

December 21, 2011

Secretary Kathleen Sebelius
Department of Health and Human Services
200 Independence Avenue SW
Washington DC 20201

Dear Secretary Sebelius,

We are a diverse group of 173 organizations in 45 states and the District of Columbia that advocate on behalf of the millions of Americans who will rely on health insurance exchanges to access affordable health coverage. As organizations focused on state health policy and social services, we are intimately aware of the specific needs, barriers, and opportunities for obtaining health care services in our communities.

We are concerned that the exchange guidance released by the Department of Health and Human Services (HHS) on November 29, 2011 could make it less likely that the promise of the Affordable Care Act (ACA) will be realized in all states. While we recognize the potential benefit of creating additional ways for HHS and state governments to partner to implement exchanges, HHS should recognize the danger in allowing state strategies that could hamper individuals', families', and small employers' ability to identify high quality, affordable insurance options and seamlessly enroll in coverage.

HHS has been responsive to requests from state officials for greater flexibility as a way to encourage as many states as possible to establish an exchange. However, we want to ensure that HHS also hears the many state voices that support robust nationwide standards for health insurance exchanges and plans as envisioned in the ACA. In particular, we urge HHS to stand firm in ensuring strong national standards in the following areas:

Streamlined Eligibility and Enrollment

We believe that by allowing the bifurcation of responsibility for determining eligibility for insurance affordability programs between state and federal governments, the new guidance will make it unnecessarily difficult for consumers to enroll in the health coverage programs for which they qualify. However, if HHS plans to proceed with this option, we recommend that it develop strict measures to ensure an integrated and seamless process for consumers, regardless of whether exchange functions are performed by the state, the federal government, or some combination of the two.

The guidance allows states with a federal exchange to maintain authority over the final determination of Medicaid and CHIP eligibility after an "initial assessment" has been performed by the federal exchange. It also permits the de-linking of eligibility and enrollment authority so that state-run exchanges will now be allowed to cede certain screening and determination functions to HHS. Under these options, HHS could be responsible for determining eligibility for premium tax credits and cost sharing subsidies and exemptions from the individual responsibility requirement while Medicaid and CHIP eligibility decisions would rest with the state. Dividing

responsibility for eligibility determinations between the federal and state governments could make it much harder for consumers to enroll in the appropriate program without delays or coverage gaps.

The guidance also permits the bifurcation of eligibility and enrollment authority in a fully state-run exchange. In practice, this allows the state Medicaid agency to retain Medicaid and CHIP eligibility authority, while the exchange determines eligibility for QHPs, premium tax credits, cost-sharing subsidies, and individual responsibility requirement exemptions. This is a model that, while entirely under the state's purview, could still result in many applicants falling through the cracks or facing needless additional barriers to appropriate coverage.

Thus, to ensure a seamless and streamlined eligibility process for consumers, HHS should require a state to meet standards before it is allowed to take up one of the new options announced in the guidance. These requirements should include (but not be limited to):

- Upgrading the state's eligibility and enrollment infrastructure so that information can be electronically transferred between the state and federal government.
- Not being able to request documentation or re-verify eligibility information that already has been obtained and verified in the initial federal assessment.
- Meeting defined and meaningful standards for timely processing of applications and the content of notices that must be provided to consumers.

Standards for Qualified Health Plans (QHPs)

We recognize the value of harmonizing the workings of a federal exchange with existing state insurance regulatory structures and rules. We want insurance markets to be as uniform as possible for consumers, to be efficient in avoiding unnecessary duplication of work, and to be protected from adverse selection. However, the existing individual and small group markets in many parts of the country do not have adequate protections for consumers. We are concerned that the coordination between a federally facilitated exchange and a state insurance department as described in the guidance could lead to insufficient standards for qualified health plans (QHPs), which consumers are expecting to provide a new level of quality and value. Specifically, we urge HHS to:

- Establish federal standards for QHP provider networks and marketing standards that serve as a minimum for all states.
- Clarify that required federal standards will be in place for quality rating, quality information transparency, and accreditation timelines for plans in all exchanges, and that state decisions must be made in the context of such standards.
- Require transparent quality information, such as HEDIS, CAHPS, and other existing quality data to be prominently posted on exchange websites in 2014 in a standardized format. We are concerned that a "phased approach" to the ACA's quality rating provisions will not give consumers the comprehensive information they need as they select coverage in the initial open enrollment period.

Oversight of Exchange Development

Many of our groups signed a letter dated October 31 regarding the proposed rule on exchange establishment. In light of the November 29 guidance, we underscore our belief that regardless of whether a state is seeking to partner with HHS to perform certain functions in a federally facilitated exchange or to obtain federal support and assistance for its state-run exchange, HHS must apply robust standards and procedures to ensure that the arrangement best serves the needs of consumers in our states. Specifically:

- An exchange plan document should be required for *all* exchanges. Such documents for state exchanges and partnership exchanges should be subject to an HHS readiness review. For exchanges where functions are shared between the federal and state governments, the document should outline the parameters of the partnership.
- The development of *all* exchange plan documents must undergo a similar process of stakeholder engagement as required for a state-run exchange. The public should have opportunities to review and weigh in on the plan to ensure it reflects the needs of consumers.
- There should be a limited, defined set of functions that may be operated by a state in a federally facilitated exchange, and similarly by the federal government in a state-run exchange.
- HHS should prepare its process for intervening and resolving problems if a state is not adequately meeting its obligations as outlined in its exchange plan and the law.
- HHS should require that all exchanges include mechanisms to measure exchange performance, including consumers' experiences.

We recognize that the development of exchanges is a novel and daunting task for both the federal government and states and that some flexibility is needed for successful implementation. However, the ACA represents long-overdue, groundbreaking reform to the US health care system that can only be realized if certain core tenets are preserved rather than weakened.

As representatives of organizations that work with millions of Americans in the states, we strongly urge HHS to set and enforce policies that enable the best possible exchange in each state. We stand ready to work with and support state officials and federal partners in realizing this complex but urgent goal and are happy to serve as a resource for HHS in our states.

Sincerely,

Alabama

Alabama Arise
Alabama Disabilities Advocacy Program

Alaska

Alaska Center on Public Policy
Alaskan AIDS Assistance Association

Arizona

Children's Action Alliance

Arkansas

Arkansas Advocates for Children and Families

Arkansas Interfaith Alliance

California

Asian Pacific American Legal Center, Asian American Center for Advancing Justice

California Black Women's Health Project

Children Now

Children's Defense Fund of California

The Children's Partnership

Project Inform

San Francisco AIDS Foundation

U.S. Positive Women's Network, a project of WORLD

Western Center on Law and Poverty

Colorado

Colorado Center on Law and Poverty

Colorado Organization for Latina Opportunity and Reproductive Rights

Connecticut

Connecticut Association for Human Services

Connecticut Voices for Children

Universal Health Care Foundation of Connecticut

District of Columbia

DC Fiscal Policy Institute

National Minority AIDS Council

Florida

Florida Center for Fiscal and Economic Policy

Florida CHAIN

Florida Child Healthcare Coalition

Florida Legal Services, Inc.

Georgia

Georgians for a Healthy Future

Georgia Watch

Idaho

Idaho Community Action Network

Illinois

AIDS Foundation of Chicago
Campaign for Better Health Care
Champaign County Health Care Consumers
Doctors Council SEIU
Health and Disability Advocates
Illinois Maternal and Child Health Coalition
Sargent Shriver National Center on Poverty Law
SEIU Local 73
Voices for Illinois Children

Iowa

Child and Family Policy Center

Kansas

REACH Healthcare Foundation

Kentucky

Covering Kentucky Kids and Families
Kentucky Advocates Association
Kentucky Equal Justice Association
Kentucky Voices for Health

Louisiana

Health Law Advocates of Louisiana
Louisiana Budget Project
Louisiana Consumer Healthcare Coalition
MQVN Community Development Corp.

Maine

Consumers for Affordable Health Care
Maine Children's Alliance
Maine Equal Justice Partners
New England Consortium Poverty Reduction Initiative

Maryland

Advocates for Children and Youth
Maryland Women's Coalition for Health Care Reform
Public Justice Center

Massachusetts

Health Care For All
Massachusetts Citizens for Children
Massachusetts Law Reform Institute
Treatment Access Expansion Project

Michigan

The Arc of Michigan
Center for Civil Justice
Community Unitarian Universalists in Brighton
Free Clinics of Michigan
Michigan Campaign for Quality Care
Michigan Consumers for Healthcare
Michigan Disability Rights Coalition
Michigan League for Human Services

Minnesota

TakeAction Minnesota

Mississippi

Mississippi Health Advocacy Program
Mississippi Human Services Agenda

Missouri

Adapt of Missouri
Bootheel Counseling Services
Catholic Charities of St. Louis
Clark Community Mental Health Center
Communities Creating Opportunity (CCO)
Comprehensive Mental Health Services, Inc.
CWA 6355- Missouri State Workers Union
Disability Coalition on Healthcare Reform
Legal Services of Eastern Missouri
Lutheran Family and Children's Services of Missouri
Mental Health America of Eastern Missouri
Missouri Alliance of Retired Americans
Missouri Association for Social Welfare
Missouri Budget Project
Missouri Citizen Education Fund
Missouri Health Advocacy Alliance
Missouri Health Care for All
Missouri Jobs with Justice
Missouri Progressive Vote Coalition
Missouri Recovery Network
Missouri Rural Crisis Center
NAMI Missouri
NAMI St. Louis
Places for People
Provident, Inc.
St. Louis Center for Family Development
SEIU Local 1- Missouri Division
The Whole Person
Women's Voices Raised for Social Justice

Montana

Montana Women Vote
Planned Parenthood of Montana

Nebraska

Center for Rural Affairs
Nebraska Appleseed Center for Law in the Public Interest

Nevada

Progressive Leadership Alliance of Nevada

New Hampshire

Children's Alliance of New Hampshire
Institute for Health Law
New Hampshire Voices for Health

New Jersey

New Jersey Citizen Action
New Jersey Policy Perspective

New Mexico

Health Action New Mexico
New Mexico Center on Law and Poverty
New Mexico Voices for Children
State of Women's Health New Mexico, a project of Gender Impacts Policy

New York

Empire Justice Center
Family Therapy Institute of Suffolk
Metro New York Health Care for All Campaign

North Carolina

Disability Rights NC
Hemophilia of North Carolina
Legal Services of Southern Piedmont
North Carolina Fair Share

North Dakota

North Dakota Economic Security & Prosperity Alliance

Ohio

Ability Center of Greater Toledo
Coalition on Homelessness and Housing in Ohio
Legal Aid of Southwest Ohio, LLC
National Alliance on Mental Illness of Ohio

Ohio Alliance for Retired Americans
Ohio Asian American Health Coalition
Ohio Communities United
Ohio Consumers for Health Coverage
Ohio Poverty Law Center
ProgressOhio
Toledo Area Jobs with Justice and Interfaith Worker Justice Coalition
United Food and Commercial Workers, Local 1059
Voices for Ohio's Children

Oklahoma

Oklahoma Policy Institute

Oregon

Children First for Oregon
Oregon Action
Oregon Health Action Campaign

Pennsylvania

Pennsylvania Health Access Network
Pennsylvania Health Law Project
Pennsylvania Partnerships for Children

Rhode Island

The Poverty Institute
Rhode Island Kids Count

South Carolina

South Carolina Appleseed Legal Justice Center

Tennessee

The Black Children's Institute of Tennessee
League of Women Voters of Tennessee
Tennessee Health Care Campaign

Texas

Alamo Breast Cancer Foundation
Center for Public Policy Priorities
Driscoll Children's Health Plan
FiDA Advocate
Gulf Coast Interfaith
La Fe Policy Research and Education Center
National Association of Social Workers, Texas Chapter
North Central Texas HIV Planning Council
Texas HIV/STD Prevention Community Planning Group (TxCPG)
Texas NAACP

Texas Public Interest Research Group (TexPIRG)

Utah

Utah Health Policy Project

Vermont

Office of Health Care Ombudsman
Vermont Public Interest Research Group
Voices for Vermont's Children

Virginia

The Commonwealth Institute for Fiscal Analysis
Virginia Poverty Law Center

Washington

Northwest Health Law Advocates

Wisconsin

9to5 Milwaukee
Coalition of Wisconsin Aging Groups
Community Advocates
Wisconsin Alliance for Retired Americans
Wisconsin Alliance for Women's Health
Wisconsin Council on Children and Families

Wyoming

Consumer Advocates: Project Healthcare