the exchanges in both states. **PROVISIONS REGARDING PREMIUM-STABILIZATION PROGRAMS** *Permanent Risk Adjustment Program* The purpose of the permanent risk adjustment program is to provide increased payments to health insurance issuers that cover higher-risk populations (e.g., those with chronic conditions) and to reduce the incentives for issuers to avoid such higher-risk enrollees. The program seeks to effectuate this goal by transferring funds from issuers with lower-risk enrollees to issuers with higher-risk enrollees. The Notice outlines CMS's proposed risk-adjustment methodology that it will use when operating FFEs. The Notice also contains a proposed approach for validation of risk-adjustment data in order to instill confidence in the program. States that choose to run their own exchanges can propose a different risk-adjustment methodology. ***Transitional Reinsurance Program*** The transitional reinsurance program is a three-year program that seeks to provide health insurance issuers with greater payment stability as insurance market reforms are implemented. To achieve this goal, the program is intended to reduce the uncertainty of insurance risk in the individual market by partially offsetting the risk of high-cost enrollees. The program will be funded by contributions that the Department of Health and Human Services (HHS) will collect annually from all applicable health insurance issuers and group health plans. The Notice includes standards for calculating the amount of the contribution. The Notice also proposes uniform reinsurance payment parameters for this program. States will be allowed to supplement the federal reinsurance payment parameters, but these supplementary parameters must be paid for with additional state reinsurance collections or other state funds (rather than funds collected by HHS under the national contribution scheme discussed above). ***Temporary Risk Corridors Program*** The temporary risk corridors program is designed to protect qualified health plans against uncertainty in rate setting. To achieve this goal, the program creates a mechanism for sharing risk for allowable costs between the federal government and qualified health plan issuers. From 2014 through 2016, qualified health plan issuers with costs that are a certain percentage less than the issuers' costs projections will remit charges for a percentage of those savings to HHS, while qualified health plan issuers with costs greater than a certain percentage of cost projections will receive payments from HHS to offset a percentage of those losses. **PROVISIONS REGARDING ADVANCE PAYMENT OF THE PREMIUM TAX CREDIT AND COST-SHARING REDUCTION PROGRAMS** The PPACA provides for advance payment of the premium tax credit and cost-sharing reductions for eligible low- and moderate-income individuals. The goal is to assist eligible individuals with paying their premiums and thereby make coverage purchased on exchanges more affordable. CMS proposes to make advance payments of the premium tax credit to health insurance issuers on behalf of eligible individuals. In addition, CMS proposes that health insurance issuers provide cost-sharing reductions for eligible individuals at the point of service, with CMS directly reimbursing the issuers for those reductions. The statute contains detailed rules regarding eligibility for the premium tax credit and cost-sharing reduction programs. **PROVISIONS REGARDING USER FEES FOR FEDERALLY FACILITATED EXCHANGES** The PPACA contemplates that health insurance exchanges

will be self-sustaining entities. In order to achieve this goal, the PPACA contemplates exchanges charging assessments or user fees to participating health insurance issuers to generate funding to support the operation of the exchanges. In the Notice, CMS proposes a user fee for issuers participating in FFEs. For the 2014 benefit year, CMS proposes a monthly user fee equal to 3.5 percent of the monthly premium charged by the issuer. The fee is expected to align with fees that will be charged by state-run exchanges to sustain their operations.