



**CONSORTIUM FOR CITIZENS
WITH DISABILITIES**

May 11, 2012

Marilyn Tavenner
Acting Administrator
Centers for Medicare and Medicaid Services
Department of Health and Human Services

RE: CMS-9989-F, RIN 0938-AQ67
Patient Protection and Affordable Care Act: Establishment of Exchanges and Qualified Health Plans; Exchange Standards for Employers

Dear Acting Administrator Tavenner:

The Consortium for Citizens with Disabilities (CCD) Health Task Force appreciates the opportunity to comment on the interim final rule components of the final rule implementing the establishment of exchanges established by the Patient Protection and Affordable Care Act, amended by the Health Care and Education Reconciliation Act of 2010 (collectively known as the Affordable Care Act or “ACA”). The CCD Health task force is a coalition of national disability organizations that work together to promote access to affordable, quality health care.

CCD is concerned about the proposal to split the eligibility functions between the exchanges and Medicaid. We are concerned that a split system could make it harder for individuals with chronic conditions and disabilities to access the coverage they need. The system should be designed to ensure that individuals and families will be able to access appropriate coverage in a smooth and coordinated fashion, and not be bounced back and forth between the exchange and the Medicaid agency if there are differences in the eligibility processes.

Under the proposed system in the interim final regulation, an exchange could make an initial assessment that a family is eligible for Medicaid and send the case to the state Medicaid agency for a final determination, only to have the state Medicaid agency deny the application because it disagreed with the exchange’s conclusion. These sorts of scenarios that result in confusion, delays, and abandoned applications are more likely when responsibility for eligibility determinations is split and these experiences could, in turn, depress participation among the eligible individuals and families in Medicaid, CHIP and in the federal premium tax credits and cost-sharing reduction programs.

We are also highly concerned that a provision of the final rule would allow states that have *not* bifurcated their eligibility process to contract with private entities to determine eligibility for all insurance affordability programs, including Medicaid. Comments that we and others have

submitted on the proposed rule explained why determining Medicaid eligibility is an inherently governmental function that cannot be contracted out. If despite long-standing law in this area, states are allowed to contract out the Medicaid eligibility process, heightened protections similar to those we propose below must apply to protect beneficiaries. We are especially concerned that there be well trained staff available to answer questions and provide consumer assistance and that contractors be held to high standards of timeliness and accuracy.

Stronger protections are needed to reduce the problems associated with splitting eligibility determinations as outlined in the interim final provisions. We recommend making the following improvements to §155.302 (options for conducting eligibility determinations):

1. Before being permitted to operate a bifurcated process, states should meet the following standards:

The exchange should have to demonstrate that it has the capacity to interface electronically with the state Medicaid and CHIP agencies (including by creating and transmitting case data), and the Medicaid and CHIP agencies should be able to accept this information in a secure, electronic format;

The state Medicaid and CHIP agencies should adopt procedures to ensure the prompt determination of Medicaid and CHIP eligibility for individuals who are determined by the state or federal exchange to be potentially eligible for Medicaid, including the acceptance of all information that has been provided by the applicant and/or verified by the exchange without requesting duplicative information;

The exchange should adopt procedures to screen applicants to determine whether they may be eligible for Medicaid based on disability or other factors not considered in determining eligibility for MAGI-based Medicaid, and if applicable, to promptly transmit all information obtained and verified by the exchange concerning these individuals to the Medicaid agency.

The exchange and state Medicaid and CHIP agencies should have access to all the information available to the other entity or agency, such as information used to determine eligibility for SNAP.

2. The interim final rule should be amended to eliminate, or strictly limit, differences between the procedures used by exchanges in assessing eligibility and those used by state Medicaid and CHIP agencies in determining eligibility. The language of the current provision is far too vague at §155.302 (b)(1), stating only that exchanges would perform an assessment using “verification rules and procedures. . .without regard to how such standards are implemented by the State Medicaid and CHIP agencies.”
3. People should only be asked to withdraw their Medicaid or CHIP applications when their income is above a threshold making it highly unlikely that they are eligible for these other programs. HHS should provide states with model language they can use in presenting the option to withdraw an application to ensure an informed choice.

4. Interagency agreements should be specific and detailed. In addition to the standards included in §155.302(b)(6), agreements should set forth how each program will determine (or assess) eligibility, the process for transferring cases, how any discrepancies or disagreements will be resolved, the process for notices and appeals, and how consumer assistance will be provided. The agreements should be available to the public and consumers should have a chance to review and comment before final adoption.

We also recommend strengthening §155.310(e) and §155.340(d) governing timeliness standards for the eligibility determination:

1. It is not enough to simply specify that the exchange “must determine eligibility promptly and without undue delay.” The interim final rule should be modified to specify a maximum period of time for completion of the entire process of determining eligibility, including an assessment of Medicaid and CHIP eligibility if applicable. We recommend establishing a 30-day standard for both the exchanges and the Medicaid and CHIP agencies. The 30-day period should be measured from the date of application to the final determination of eligibility.
2. In addition to setting a maximum period for determining eligibility, HHS should amend the interim final rule to establish performance standards and metrics regarding the timeliness of the eligibility process. These standards should measure the overall performance across all applicants and set an expectation that eligibility will be determined quickly and for the vast majority of applicants well before the expiration of the 30-day maximum period. Performance standards should measure how long it takes to do an assessment, how long it takes to transfer a case from the exchange to the Medicaid or CHIP agency, and other stages of the process. Separate standards should be adopted for applications received on-line, by telephone, or through the mail.
3. Exchanges should be required to regularly issue public reports on their performance in accordance with the standards adopted under the final rule.

Sincerely,

ACCSES

American Academy of Physical Medicine and Rehabilitation

American Association on Health and Disability

American Music Therapy Association

American Network of Community Options and Resources

Association of University Centers on Disabilities

Bazelon Center for Mental Health Law

Brain Injury Association of America

Community Access National Network

Disability Rights Education and Defense Fund

Epilepsy Foundation of America

Family Voices
Mental Health America
National Alliance on Mental Illness
National Association of County Behavioral Health and Developmental Disability Directors
National Council on Independent Living
National Disability Rights Network
National Down Syndrome Congress
National Multiple Sclerosis Society
Physician-Parent Caregivers
The Arc of the United States
United Cerebral Palsy