



October 31, 2011

U.S. Dept. of Health and Human Services
200 Independence Avenue
S.W. Washington, D.C. 20201

Re: Comments on the Notice of Proposed Rule Making (NPRM) for 45 CFR 155 and 156

Dear Secretary Sebelius:

As Lieutenant Governor and Director of the Ohio Department of Insurance and on behalf of the State of Ohio, I appreciate the opportunity to comment on the proposed exchange rules. While Ohio has not committed to a state-based Exchange, the final regulations, along with other contributing factors, will be important as we continue to evaluate all options to protect Ohio consumers from the increased costs associated with a one size fits all approach that is bad for Ohio.

As part of the evaluation process, the State has significant concern with regards to the proposed rules and any unnecessary and undue federal oversight stemming from the final rule. This over specificity and creation of new mandates, not required by the ACA, will collectively drive-up operational costs for state-based Exchanges. Consequently, this will unnecessarily increase the costs of health insurance for Ohio consumers.

In addition, we are very concerned with the condensed (and in some cases, unrealistic), timeline for creating a compliant exchange without proper guidance. Planning to this point has involved assumptions, guesses and rough projections not sufficient to construct such complicated health systems even under the most desirable time frames.

In the face of this substantial uncertainty and in order to promote state specific solutions, we urge HHS to consider waivers to allow states to deal with unreasonable timeline requirements. Additionally, HHS should release and finalize all remaining rules, especially the essential health benefits. Doing so will give states a more realistic opportunity to establish compliant exchanges should they desire to do so.

Ohio has prepared the following comments for HHS' consideration. Thank you for the opportunity to submit these comments.

Sincerely,

Mary Taylor

Lieutenant Governor/Director of the Ohio Department of Insurance

Exchange Operating Plans

HHS has suggested an approval process for exchange plans that would provide 90 days to review the application and then another 90 days to review any additional material requested. Ohio objects to such a long and time-consuming process. Ohio would strongly urge HHS to consider giving states the right to make necessary changes to exchange operations without approval once exchanges have been initially certified by HHS. Since there is no federal funding after 2015 for state-based exchanges, Ohio should have the right to make changes as needed without federal approval.

In addition to these comments, Ohio would suggest the federal government provide further flexibility in the federal-state partnership model. Many states have expressed interest in this opportunity, but Ohio was disappointed with the options once additional details were released. States are more than capable and should have the ability to customize their state-based exchange by choosing additional options that the state is able to manage, while leveraging federal coordination of functions that makes more sense handled nationally. Such a partnership should offer states the financial leverage of the federal government while leaving regulatory authority and exchange design to the states.

Qualified Health Plans

Throughout the proposed exchange rule from HHS, comment is requested on a number of items impacting how Qualified Health Plans (QHPs) will operate within exchanges. Ohio is very concerned about the level of compliance and authority HHS is seeking in the proposed regulation.

First, states should have the ability to set the model regarding how it will govern its QHP's and then be able to regulate accordingly. Some states, including Ohio, prefer to look at the exchange as a pure marketplace for competition as opposed to an extension of the state's regulatory arm. States should have the ability to control which model the state will implement.

Further, comment is requested regarding whether or not QHPs offered in the SHOP should be required to waive application of minimum participation rules or if a minimum participation rule at the SHOP level is desirable. Ohio believes states should have the authority to make these decisions and they should not be prescribed at the federal level.

In addition, HHS proposes SHOPs require all QHPs to make rate changes at specific times during the year. With all the changes already being forced onto plans as part of the ACA, Ohio believes QHPs need flexibility, (especially in the early years of exchanges) to make necessary rate changes in order to adapt to the significantly different market Ohio will have in a post-ACA era. While the ability to plan and predict future cost and changes are important for Ohio consumers, at times, it may not in the best interest of Ohioans to lock plans into rates that may become inadequate due to unforeseen circumstances. Therefore, this requirement is best left to states to regulate appropriately.

On this topic, the proposed rule suggests a QHP's rates must be applicable for an entire benefit year, or in the SHOP, for the plan year. Ohio requests this decision on rates be left to a state's discretion. Changes during the year may be necessary based on specific behavior or for specific events. Avoiding such requirements will provide states with flexibility to make adjustments.

Another concern that needs addressed in the final rule deals with multi-state plans. While there may be interest in having multi-state plans approved by HHS at the federal level, we believe Ohio should have the right to ensure any plan operating in the state exchange conform to state insurance laws as well as Department of Insurance (ODI) rules and requirements. Ohio law requires all plans operating in Ohio meet certain requirements. Therefore, multi-state plans should also be required to meet or exceed these same conditions in order to provide coverage in Ohio. Without these protections, plans unique to Ohio will be adversely impacted by national plans resulting in negative consequences to Ohio's market.

Finally, HHS also seeks comment on whether or not the exchange establishes specific standards on QHP issuers and provider networks. Ohio, like all other states, is in the best position to establish standards regarding provider network adequacy for our state. We strongly urge HHS to avoid issuing additional federal guidance and further eroding state flexibility.

Administrative Burdens

In several sections of the proposed exchange rule, HHS offers guidance or seeks comment on a number of application and form approval requirements. Specifically, HHS has proposed to heavily regulate the design and wording of plan applications. ODI already reviews plan's form filings in addition to rate filings and objects to such one-size-fits-all approaches.

In addition, if states wish to use an alternative application to the one approved by HHS, it should not be subject to HHS approval. ODI is well equipped and best suited to understand the unique needs of Ohio's consumers, insurers and businesses and is able to provide consumers with an application that best meets their needs. It should also be left up to the state how to accept applications for the exchange. In-person application standards only add administrative burdens to states and additional compliance increases costs.

Employer Size

HHS seeks comment on determining the size of employers. Ohio objects to any federal requirements on this issue and believes the states should be left in control of such determinations. Each state has a different market with different plans serving the small business population and should therefore have the ability to adjust employer size requirements as necessary without federal interference.

Navigator Grants

Even though the ACA indicates that an Exchange shall provide grants to navigators, Ohio recommends HHS consider giving states more flexibility in this area in order to meet demand. Grants awarded to Navigators through the exchange will increase costs and administration. While we appreciate and agree with the regulation's requirement that navigators meet state standards regarding certification and licensure, the requirements pertaining to sources of payment, number and type of entities and other standards are overly prescriptive and unnecessary. Providing states flexibility to identify suitable navigators interested in participating in volunteer efforts would reduce costs while providing consumers with the assistance they need.

Dependent Coverage

HHS is proposing that individuals who gain a dependent are eligible to change from one QHP to another. Such a proposal should not be a requirement for all states. Adding or subtracting dependents from a plan is a simple process that is well utilized in the market today and should not be complicated unnecessarily by giving individuals the opportunity to change plans mid year because of a change in family status. Ohio is very concerned such requirements could lead to significant adverse selection issues while increasing administrative demands on exchanges as well as the plans.

Premium Collection and Aggregation

In the proposed rule, HHS is requiring the SHOP perform premium collection and premium aggregation functions. Ohio understands many states may have this preference, however, we object to any mandate forcing all states to follow the same standard. To this point, plans and employers already carry out these functions and are well-equipped to continue doing so in the future. Exchanges should have the flexibility to leverage these, and other, private sector resources in order to reduce administrative burdens on the exchange.

Private Partners

HHS recognizes in the proposed rule private entities currently exist capable of providing web-based outreach, enrollment or even similar exchange activities. Ohio supports such partnerships and strongly supports the ability of private entities assisting states in meeting their obligations under the ACA. As long as states are meeting the minimum requirements of the ACA, the federal government should not interfere or prevent private entities from carrying out certain functions.

Conclusion

These comments and recommendations seek to offer meaningful suggestions in order to help states best meet the needs of their unique populations and markets should they desire to create exchanges. State flexibility ensures each population has available the best, most affordable health care without disrupting the current environment. Unfortunately, without additional

flexibility, the ACA will cause significant disruptions and, in some cases, negative consequences for Ohioans. Therefore, we strongly urge HHS to consider and implement these recommendations giving Ohio options that are best suited for its needs.