



NATIONAL CONFERENCE *of* STATE LEGISLATURES

The Forum for America's Ideas

May 11, 2012

Ms. Marilyn Tavenner
Acting Administrator
Centers for Medicare and Medicaid Services
U.S. Department of Health and Human Services
Room-445-G
Hubert Humphrey Building
200 Independence Avenue, S.W.
Washington, D.C. 20201

Stephen Morris
*Senate President
Kansas Senate
President, NCSL*

Michael P. Adams
*Director, Strategic Planning
Virginia Senate
Staff Chair, NCSL*

William Pound
Executive Director

Attention: CMS-9989 – Establishment of Exchanges and Qualified Health Plans; Exchange Standards for Employers

Dear Acting Administrator Tavenner:

On behalf of the National Conference of State Legislatures (NCSL) I am submitting comments on some of the provisions of the rule that were issued as interim final. I will also briefly address some of the concerns NCSL identified in the proposed rule and express our continuing concern over some of the provisions. I would like to note our appreciation for some of the changes that were made in the proposed rule that afford more flexibility to states

NCSL thanks you for this opportunity to share our perspective on key issues regarding health insurance exchanges. We look forward to continuing to work with you and your staff to ensure that state interests and concerns are addressed during the regulatory process.

Please contact me if you have any questions or need additional information from NCSL. I can be reached at 202-624-8689 or by e-mail at joy.wilson@ncsl.org.

Sincerely,

Joy Johnson Wilson
Health Policy Director

Comments on the Provisions that are in the Final Rule

§155.110(c) - Health Insurance Exchange – Governing Board Structure; §155.210 - Navigator Program

In October, NCSL responded to a request for comments by urging the department to allow states to establish governing boards for the health insurance exchanges using guidance provided in the statute and in state law. We believe the changes you made in §155.110(c), regarding the structure of governing boards are responsive to our concerns. We continue to support maximum flexibility for states to constitute their governing boards and to address conflict of interest and ethics provisions within the board membership. With flexibility in mind, NCSL also urges you to provide states maximum flexibility in the establishment of their navigator programs (§155.210). It is extremely important that states be afforded the opportunity to fully integrate and coordinate the Navigator program into the overall application education and enrollment effort.

§155.1010(b) – Certification Process for Qualified Health Plans (QHPs)

NCSL expressed concern about the provision in the proposed rule that would have exempted multi-state plans from the state certification process and from complying with state law. The interim final rule continues to require states to deem multi-state plans as certified, but does require them to comply with state law in the same way similarly situated QHPs will be required to do. We look forward to additional discussion and guidance on multi-state plans.

§155.410 – Initial and Annual Open Season

NCSL urged you to extend the initial “open season,” and we are pleased that you did so in the interim final rule.

§155.1055 – Service Area of a QHPs

The interim final rule requires the service area of a QHP to cover a minimum geographical area that is, “at least the entire geographical area of a county, or a group of counties defined by the exchange, unless the exchange determines that serving a smaller geographic area is necessary, nondiscriminatory, and in the best interest of the qualified individuals and employers.” Some states do not have counties. In some states, the “county” may not be the most appropriate geographical area. We urge you to simply require the exchange to establish service areas that are nondiscriminatory and are in the best interest of qualified individuals and employers participating in the plan and to leave it to the state to determine what political subdivisions or other determinants are necessary to meet the stated goal.

Comments – Interim Final Rule Provisions Open for Comment

§155.220 – Ability of states to permit agents and brokers to assist qualified individuals, qualified employers, or qualified employees enrolling in QHPs

We appreciate the support provided to states in the interim final rule to work with agents and brokers to assist in the education and enrollment process within the health insurance exchanges. We ask that you provide states maximum flexibility to develop and establish appropriate roles for agents and brokers and avoid micromanaging state efforts in this area. It is important for states to be able to coordinate education and enrollment assistance efforts in a way that is appropriate given state resources and the needs of potential enrollees. We urge restraint in federal rulemaking while states develop strategies to achieve the best outcomes in the development of a statewide education and enrollment assistance program.

§155.302 - Options for conducting eligibility determinations

The interim final rule provides more options for states in the conducting of the eligibility process. This flexibility is appropriate and helpful.

§155.310(e) – Eligibility process: Timeliness standards

It is difficult to comment on timeliness standards while so much is still not known about the readiness of state and federal systems to actually conduct eligibility determinations and the verification of submitted documentation. Timeliness will in large part be a function of readiness of state and federal staff; state and federal systems and potential beneficiaries. We urge you to revisit timeliness standards when more is known about the overall eligibility process.

§155.315(g) – Verification: Exceptions for special circumstances

This provision is confusing. In the case of an applicant that is unable to produce documents to address inconsistencies uncovered in the eligibility determination process, the interim final rule states that an exchange, “**must provide an exception, on a case-by-case basis**, to accept an applicant’s attestation as to the information which cannot otherwise be verified along with an explanation of circumstances as to why the applicant does not have documentation.” The language is ambiguous and leaves the exchange vulnerable to legal action if the exception is not granted. We urge you to address this issue in the rule that addresses appeals or to rewrite this provision to clarify your intent.