

October 1, 2010

Submitted electronically at [www.regulations.gov](http://www.regulations.gov)

Centers for Medicare & Medicaid Services  
Department of Health and Human Services  
Room 445-G  
Hubert H. Humphrey Building  
200 Independence Ave, SW  
Washington, DC 20201  
Attention: OCIO-9989-NC

**RE: Planning and Establishment of State-Level Exchanges: Request for Comments Regarding Exchange-Related Provisions in Title I of the Patient Protection and Affordable Care Act**

To Whom It May Concern:

The National Council for Community Behavioral Healthcare (“National Council”) welcomes the opportunity to respond to your “Request for Comments” on the Planning and Establishment of State-Level Exchanges (“Exchanges”) as part of the Patient Protection and Affordable Care Act (“Affordable Care Act”). The National Council, a non-profit association representing over 1,700 community-based mental health and addiction providers, is dedicated to fostering clinical and operational innovation and promoting policies that ensure the more than 8 million low-income children, adults, and families our members serve have access to high quality services. Our community mental health and addiction organizations have more than 40 years of experience and expertise in providing a range of clinic-based services and recovery supports for millions of individuals with multiple chronic health problems.

Our member agencies are dedicated to helping consumers navigate often unclear, inconsistent, and confusing programs to help ensure their access to health insurance and services important to their mental and physical health. These regulations take an important step in establishing a system through which healthcare consumers can gain access to necessary care and enable healthcare providers to help consumers navigate the healthcare system more effectively.

Based on an analysis that we have commissioned, we estimate that there are currently 4.5 million uninsured Americans under 133% of the Federal Poverty level in need of mental health services who have not been able to obtain service due to access barriers and funding shortages. The establishment of State-Level Exchanges will expand access to health insurance as they

facilitate the purchase of “qualified health plans” (“QHP”) for these individuals. The National Council is concerned that low-income individuals do not have enough information about their rights, that barriers may deter them from utilizing the Exchange systems as they need and that States do not have proper mechanisms in place to educate the public and facilitate enrollment.

Furthermore, based on the difficulties our member agencies report, we are concerned, that people with mental illnesses or substance use disorders may have particular difficulty navigating the enrollment process.

The National Council welcomes the opportunity to comment in advance of future rulemaking on the Exchange programs and respond to the Department’s questions as outlined below.

## **B. Implementation Timeframes and Considerations**

### **2. What kinds of guidance or information would be helpful to States, plans, employers, consumers and other groups or sectors as they begin the planning process?**

It is important that the Department of Health and Human Services (“Department”) provides guidance to States and other interested parties or groups as they begin the planning process. The National Council would like to encourage the Department to consider the following suggestions.

States should be encouraged to reach out to stakeholders within their states to gather additional information on populations that may be at risk during the formation and operation of these Exchanges. For instance, individuals with disabilities, substance use and mental health issues face particular challenges when it comes to enrolling in the Exchanges. Outreach to substance use and mental health organizations, service providers and local interest groups would enable the state to implement an Exchange that is beneficial to many. These stakeholders can provide information to States as to how best to disseminate information about the Exchanges, remove barriers, and facilitate enrollment.

Examples of positive model programs that have shown success should be shared among the States. The start-up of the Massachusetts exchange may serve as a useful model for public education efforts conducted beyond traditional health care settings (such as ballparks) and for how quickly the ramp-up was before implementation of major elements of the law. The most successful strategies will include utilizing community-based groups and application assistors; working through schools and churches; creating trusted messengers (doctors, teachers); and developing effective media strategies (such as working with ethnic media).

## **C. State Exchange Operations**

### **1. What are some of the major considerations for States in planning for and establishing Exchanges?**

States must remain cognizant of the challenges and difficulties that may be experienced by persons with disabilities, mental health concerns, lower socio-economic resources and substance use issues in regards to their enrollment in the Exchanges.

History has shown us that there have been difficulties in the past with setting up national programs of assistance (Medicaid Part D) and States would benefit from learning from these issues. Currently, there is a disproportionate share of individuals with severe mental illness (SMI) who do not have insurance. These individuals may have access problems due to a lack of knowledge about the program as well as the potential complexity of the enrollment and application process. It is essential that States provide training to anyone who is responsible for enrollment as to the “best practices” of working with these populations.

States should be encouraged to partner with mental health and substance use treatment organizations in order to distribute educational materials and support individuals in the enrollment process in order to ensure an easy transition. However, it is important that the States provide some reimbursement to community based institutions that are helping individuals to fill out their forms, learn about the Exchange, etc. Providers can be utilized as a conduit of service as they are the first line of contact with these individuals and can provide valuable information regarding their clientele. Community based institutions can also provide information about the Exchanges to the individuals who are looking into enrolling.

### **8. What specific planning steps should the Exchanges undertake to ensure that they are accessible and available to individuals from diverse cultural origins and those with low literacy, disabilities and limited English proficiency?**

Exchange planners/designers should create and utilize an Advisory Group as a regular and integral resource to provide input to design considerations, get feedback on proposals and share information with people with disabilities. This group should include individuals with disabilities, family members and caregivers, and include representatives of all disability groups – sensory, physical, mental and cognitive. The Advisory Group must have real ability to influence decisions.

Exchange planners/designers should also meet with members of state organizations, non-profit associations, advocates and other important stakeholders who are devoted to furthering the rights of those populations in order to inform the process and determine those issues. Advice should be solicited from providers of services as to “best practices” for reaching out to these populations. Additional support for these community based programs is necessary to enable them to provide the resources to these populations in order to facilitate their enrollments in the Exchanges.

All communications from the Exchange -- web-based information, advertisements, information kiosks, printed material and brochures, information lines, etc, -- must meet the federal government's Section 508 of the Rehabilitation Act standards for electronic and information technology and the ADA. Information about the Section 508 standards can be located at: <http://www.section508.gov/> . The goal must be reaching the highest level of accessibility – not just in the roll out of the exchanges, but as part of the full time practice of these marketplaces.

Simple application forms and procedures should be designed for use within the Exchange. These forms should encourage the idea that there is no wrong door into the Exchange. Exchanges should operate across multiple points of enrollment, develop systems to enroll applicants in the right programs and share data securely across programs. Other public programs will be critical “connectors” to Exchange and Medicaid/CHIP coverage. As much as possible, linkages with other public programs should be automatic. For example, when someone applies for unemployment insurance the system should trigger a review of their eligibility for subsidies or public programs. When a child is enrolled in Free School Lunch or SNAP, there should be an automatic route to health coverage.

HHS should also consider requiring the use of a standard, consumer friendly “explanation of benefit” (EOB) form (the form typically received by a consumer after a claim has been filed). These forms are often drafted in ways that cause confusion among consumers. An effort to create a standard, simplified EOB would help consumers better understand their cost-sharing responsibilities.

The insurance plans that are deemed eligible to sell through the Exchanges should be required to meet these standards in any of their communications with customers as a pre-requisite for eligibility and a requirement for operating in the pool.

#### **D. Qualified Health Plans**

##### **2(a). What issues need to be considered in establishing appropriate standards for ensuring a sufficient choice of providers and providing information on the availability of providers?**

The ACA highlights the need for affordable, adequate and accessible health care coverage. In developing regulations to govern the certification criteria in § 1311(c) of the ACA, HHS should look to “best practices” among states for laws and regulations that have benefited consumers.

It is critical that network adequacy standards ensure that consumers have reasonable choice of the providers they need, within a reasonable geographic proximity to their home or workplace. In addition, if a plan purports to cover a certain item or service, then it must also have in-network providers and suppliers that are able to provide that item or service. Plans should be encouraged, to the extent possible, to include Medicaid providers to facilitate continuity of care for families transitioning off of Medicaid eligibility. In addition, we applaud the requirement in the

California legislation, AB (1602), that requires carriers to regularly update an electronic directory of contracting providers so that individuals can search by health care provider name and see which plans include the provider in their network, and ascertain whether the provider is accepting new patients for a particular health plan.

We are extremely pleased that the ACA requires an essential benefits package for all health plans in the individual and small group markets, and that all such plans will be required to cover mental health and substance use disorder services, at parity with medical/surgical services, as essential benefits. These important reforms will both improve the health of millions of Americans and their families and save the health care system many millions of dollars.

As you move forward with implementation, we ask that you make clear that the essential benefits package is a central component of the Exchanges, and make enforcement of benefits requirements a priority. At this early stage of development, we ask that the Department make clear to States and health insurance plans that the ACA requires a robust benefits package for mental health and substance use disorders that includes the full range of MH/SUD prevention, early intervention, treatment, rehabilitative and recovery support services, and that limits on benefits be no more restrictive than those allowed under the *Wellstone/Domenici Mental Health Parity and Addiction Equity Act of 2008* and that law's corresponding regulations. Ensuring that consumers in the Exchange have access to these providers and services will help ensure continuity of care

In addition, we ask the Department to develop strong enforcement mechanisms to ensure that all qualified health plans meet the essential health benefits and MH/SUD parity requirements.

## **G. Enrollment and Eligibility**

### **2. What are some of the key considerations associated with conducting online enrollment?**

While we applaud the availability of online enrollment, the National Council would also like HHS to take into consideration those populations that are unable to use a computer due to disability, mental retardation, or lack of access. It is essential that employees of community centers and other venues be trained in how the enrollment process works so as to assist those individuals who cannot enroll on their own through no fault of their own. A limited understanding, whether due to mental health, developmental or intellectual disabilities, of the tenets of the Exchange program is also a barrier to online enrollment.

## **H. Outreach**

### **1. What kinds of consumer enrollment, outreach, and educational activities are States and other entities likely to conduct relating to Exchanges, insurance market**

**reforms, premium tax credits and cost-sharing reductions, available plan choices, etc., and what Federal resources or technical assistance are likely to be beneficial?**

States have had multiple years of experience conducting consumer enrollment, outreach, and educational activities through Medicaid/CHIP. States should be encouraged to build upon their successes to date. State experiences show that a successful model includes one-on-one contact and accessible assistance for individuals and families. There is also experiential evidence to suggest that the use of community based organizations, mental health and substance use disorder organizations and application “assistors” are integral to getting to some of the harder-to-reach families who struggle with low literacy or may have limited English proficiency. In person opportunities for consumers to get individualized assistance and have their questions answered in the method most preferred by consumers.

Federal assistance is needed to develop effective and unified messages that everyone is now eligible for coverage, provide models of outreach and enrollment programs that have worked, and create federal linkages with effective messengers that states could utilize. In order to be most effective, efforts to convey accurate and individualized information to consumers should take many different forms. And all enrollment activity should be preceded by a highly visible and sustained media campaign -- including television, radio, print, and social media – to raise the public’s awareness.

Some of the more successful outreach efforts utilized during the launch of the Part D prescription drug benefit were the web-based enrollment, the toll-free hotline, and the enrollment information fairs at houses of worship, congressional town hall meetings, grocery stores and other places consumer congregate. Some states also utilized mobile units that travelled between cities and neighborhoods to reach people where they lived. The formation of effective state coalitions supported community partners and trusted local organizations provided support to individuals in racial/ethnically diverse populations.<sup>1</sup> Local efforts were supported by coalitions which included organizations and state agencies, such as Nebraska’s Medicare Prescription Drug Coalition, which provided guidance and technical support to local teams that provided outreach to Medicare beneficiaries.

**J. Consumer Experience**

**1. What kinds of design features can help consumers obtain coverage through the Exchange?**

Consumers need clear, accurate, and easily understood information about their health insurance options. They need to be able to make apples to apples comparisons in order to find the product that best suits their health care needs. And they also need an enrollment process that is simple

---

<sup>1</sup> Summer, L; O’Brien, E.; Nemore, P. and Hsiao, K. Medicare Part D: State and Local Efforts to Assist Vulnerable Beneficiaries. The Commonwealth Fund. April 2008. Available at: <http://www.hapnetwork.org/assets/pdfs/commonwealth-lis-outreach.pdf>

and easy to follow. The health insurance Exchanges hold great promise, but only if implemented with the needs of the consumer in mind. In recognition of this, we posit three issues to consider.

**A. Information must be clear**

At the most basic level, any and all consumer information either produced or shared by Exchanges must be comprehensible to the diverse populations of users and, in particular, low-income individuals and families who must go through the Exchanges to qualify for subsidized coverage.

If consumers cannot understand the information presented to them by Exchanges, they will either end up choosing an option that doesn't meet their needs or they may get frustrated enough to give up on the process. But, if Exchanges can bring clarity and transparency to what is often a confusing, opaque process, they will become the consumer's most trusted tool.

Exchanges should use clear, concise language written at the lowest reasonable education level, and take steps to make sure information can be understood by individuals with low literacy, numeracy, and health literacy levels. Exchanges should use consistent terminology and plain language definitions of health care terms, including the terms being developed by the NAIC consumer panel. The NAIC terms will already have been tested with consumers through rounds of focus groups. We also suggest that – where possible – Exchanges use standardized language. Accommodations should also be made to meet the needs of persons with disabilities, including through the use of assistive technologies.

**B. Website should be accessible**

Exchanges should have an accessible, consumer-friendly website where consumers can make informed, apples-to-apples comparisons of their health coverage options, determine their eligibility, and enroll in the plan of their choice. The federal web portal, Healthcare.gov, is a good start, but improvements are still needed.

As discussed in the previous section, an Exchange website should be accessible to individuals with LEP, low health literacy, and disabilities. Assistance, such as telephone support lines, should also be made available to individuals with low computer literacy to help them navigate the website.

In response to the question, “What information are consumers likely to find useful from Exchanges in making plan selections?” we discuss information that consumers need when making plan selections – all of which should be available on an Exchange website. To facilitate consumer choice, an Exchange website must present information in a manner that allows consumers to make meaningful comparisons of their health coverage options. Consumers should be able to narrow the list of options to a few select plans to make more detailed, head-to-head comparisons of health plan features, including premiums, cost sharing, benefits and benefit limits, provider networks, formularies and pharmacy benefits, and quality metrics and accreditation status. They should also have the ability to search for a particular doctor or hospital.

Additionally, we encourage HHS and States to conduct extensive consumer testing, iteratively test websites with focus groups, and create consumer feedback mechanisms so the websites can continue to be improved over time.

On a related note, HHS should indicate how Healthcare.gov and any new websites created by Exchanges (both State and Federally-run) will co-exist as of 2014. Will they host overlapping information? Will Healthcare.gov solely host information for plans in States that opt to have a Federally-run Exchange? Answers to these questions are important both to consumers, who need to know where they should be going for information, and for States as they make decisions around crafting their own websites.

**C. Alternative ways to access information must be offered**

Individuals and families without computer or internet access must be provided alternative ways to access information, determine eligibility, and enroll in coverage offered in the Exchanges.

Regardless of where consumers start the process, they must be guaranteed access to the full range of coverage options and services. If feasible, information posted on the Exchange website should be available as a downloadable, comprehensible data set that can be printed and shared with consumers at the time of assistance so that individuals and venues offering consumers assistance have the most up-to-date information on plan options. At a minimum, the Exchanges should prepare and make available standardized written materials with detailed information about coverage options, a list of consumer protections, and directions to in-person, telephone, and online assistance with enrollment. These materials should have the depth necessary for navigators and other exchange representatives to help consumers choose a plan.

**What information are consumers likely to find useful from Exchanges in making plan selections?**

Consumers should consider a number of factors when determining what health coverage option is best for them and their families. In our current health care system, consumers are often unable to make informed decisions because they do not have access to the most relevant information. To ensure that consumers can make the most informed choice, information about insurance coverage options should be presented in a clear and concise format, using standardized terminology and descriptions, on any Exchange website and in written materials for consumers without internet access. The materials provided should include information on provider networks and quality, descriptions of benefits and limits on health care services, as well as premium costs and cost-sharing.

Also, the Exchanges should provide consumers with information about how the health insurance system operates in their State. Consumers need information about when, how, and under what circumstances consumers can switch between plans, along with information on shifting eligibility between Medicaid, CHIP, and private coverage. They should also be informed of relevant state laws, including laws mandating benefit coverage (e.g. maternity coverage) and

restricting or banning coverage (e.g. abortion coverage), and consumer protections (e.g. bans on pre-existing condition exclusions, appeals rights, rights and protections regarding hospital billing and debt collection practices, etc.). In addition, Exchanges should alert consumers to the existence of and provide contact information for navigators, consumer assistance grant recipients, hospital financial assistance programs, and other similar programs.

**Which kinds of enrollment venues are likely to be most helpful in facilitating individual enrollment in Exchanges and QHPs?**

There should be no wrong door for consumers looking to enroll in Exchanges. Consumers who are looking to enroll in Exchanges should have a variety of options available to them, including online through the Exchange website, by mail, and by telephone, and in person at Exchange offices, and the offices of consumer assistance programs and navigators.

Some consumers – particularly those with limited access to traditional venues – will need Exchanges to come to them, where they live or work. Below we offer a number of suggestions for venues. We also encourage you to look at how other entities that have undertaken large public outreach campaigns – like the U.S. Census Bureau – have employed innovative strategies.

- Through employers, including/especially those that do not offer insurance coverage
- Medical facilities, in particular community health clinics, mental health and substance use disorder organizations disproportionately serving low-income populations
- Social Security, Medicaid, and state human service agency offices
- Enrollment fairs at grocery stores, box stores, banks, community centers, libraries, schools, Congressional town hall events, Houses of worship, coffee shops, sporting events.

The Exchanges should support mobile units that can travel to these venues and also target neighborhoods with low rates of insurance coverage. Exchanges should also conduct public-private marketing campaigns that involve community list serves and blogs, places of worship, community groups, etc, to get the word out about where, when, and how consumers can find such assistance.

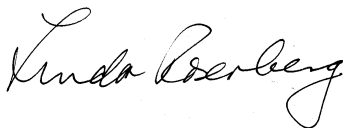
While insurance brokers can ease the enrollment process for some, they should not be solely or heavily relied upon for outreach and enrollment efforts. Many moderate- and low-income consumers cannot afford brokers fees, and brokers are not typically experienced working with these populations. Instead, Exchanges should look to non-profit advocacy, including state SHIP counseling programs, and community-based organizations that provide counseling, navigation, and enrollment assistance to consumers. These groups are a trusted source of information and linguistically and culturally competent assistance that can help ensure low-income and vulnerable populations gain access to health coverage.

**2. What types of efforts could be taken to reach individuals from diverse cultural origins and those with low literacy, disabilities, and limited English proficiency?**

Information on Exchange websites should be available in multiple languages that is both culturally sensitive and linguistically-appropriate. The Exchange's toll-free telephone hotline number should be clearly displayed on the website and at highly visible places in the community, such as on public transportation. Telephone operators who speak a variety of languages should be available and able to refer consumers to local resources. An audio component could be integrated into the website in various languages so that consumers could click to listen to information and understand where to go for additional assistance. Other forms of communication, such as newspapers and radio stations that are popular in racial/ethnic communities could also serve as useful forms of outreach. Additionally, community health, education and outreach workers with existing relationships in culturally-diverse communities should be incorporated into Exchange outreach efforts. Outreach efforts should consider how to reach people who are homebound or who lack time or ability to travel to a state office and a mail campaign should also be employed. Outreach efforts involving partnerships with community vendors (such as grocery stores) and which include public facilities (such as libraries and public transportation hubs), hospitals, clinics and churches should also be conducted to reach consumers in places they live and frequent. In addition, methods used to contact hard-to-reach populations during the 2010 census should also be considered. States and other entities will need sufficient time and funding to train outreach workers and counselors to serve as resources to consumers in the Exchanges and establish effective outreach to culturally diverse populations.

The National Council believes the establishment of State-level Exchanges will be beneficial to those persons with disabilities and chronic conditions as well as low-income populations. These regulations take an important step in establishing a system through which healthcare consumers can gain access to necessary care. We thank you for the opportunity to comment on their planning and establishment in advance of future rulemaking. Thank you for your consideration of our comments.

Sincerely,



Linda Rosenberg

President/CEO