April 25, 2011

Submitted via the Federal eRulemaking Portal: http://www.regulations.gov

CMS Office of Strategic Operations and Regulatory Affairs
Division of Regulations Development
Attention: CMS-10320/OMB 0938-1086
Room C4-26-05
7500 Security Boulevard
Baltimore, MD 21244-1850

Re: Web Portal Information Collection—CMS Form 10320

Dear Sir or Madam:

Aetna welcomes the opportunity to respond to the Centers for Medicare and Medicaid Services' (the "Department's") Public Information Collection Requirements regarding the Health Care Reform Insurance Web Portal Requirements of the Patient Protection and Affordable Care Act ("ACA"), as published on March 25, 2011 in the Federal Register (76 Fed. Reg. 16703) (the "Notice").

Aetna is one of the nation's leading diversified health care benefits companies, providing members with information and resources to help them make better informed decisions about their health care. Aetna offers a broad range of traditional and consumer-directed health insurance products and related services and we strive to improve the quality of health care while controlling rising health benefit costs.

As a key stakeholder affected by the ACA, Aetna is committed to working with the Department regarding the web portal (now known as the "Plan Finder"). However, the current Plan Finder takes a short authorizing provision in the ACA and turns it into a massive insurance information data collection and monitoring tool that duplicates accurate information readily available in the marketplace.

We continue to believe that Congress intended for the Plan Finder to serve a limited purpose, which is to provide consumers with access to consumer-friendly information about available health insurance options until 2014, when the state portals and exchanges are operational and will serve as the primary marketplaces for consumers. To be most effective, the Plan Finder should:

- Provide simple and effective navigation for users to understand and access those insurance options best suited to their needs;
- Present insurance options in a consumer-friendly manner, with only the information necessary to help the consumer select among those choices; and
- Connect directly to the associated insurer's website for details, pricing and purchasing of health insurance coverage, rather than attempting to replicate those functions within the portal itself.

In contrast, the current healthcare.gov website (and proposed updates to the same) attempts to duplicate insurer-specific information, including estimating premium rates. As a result, the Plan Finder has become a statutorily unauthorized, ongoing and massive data collection vehicle. In addition, because the Department has unnecessarily chosen to replicate functions already available to consumers via insurer websites and independent, third-party websites (such as ehealth.com), the Department has grossly understated the costs to insurers to participate in the portal. *See* CMS Supporting Statement for Paperwork Reduction Act Submission, Form. No. 10320, App. A. (estimating that annualized cost to an insurer to complete the required submissions to be $11,190). In fact, Aetna has already spent approximately $135,000 in responding to the Plan Finder data requests on the January and March refreshes alone. These costs are increased by the repeated, unnecessarily short timeframes for data transmission. As a result, we estimate the actual annual costs will be closer to $340,000 for the 5 refreshes planned for 2011. With the addition of small employer plan and rate information to Plan Finder later this year, the costs will increase significantly to encompass the additional work required by the Department and issuers to build initial and ongoing support for the small employer components.

Not only is this duplication costly, wasteful and unnecessary, it will inevitably lead to inaccuracies, which will frustrate and confuse consumers. Despite carrier best efforts, the volume of data transfer will lead to errors. The need for periodic data transfers to the portal further confuses customers by causing the rates to be quickly outdated. In fact, not only does the Department already recognize that this data may be inaccurate, the Department directs individuals to health insurers to receive accurate premium rates. *See, e.g.*, Disclaimer presented along side specific options: "Note: We do not list plans unless the insurer has sent us complete information and has certified that it is accurate. All insurers may update their information on a regular basis, but all displayed rates may not be current. **For the most up-to-date rates, please contact the insurer**." (Emphasis added). Finally, the portal confuses consumers because it appears to be a tool for getting coverage rates, but really is simply a tool for generic rate samples. The Department already disclaims the accuracy of the premium information presented on healthcare.gov. *See, e.g.*, Disclaimer before specific health insurance options are presented: "The actual premiums you are quoted may be higher than the starting estimates shown here, based on your health status." Consumers would be better served by a simpler federal portal which connects them to carrier tools for timely accurate information.

Furthermore, requiring insurers to turn over a large quantity of proprietary and confidential data risks inappropriate disclosure of such data. The recent inappropriate Freedom of Information Act (FOIA) disclosures of portal data to Consumers Union, the Urban Institute and the Kaiser Family Foundation are examples of the types of confidentiality breaches that are likely to occur when the government forces collection of data even though the statutory objective could be completed without collecting issuer proprietary information.

Because all health insurers maintain direct web-based information and purchasing capabilities today, we urge the Department to abandon its attempt to replicate insurer's information and instead leverage these capabilities. Such an approach would be cost-effective for the government and for health insurers and would avoid the inevitable consumer frustration and confusion that will result from inaccurate or untimely data.

Aetna's specific comments on the Plan Finder are set out below.

A. Plan Finder should not have a pricing engine

Recommendation: We urge the Department to abandon the Plan Finder pricing engine. Instead, the portal should link to each insurer's website for updated pricing information.

Rationale: Pricing information for health insurance products is constantly updated by insurers. The administrative burden of tracking and updating price information by the Department and insurers would be significantly lessened if consumers were directed to a single source of information on pricing—the insurer's website. It is simply more efficient to monitor and update one source of information than multiple sources of information. Plus, a single point of information will also lessen possible confusion if an insurer's website is updated with current information before the Plan Finder is updated. The Department must recognize the danger—and inevitability—of inaccurate or out-dated information, as the Plan Finder has numerous disclaimers about the accuracy of the information presented and directs consumers to insurers for definitive information.

Finally, we believe that pricing information is proprietary and as a result should be protected from public release. Collecting this type of information will require the Department to add additional layers of confidentiality, thereby increasing the resources required by the Department in creating and maintaining the Plan Finder.

Recently, despite contrary Departmental FOIA regulations, proprietary and confidential data was inappropriately released in response to a FOIA request by Consumers Union, the Urban Institute and Kaiser Family Foundation. *See, e.g.*, 45 CFR § 5.65 (The Department "will withhold trade secrets and commercial or financial information that is obtained from a person and is privileged or confidential.") As is plain by the very nature of the data submitted, and as Aetna has previously advised the Department, the data collected by the Plan Finder to create the pricing engine is proprietary and confidential. *See* Aetna Health Care Reform Insurance Web Portal Requirements Comment Letter dated June 4, 2010. And as Aetna has previously informed the Department, the disclosure of this information may "substantially harm the competitive position of the person who submitted the information." 45 CFR § 5.65 (b)(4). Notwithstanding Aetna's comment letter, the Department had and has "substantial reason to believe that the information in the records could reasonably be considered exempt" from disclosure under FOIA. 45 CFR § 5.65(d). Nevertheless, the Department failed to follow its own regulations when it failed to notify Aetna that it received a request for these records and failed to permit Aetna to object to the disclosure. 45 CFR § 5.65(d)(1). We are justifiably concerned that the continued collection of this detailed proprietary information will lead to additional inappropriate and seriously damaging public disclosures of confidential information. This concern is heightened for publicly traded carriers like Aetna.

Rather than requiring sellers to "hand over the data," the Plan Finder should leverage existing insurer resources, by providing a framework in which sellers can responsibly represent their products and services to buyers through a full range of transactional services that permits buyers to research, assess, compare, filter, acquire or transact, and optionally review the seller's products and services. The Plan Finder should not

recreate the core business processes or methods of sellers (*e.g.*, pricing, customer service), but rather display what products or services may be available, with links to insurers websites for more detailed information.

Overall, we recommend that the individual market Plan Finder be revised to assure that insurers are not required to turn over sensitive information to the federal government. As the small group portal is not operational yet, we recommend that the small group portal be designed properly from the outset – and assure that consumers have access to accurate and timely information by allowing insurers to maintain control of all data.

B. The information required should be limited so that consumers can make accurate and meaningful decisions

Recommendation: We recommend that the Plan Finder present only the following limited sets of information regarding private insurance: state, types of products (*e.g.*, HMO, PPO), and links to insurers' websites for more detailed coverage and pricing information. The Department should not require information on plans not available to the public, information provided should not have to be updated continuously, and the Department should not collect any information not specified by statute.

Rationale: Consumers and small employers are most likely to base their buying decisions on a comparison of a limited set of information – premiums, benefits, and other plan features (*e.g.*, provider network participation) available to them. The ability to see and compare these factors, as contemplated through federal and state Plan Finders and eventually through Exchanges, should be valuable to consumer purchasing decisions.

Collecting information on insurance products that are not open for enrollment is unnecessary and wasteful. Consumers do not benefit from this information collection because they cannot purchase these products. Eliminating the requirement to provide information on closed products would eliminate reporting on many plans and dramatically reduce the reporting burden. Omitting this information from the required disclosures would conserve the scarce resources of both the Department and insurers.

Insurers should not be required to continuously update their data. Given the level of data required, there are literally tens of thousands of variations of coverage and rates by rating area for any single insurer. The terms of such coverage are regularly updated for routine benefit changes. Providing this information after a product change and updating this information within the portal has proven terribly burdensome on insurers and the Department, as illustrated by the "emergency" information collection notice published March 25. Updated information can more easily and reliably be provided on each insurer's website, which should be linked to the federal Plan Finder.

Finally, the Department should not collect any information that is not specifically listed in the statute. ACA § 1103(b) (directing Health and Human Services to present limited coverage information to consumers, including information on eligibility, premiums, and cost sharing.) By providing state, types of products (*e.g.*, HMO, PPO), and links to insurers' websites on the Plan Finder, the Department can effectively, efficiently and accurately fulfill its obligation under the ACA without imposing unnecessary burdens on insurers and providing duplicative and sometimes inaccurate information to consumers.

In particular, the following information collection requirements should be eliminated:

- **Company Profile and Medical Benefits Information**. *See* CMS, Form. No. 10320, App. E – Benefits and Pricing. Detailed medical benefits information should be provided by insurers through their websites and product publications, not by the Plan Finder. At a minimum, the following requested Medical Benefits Information should not be collected:

    - Plan Enrollment
    - Additional Coverage (specific questions regarding specific coverage, including descriptions of the coverage of all the items)
    - Dental Benefits
    - Medical records coverage
    - Chiropractic, Mental Health and Substance Abuse Treatment Services

- **Eligibility and Rating Information, Individual and Small Group Market.** *See* CMS, Form. No. 10320, App. E – Benefits and Pricing. Detailed eligibility information should be provided by insurers through their websites and applications, not by the Plan Finder. The Department recognizes that there are "myriad differences" in pricing among products. Rather than attempt to replicate the myriad pricing models of insurers, the Department should direct consumers to the best source of accurate and timely information—the insurer.

  In addition, as discussed above, rating information is confidential and proprietary. The Department does not need this information to assist consumers in finding health insurance coverage, and requiring the production of this information is anticompetitive and highly damaging to insurers.

  At a minimum, the following requested Eligibility and Rating Information should not be collected:

    - Citizenship requirements
    - Other eligibility requirements
    - Rate update timing
    - Categorical conditions for membership
    - Administrative fees
    - Issuer fee conditions
    - Rate calculation/Rate calculation specifications
    - Additional administrative specifications/calculation factors
    - Rating tiers
    - SIC/NAICS codes
    - Coverage area administrative specifications
    - Specified rating factors
    - Other factors
    - Minimum participation/contribution requirements

- **Product Administrative Information**. *See* CMS, Form. No. 10320, App. D – Issuer Requirements for Individual Market or Small Group Market.

  As described above, the product administrative information requested is confidential and is not necessary to provide consumers accurate information about health insurance coverage options available to them.

  At a minimum, the following requested information should not be collected:

  - Product enrollment
  - Number of applications received
  - Number of applications denied
  - Number of up-rated offers

  The collection of this data does not empower consumers because there is no consistency between insurers with respect to these terms and the collection of this data. This means that the information cannot be meaningfully compared across insurers. Moreover, we note that this information is entirely negative and provides insurers no opportunity to present other salient, valuable, positive information about policies and benefits and thus give consumers the opportunity to compare the strengths of various plan options and insurers.

C. Technical Recommendations:

Our overarching recommendation is that the individual market portal be retooled so that insurer's maintain control over confidential data and can assure that consumers have access to up-to-date information. However, if the Department fails to make these changes, we have specific recommendations to the current portal construct:

Template Changes and Pre-population

Before each refresh cycle, insurers should be provided with the current version of all templates pre-populated with the latest version of previously attested data. Requiring insurers to re-enter or copy and paste data causes a real risk of inaccurate data being submitted. Insurers may also be required to retest and re-attest data, an unnecessary and costly drain on resources. Additionally, details of all template changes should be clearly documented for insurers six weeks in advance of the version release. The name of the changed template, the specific changes and how insurers should use the changed parts of the template should be communicated with examples. Unclear changes may result in insurer confusion and unnecessary delays while insurers identify and understand the changes.

Support of Age-based Rates

CMP's Rating Questions and Rate Template should be revised to accommodate a rate structure based on the age band of each dependent, regardless of the dependent's relationship to the policy holder. The current CMP Rating Questions and Rate Template values are categorized to reflect the relationship of the dependent to the policy holder. This has caused Aetna and our CMP Account Specialist to execute a manual

workaround each refresh in order to have Aetna's age-based rates accurately accepted and processed by CMP.

* * *

Aetna is pleased to have the opportunity to provide comments regarding the Health Care Reform Insurance Web Portal Information Collection. Thank you for considering our comments. Should you have any questions, please feel free to contact me at kelmars@aetna.com.

Sincerely,

Steven B. Kelmar
Senior Vice President
Government Affairs and Public Policy
kelmars@aetna.com
860.273.2706

BlueCross BlueShield Association

An Association of Independent Blue Cross and Blue Shield Plans

1310 G Street, N.W.
Washington, D.C. 20005
202.942.1000
Fax 202.942.1125
www.BCBS.com

April 25, 2011

Office of Management and Budget
Office of Information and Regulatory Affairs

Attention: CMS Desk Officer

RE: Agency Information Collection Request (CMS-10320/OMB#: 0398-1086)

Submitted via www.regulations.gov

Dear Sir or Madam:

The BlueCross and BlueShield Association ("BCBSA") hereby submits these comments in response to the Centers for Medicare and Medicaid Services ("CMS") Emergency Information Collection Request for the Health Care Reform Insurance Web Portal ("Portal") published in the *Federal Register* on March 25, 2011 (76 Fed. Reg.167983).

BCBSA represents the 39 independent Blue Cross and Blue Shield Plans ("Plans") that currently provide health coverage to approximately 98 million Americans – one in three. All of our Plans are issuers in regard to the Portal and have been complying to date with the extensive data requested by the agency.

We have several concerns with the required data. We would urge the agency to review the needs of the Portal in light of the data being collected and seek a balance in the data requirements which, to date, are extensive and costly to compile and submit. While we share the agency's objective to provide information to consumers and small groups on health insurance options available to them in their individual and small group insurance marketplaces, we have concerns with the fact that the data being requested goes far beyond the data needs of the Portal.

For example, issuers are asked to submit information on closed blocks of business – plans that are no longer made available to new members. This seems to go beyond the data needs of the Portal. Plans are also asked to submit detailed benefit summaries and brochures, data that might be available on a Plan's website and therefore need not be duplicated on the Portal. The Portal is meant to be informational, not a sales engine, so data should therefore be limited while still being informative. Additional detailed rating factors, enrollment levels, and other confidential elements are also required in these submissions -- items considered to be confidential to Plans yet required to be submitted to the agency. We would urge reevaluation of the data being submitted, as well as how the agency uses the data, and recommend that future Plan submissions be limited to actual data elements needed to be displayed on the Portal compiled and submitted by Plans, using commonly agreed upon definitions and methodologies.

BCBSA also has concerns that, in regard to implementation of the Affordable Care Act ("ACA"), an unprecedented number of requests and initiatives are underway or anticipated that involve the collection of competitively sensitive information from Plans. In addition to presenting significant issues related to ensuring data integrity and quality in the information collected, these collection efforts pose significant questions related to health care privacy and the protection of confidential information. They also result in substantial administrative costs within Plans that

add to the cost of health coverage, as well as divert staff resources away from many of the numerous and immediate required Plan changes implementing the ACA. Many data collection efforts, including those related to the Portal, as well as additional collections anticipated in the future, do not seem to be in keeping with the Administration's goal of streamlining and making regulatory initiatives more effective to achieve industry efficiencies as laid out in the President Obama's recent Executive Order. All data collections need to be evaluated for their necessity, as well as the burdens and costs placed on the submitters.

Some of these collection efforts are reflected in a series of recent Federal Register notices, including the announcement from March 25, 2011, which sets out PRA clearance requests from CMS pertaining to the collection of health plan information in relation to quarterly reporting on Medical Loss Ratios and the Health Care Reform Insurance Web Portal. Another recently released request by HHS is for data related to the effects of reform on certain aspects of coverage and enrolled members as issued in the Federal Register on April 5, 2011. Such proposals at various stages of the regulatory process reflect a combination of required and voluntary information collection requests and include proposals such as:

- Health Insurance Assistance Database – CMS request;
- Effects of Insurance Market Reforms - Voluntary ASPE survey request;
- Consumer Assistance Grants Program;
- Exchanges – expected in the future; and
- Risk Adjustment, transitional reinsurance, and risk corridors - also expected in the future.

While these collection activities are each being proposed as separate initiatives they have numerous issues in common from a PRA and public disclosure perspective. The commonality of these issues is reflected in the Department of Health and Human Services' December 2010 Unified Regulatory Agenda publication, which includes an initiative titled "Public Use Files of Health Plan Data." This initiative is described as fulfilling an ACA requirement to generate public use files on data that HHS collects from health plans, and "includes specific data and their application (or not) to the Trade Secrets Act," and is said to "clarify statutory requirements under the Affordable Care Act."

As the Unified Regulatory Agenda suggests in broadly addressing the issue of public use files and highlighting issues related to the Trade Secrets Act, the ongoing and planned information collection activities highlight collectively the need for an integrated framework and process for considering these collection requests and their implementation. An integrated framework would reinforce the principles and goals outlined as part of the PRA process, which include balancing between the costs and benefits of collecting information, encouraging efficiency and quality in the collection of information, and ensuring consistency with applicable laws and regulations such as those relating to privacy and confidentiality.

Precedential Nature of the Portal Information & the Need for an Integrated Framework

In evaluating CMS's request for "emergency" clearance to support the continued collection of information for the Portal it would be helpful if the goals and considerations established through the PRA process and the President's Executive Order on regulatory reform were more directly addressed, including those related to ensuring consistency with applicable laws and regulations on privacy and confidentiality. The Portal is of substantial significance because it reflects one of the first initiatives where, working cooperatively with HHS, health plans have submitted a wide range of confidential data. How these data are handled, and other "rules of the road" relating to

how these data will be used and made available to the public, is vital to the future success of further data collection efforts including those outlined above. With the Portal, issuers submit "raw" data to CMS that is then translated by the agency and presented in a manner that might not be portrayed in the same manner where the issuer to have control over the actual displays of their data. Many Plans also object to the fact that they cannot decide what products or options are displayed. Plans have to follow the rules established by the agency even if the products displayed are not in keeping with the Plans' enrollment strategies or the data displays does not accurately reflect the numbers of applicants who actually obtained coverage.

The importance of clear, fair, and transparent rules that provide an adequate process for the issuers who are the submitters of the Portal data to comment in advance on many operational aspects of the Portal as well as any release of data designated as confidential is recognized in the underlying goals of the PRA and associated laws such as the Freedom of Information Act and Trade Secrets Act. These laws recognize the public's interest in accessing information, but likewise recognize the importance of protecting confidential information from public disclosure in order to encourage the submission of useful commercial and financial information. The protection of this information has also long been recognized by agencies, such as the Federal Trade Commission, as critical to the functioning of competitive markets.

To help highlight a specific concern, we note that CMS's "Supporting Statement" for the emergency clearance request makes no mention of how underlying "raw" data submitted to the agency (as compared to information displayed on the Portal) will be treated and protected from disclosure from a standpoint of confidentiality. This is despite the fact that the Interim Final Rule for the Web Portal issued in May 2010 specifically invited comments on the confidentiality of information submitted to HHS, and the fact that some specific submitters designated their data as confidential (even though the HHS tool for data submission did not permit for such designations). In addition, Plans have consistently made clear that a number of HHS's definitions used in displaying Portal information are overly broad. This creates the potential for the Portal information (especially if raw data or spreadsheets are released) to create consumer confusion and could mislead consumers in their decision-making regarding coverage options.

OMB guidance, dated April 7, 2010 on the PRA, makes clear that OMB "reviews the extent to which the information collection is consistent with applicable laws, regulations, and policies related to privacy, confidentiality, security, information quality, and statistical standards." For these reasons BCBSA recommends that to the extent OMB approves CMS's request, that it do so contingent upon a commitment from CMS to develop an integrated framework and process that results in workable "rules of the road" for the collection of information and moves CMS away from reliance on emergency requests as the means of obtaining PRA approval.

Elements of an Integrated Framework

To be effective, such a framework and process would include consideration of: 1) the proper level of information to be requested in order to accomplish an identified congressional purpose; 2) the government's use of the information as it relates to congressional purpose; and 3) the disclosure of information to the public and under what conditions to reflect the protections established in the Trade Secrets Act to ensure adequate procedural protections for the submitters of information, and guard against unintended consequences attendant with improper use or disclosure, including the creation of consumer confusion and harm to competition, all of which would occur to the public's detriment.

From a standpoint of public policy, such a process would help to ensure that the public's interest in having appropriate access to health plan information is recognized, but that weighed equally with this goals is the public's interest in ensuring: 1) that such information be collected efficiently; 2) that context and explanation be considered as paramount to minimizing the chances for data to be misconstrued or create public confusion; and 3) competitively sensitive, confidential information is properly safeguarded recognizing the importance of these protections to any market's proper functioning.

Goals of the Web Portal/Plan Finder

The statutory intent of the Portal was to provide consumers and small employers a tool to help them identify available and affordable health insurance coverage options in their geographic area. In response to the IFR, BCBSA provided comments and recommendations in June 2010 on a number of key provisions. At that time, the exact data to be submitted and the data submission technical processes were not yet identified but BCBSA raised comments regarding the need to keep some of the data submitted confidential.

The data that HHS requires health insurance plans to submit appears to exceed the amount of information that is necessary for HHS to fulfill its statutory obligations under §1103 of the ACA. Related to this concern, the data submission processes to support the Portal have proved unnecessarily costly and excessive, with many Plans reporting that they have had to create entire new departments to manage data submission and on-going requirements which include the manual uploading of dozens of massive Excel spreadsheets.

BCBSA is also concerned that the scope of the data requested departs from the PRA goals of reducing burdens and increasing efficiency. In this regard, much of the information submitted to HHS does not appear on the Portal. Therefore the Portal requirements create unprecedented burdens which in turn increase health plan administrative costs at a time when Plans seeks to lower their administrative costs on an on-going basis to maintain affordability of options in the marketplace. Going forward, it is critical that CMS only collect the information that is needed for the Portal displays and operations -- the original intent of the ACA.

Need for Information Safeguards

As OMB reviews the information collection request, we ask you to ensure CMS establishes protections for confidential and proprietary data. As noted, the previous PRA package included as part of the IFR sought public comment on whether certain information should be considered confidential business information. To our knowledge HHS has not responded to public comments received on this issue.

In BCBSA's comments as submitted in response to the Portal IFR, we raise the issue of the need to keep some plan data confidential as some of it is confidential and proprietary. Some data of concern may not be displayed on the Portal but include (1) information on the base rating factors used by health plans to generate premiums; (2) product and plan level specific enrollment information; and (3) numbers of health insurance applications received, application denials and number of instances where a higher rate was offered. The existing data collection process also involves Excel templates that are unable to be modified resulting in health plans being unable to designate confidential information as a standard element of the submissions and some report having to "fill in the blanks" on the required spreadsheets even when the resulting data is not accurate if subsequently displayed on the Portal. Some Plans have added their own language to ask for protection of their submissions.

Burden of Data Submission Process

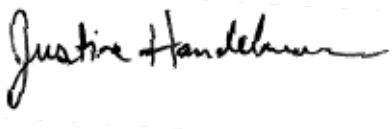
BCBSA recommends that CMS, going forward, only collect information that is reported to the public on the Portal and that the agency work to eliminate the submission of duplicate and unnecessary data elements. As discussed, several data elements collected are not used for public display (e.g., information on financial ratings as an example) and should be removed from future information collection requests. In addition, the agency currently maintains two separate systems to collect this information which often ask for the same information and creates the unnecessary burden of Plans having to parse their information into many templates for every applicable state/legal entity. For example, both Portal systems require that health plans submit information on service area, membership, and health plan contact information.

While we appreciate that CMS increased the total PRA burden estimate from 84,706 hours to 101,960 hours we believe the total number of hours spent is well under represented given the manual processes surrounding the data submissions and the depth of the information submitted to the Department. In addition, the exact data submission requirements for the small group benefit and pricing information are unknown at this time and the data collection processes put in place for future submissions could have an additional impact on Plan burdens and cost to comply.

BCBSA appreciates the opportunity to provide comment on these issues related to Portal data collections and others anticipated for future initiatives and urge reconsideration of the submissions required for the Portal today and adoption of a streamlined approach to the data that will allow the agency to continue to meet its obligations under the ACA in regard to the Portal.

Thank you for this opportunity to provide comments. Questions on our letter may be directed to Jane.Galvin@bcbsa.com

Sincerely,



Justine Handelman, Vice President
Legislative and Regulatory Policy

America's Health
Insurance Plans

601 Pennsylvania Avenue, NW
South Building
Suite Five Hundred
Washington, DC 20004

202.778.3200
www.ahip.org

April 25, 2011

Submitted via email to OIRA_submission@omb.eop.gov

Mr. Joshua Brammer
CMS Desk Officer
Office of Information and Regulatory Affairs
Office of Management and Budget
New Executive Office Building
725 17th Street NW
Washington, D.C. 20503

RE: Agency Information Collection Request (CMS-10320/OMB#: 0398-1086)

Dear Mr. Brammer:

I am writing on behalf of America's Health Insurance Plans to offer comments in response to the Centers for Medicare & Medicaid Services (CMS) Emergency Information Collection Request for the Health Care Reform Insurance Web Portal (Web Portal or Plan Finder) that was published in the *Federal Register* on March 25, 2011 (76 Fed. Reg. 167983), and to offer broader comments pertaining to a range of pending information collection requests that are at various stages of the regulatory process.

As the national association representing approximately 1,300 health insurance plans that provide coverage to more than 200 million Americans, our members have supported the efforts of the Department to provide information to the American public on available health insurance options in the individual and small group insurance market through the Plan Finder.[1] While we have supported the Department's efforts over the past year, we are writing to raise significant concerns about this information collection and ask that the Office of Management and Budget (OMB) delay approval of the emergency Paperwork Reduction Act (PRA) request until these concerns are addressed.

Below we outline specific concerns regarding CMS's Emergency Collection Request for the Web Portal which we do not believe adequately addresses the broad range of issues called for under the PRA, particularly those relating to consistency with laws, regulations, and policies concerning data confidentiality and information quality. As we explain, it is vitally important to the functioning of competitive markets and consumer understanding that the issues associated with CMS's Emergency Collection Request for the Web Portal be addressed. This reflects both the individual importance of these issues and their precedential significance given that the Web Portal stands as one of the first of many forthcoming initiatives where health plans will be called

[1] *See*, http://finder.healthcare.gov/

on to submit a broad range of confidential data and where clear, workable "rules of the road" that facilitate and encourage the submission of information will be vital to the future success of these efforts.

The Wide-Range of Pending Information Collection Requests Reflect Common Issues & the Need for an Integrated Framework

As suggested, our comments reflect the perspective that the important goals outlined as part of the PRA process, and more broadly reflected in the President's Executive Order[2] to improve regulation and regulatory review, cannot be met to the extent common issues raised in information collection requests are considered in isolation rather than being approached as part of a larger whole.

In this regard, in connection with the Affordable Care Act (ACA) an unprecedented number of requests and initiatives are underway or planned that involve the collection of competitively sensitive information from health insurance plans. In addition to presenting important issues related to ensuring data integrity and quality in the information collected, these collection efforts pose significant questions related to health care privacy and the protection of confidential information. They also have the potential to generate substantial administrative costs that raise the cost of coverage, making efforts at achieving efficiency in the information collected of paramount importance.

The breadth of these collection efforts is reflected across a series of recent Federal Register announcements including the announcement from March 25, 2011, which sets out PRA clearance requests from CMS pertaining to the collection of health plan information in relation to quarterly reporting on Medical Loss Ratios and the Health Care Reform Insurance Web Portal. A further recently released request for clearance is pending with respect to data that is to be collected as part of HHS's implementation of ACA's rate disclosure and review provision. Additional proposals at various stages of the regulatory process reflect a combination of required and voluntary information collection requests, including:

- Health Insurance Assistance Database – CMS request;
- Effects of Insurance Market Reforms – voluntary survey from ASPE;
- Consumer Assistance Grants Program – CMS request;
- Exchanges – expected from CMS; and
- Risk Adjustment, Transitional Reinsurance, and Risk corridors – expected from CMS.

While these collection activities are being proposed as separate initiatives, in practice they have numerous issues in common from a PRA and public disclosure perspective. The commonality of these issues is reflected in the Department of Health and Human Services' December 2010

[2] Executive Order 13563 "Improving Regulation and Regulatory Review"

Unified Regulatory Agenda publication, which includes an initiative titled "Public Use Files of Health Plan Data." This initiative is described as fulfilling an ACA requirement to generate public use files on data that HHS collects from health plans, and "includes specific data and their application (or not) to the Trade Secrets Act," and is said to "clarify statutory requirements under the Affordable Care Act."

As the Unified Regulatory Agenda suggests in broadly addressing the issue of public use files and highlighting issues related to the Trade Secrets Act, the ongoing and planned information collection activities highlight the need for an integrated framework and process for considering all of these collection requests and their implementation. An integrated framework would reinforce the principles and goals outlined as part of the PRA process, which include balancing between the costs and benefits of collecting information, encouraging efficiency and quality in the collection of information, and ensuring consistency with applicable laws and regulations such as those relating to privacy and confidentiality. Such a framework would also eliminate the need for emergency clearances under the PRA.

Precedential Nature of the Web Portal Information & the Value of an Integrated Framework

It would be helpful in evaluating CMS's request for "emergency" clearance to support the continued collection of information for the Web Portal if the goals and considerations urged through the PRA process and the President's Executive Order on regulatory reform were more directly addressed, including those related to ensuring consistency with applicable laws and regulations on privacy and confidentiality. While important in its own right, the Web Portal is of substantial precedential significance because it reflects one of the first initiatives where, working cooperatively with HHS, health plans have submitted a range of confidential data. How these data are handled, and other "rules of the road" relating to how these data will be used and made available to the public is vital to the future success of further data collection efforts including those outlined above.

The importance of clear, fair, and transparent rules that provide an adequate process for the submitters of data to understand and comment in advance on these plans and any release of data designated as confidential is recognized in the underlying goals of the PRA and associated laws such as the Freedom of Information Act (FOIA) and Trade Secrets Act. These laws recognize the public's interest in accessing information, but likewise recognize the importance of protecting confidential information from public disclosure in order to encourage the submission of useful commercial and financial information. The protection of this information has also long been recognized by agencies as the Federal Trade Commission as critical to the functioning of competitive markets.

To help highlight our specific concerns (articulated in greater detail below), we note that CMS's "Supporting Statement" for the emergency clearance request makes no mention of how underlying, raw data submitted to the agency (as compared to information to be displayed on the

Portal) will be treated and protected from disclosure from a standpoint of confidentiality. This is despite the fact that the Interim Final Rule for the Web Portal issued in May 2010[3] specifically invited comments on the confidentiality of information submitted to HHS, and the fact that some submitters designated their data as confidential (even though the HHS tool for data submission did not permit for such designations). In addition, health plans have consistently made clear that a number of HHS's definitions are overly broad and not in keeping with the practices of the National Association of Insurance Commissioners (NAIC). This creates the potential for the Web Portal information (especially if raw data are released) to create consumer confusion and could mislead consumers in their decision making regarding coverage options.

These are key considerations for OIRA to consider because as OMB guidance, dated April 7, 2010 on the PRA makes clear, OMB "reviews the extent to which the information collection is consistent with applicable laws, regulations, and policies related to privacy, confidentiality, security, information quality, and statistical standards." For these reasons we recommend that to the extent OMB approves CMS's request that it do so contingent upon a commitment from CMS to develop an integrated framework and process that results in workable "rules of the road" for the collection of information and moves CMS away from reliance on emergency requests as means of obtaining PRA approval.

Elements of an Integrated Framework

To be effective, such a framework and process would include consideration of the:

(a) Proper level and scope of information to be requested in order to accomplish an identified congressional purpose;

(b) Government's use of the information as it relates to Congressional purpose;

(c) Usefulness of the data to include consideration of whether any information to be released to the public is likely to create consumer confusion or misunderstanding taking into account factors such as the appropriateness of definitions used to describe the data; and

(d) Confidentiality of data, including considering of what information may be publicly disclosed and under what conditions to reflect the protections established in the Trade Secrets Act and recognized under the FOIA. This would include ensuring adequate procedural protections for the submitters of information, and consideration of the unintended consequences attendant with improper use or disclosure.

From a standpoint of public policy, such a process would help to ensure that the public's interest in having appropriate access to health plan information is recognized, but that weighed equally

[3] 75 Fed. Reg. 24470.

with this goal is the public's interest in ensuring: 1) that such information be collected efficiently; 2) that context and explanation be considered as paramount to minimizing the chances for data to be misconstrued or create public confusion; and 3) competitively sensitive, confidential information is properly safeguarded recognizing the importance of these protections to any market's proper functioning.

Detailed Comments on the Emergency Information Collection Request for the Web Portal

Provided below are more specific and additional concerns related to the Web Portal emergency clearance, including those related to the regulatory burden of providing information in the form and manner requested.

Data Collected for the Web Portal Exceeds What is Required to Accomplish Statutory Goals

The statutory intent of the Plan Finder was to provide consumers and small employers a tool to help them identify affordable health insurance coverage options in their state. In response to the IFR, AHIP and several of our member companies provided comments and recommendations in June 2010 on a number of key provisions.[4] At that time, the exact data to be submitted and the data submission processes were unknown but we raised comments regarding the specific information that was collected, its potential secondary uses, methods to designate certain information as confidential and the importance of minimizing the burden of the information collected.

The data that HHS requires health insurance plans to submit exceeds the amount of information that is necessary for HHS to fulfill its statutory obligations under §1103 of the ACA. Information falling in this category includes some of the most competitively sensitive information required by HHS relating to enrollment in particular products and plans by specific geographic areas. Whereas the ACA requires information on "eligibility" and the "availability" of plans, HHS has required the submission of detailed enrollment information by specific health plan product and local geographic area. We have confirmed that this information is not otherwise available in the market and is reflective – on its own and when combined with other information related to product pricing and underwriting – of the type of detailed competitor information that agencies such as the Federal Trade Commission and Department of Justice have long raised concern about with respect to maintaining market competition and encouraging innovation.

Similarly, HHS has required the submission of information related to underwriting information at a specific product and plan level, whereas the statute simply requires information on "premium rates" and "cost sharing." This is a significant issue because of (1) the competitive

[4] AHIP comment letter is available at www.regulations.gov under document identification number "HHS-OS-2010-0010-0042."

sensitivity of these data, particularly when combined with detailed enrollment data as described above; and (2) health plans have consistently advised HHS that the Web Portal definitions related to underwriting (specifically, definitions relating to *e.g.*, "declinations" and substandard rates or "rate ups") are overly broad and not in keeping with the practices of the NAIC. Therefore, the potential for these data to be released in totality in raw form further heightens concerns that the effect of these definitions will be to create consumer confusion and could mislead consumers in their decision making regarding coverage options.

Unnecessary Burden Associated with the Data Submission Process

Connected to concerns that data required for submission under the Web Portal exceeds statutory requirements is that the data submission processes themselves have proved unnecessarily onerous, with many of our member health insurance plans reporting that they have had to create entire new departments to manage Web Portal information submission requirements which currently comprise of the manual uploading of dozens of massive Excel spreadsheets.

A cascading effect of these requirements is that the scope of the data requested departs from the PRA goals of reducing burdens and increasing program efficiency. In this regard, much of the information submitted to HHS does not appear on the Web Portal, and appears to reflect a view – that to our knowledge has not been substantiated – that this will "in turn result in a more efficient insurance market."[5] Not reflected in this approach is a concern that by going beyond the original intent of the ACA, the Web Portal requirements create unprecedented burdens which in turn increases health plan administrative costs. Going forward, it is critical that HHS only collect the information that is needed for the Plan Finder's operations that is more aligned with the original intent of the ACA.

Need for Safeguards Related to Confidentiality, Privacy, Information Quality, and Security

As OMB reviews the information collection to determine "the extent to which the information collection is consistent with applicable laws, regulations, and policies related to privacy, confidentiality, security, information quality, and statistical standards,"[6] we ask you to ensure HHS establishes protections for confidential and proprietary data. As noted, the previous PRA package included as part of the IFR sought public comment on whether certain information should be considered confidential business information. To our knowledge HHS has not responded to public comments received on this issue. In our comments we raised questions about the potential public release of the submitted data and requested information from CMS on how health insurance plans could "classify data as confidential or proprietary and request that the information be kept from being displayed in the portal or otherwise released." [7]

[5] Refer to the HHS Fall 2010 Semi-annual Regulatory Agenda as available on the Internet at www.regulations.gov.
[6] See OMB Memorandum "Information Collection under the Paperwork Reduction Act." April 7, 2010. Available at: http://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/PRAPrimer_04072010.pdf.
[7] *Id.* at page 5.

The data collected from health insurance plans includes several data elements that are considered proprietary and confidential. These data are used to inform information on the Web Portal but are not currently made available to users of the website and includes (1) information on the base rating factors used by health plans to generate premiums; (2) product and plan level enrollment information; and (3) numbers of health insurance applications received, application denials and number of instances where a higher rate was offered. The existing data collection process involves Excel templates that are unable to be modified resulting in health plans being unable to designate confidential information.

Suggestions for Alleviating Burden, Reducing Opportunities for Confidentiality Breach, and Protecting Against Consumer Harm

We suggest that going forward HHS only collect information required to meet statutory purposes and that is to be reported to the public on the Plan Finder, and that the Department works to eliminate the submission of duplicate data elements.

As discussed above, some of the most sensitive information required for submission under the Web Portal process is not required to meet statutory requirements. In addition, several data elements collected are not used on the Plan Finder (e.g., information on quality ratings, financial ratings, PDFs of benefit summaries and brochures) and should be removed from future information collection requests. In addition, the Department currently maintains two separate systems to collect this information which often ask for the same information and creates the unnecessary burden of health plans having to parse their information into many templates for every state/legal entity. For example, both systems require that health plans submit information on service area, membership, and health plan contact information.

While we appreciate that CMS increased the total PRA burden estimate from 84,706 hours to 101,960 hours, we believe the total number of hours spent is under represented given the manual processes surrounding the data submission and the depth of the information submitted to the Department. In addition, the exact data submission requirements for the small group benefit and pricing information are unknown at this time and the data collection processes put in place will have a large impact on the health plan burden estimates. One of our member plans alone has estimated that they will spend at least 18,000 hours in submitting the small group information using their experience in the submission of the individual market information which indicates to us the CMS estimates should be increased.

The data submission process itself would greatly benefit from further automation. We understand that the system used to gather benefit information is quite rudimentary in that a minor change that should take minutes to update, takes hours. Instead of having the ability to update information previously provided, updates require reentering all the information in a new Excel template. This adds additional time and personnel resources to the update process.

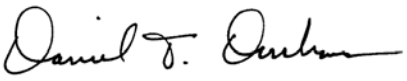
A further suggestion is to urge evaluation of whether some of the data collected is actually required to fulfill a statutory purpose or whether alternative approaches – such as linking to a health plan website that posts and refreshes the required data – would better meet consumer needs while reducing administrative burden, cost and risks related to data confidentiality. Due to the complexity of the rating process as recognized in the Web Portal IFR, this may be the only practical way to provide consumers with the most accurate and up-to-date pricing information.

For the reasons described above, these recommendations, if followed, would help to: a) alleviate burden; b) lessen the potential for breaches with respect to confidential information; and c) reduce risks related to consumer privacy and confusion.

As explained, we also believe that an integrated framework for developing "rules of the road" to address these issues more broadly is vital because the data collection related issues arising in connection with the Web Portal are likely to be replicated given the range of other initiatives involving the collection of health plan data. Approaching the issues in the context of an integrated framework would support program efficiency and help advance and protect the public's interest in the functioning of competitive markets and in ensuring any information released to the public is meaningful, protective of individual privacy interests, and not susceptible to creating consumer confusion or misunderstanding.

We appreciate the opportunity to provide comments on these important issues. Please let me know if you would be interested in discussing these issues in person. If you have any questions, please contact me at (202) 778-8490.

Sincerely,



Dan Durham
Executive Vice President, Policy and Regulatory Affairs

CC: Karen Pollitz, Center for Consumer Information & Insurance Oversight, CMS