Submitted via email to: State.Exchange.Group@cms.hhs.gov

Steven Larson
Deputy Administrator and Director of the Center for
Consumer Information and Insurance Oversight (CCIIO),
CMS, U.S. Department of Health and Human Services

Dear Mr. Larson:

On behalf of the 1.6 million active members and retirees of American Federation of State, County and Municipal Employees (AFSCME), AFL-CIO, I am submitting comments on the Blueprint for State-Based and State Partnership for Health Insurance Exchanges. Hundreds of thousands of AFSCME members work in the health care industry, and all of our members are health care consumers.

Conditional Approval

The Exchange blueprint indicates that HHS will permit Conditional Approval of a state's Exchange Blueprint if the state is not ready as of January 1, 2013 but is making significant progress toward all requirements. FAQ on the Exchange Blueprint indicates that "a State Exchange will remain Conditionally Approved until it meets all Approval requirements."

Comments

HHS should specify the last date by which a state with a "conditionally approved" Exchange must demonstrate full compliance and readiness or else defer to the FFE. This deadline should provide sufficient time for an FFE to prepare to operate in a state.

The Declaration Letter must be submitted by November 16, 2012.

Comments:

The Declaration letter should expressly identify the public entity that will conduct final eligibility determinations for Medicaid for people who apply through the Exchange. Each state should be required to indicate whether the Exchange (regardless of whether the Exchange is state-operated or an FFE) will make the final determination of Medicaid eligibility that the state Medicaid agency will accept or whether the Exchange will make an initial assessment of potential Medicaid eligibility with the final determination being made by the state Medicaid agency.

Comments on Nondiscrimination and Civil Rights Compliance

HHS should consider how states will comply with the nondiscrimination requirements of § 1557, Title VI and § 504 as it reviews applications for State-based Exchanges and State Partnership Insurance Exchanges. HHS should ensure that the Exchanges have specific plans and policies in place to reduce health disparities and provide equitable services, and are accessible to all groups, including individuals with limited English proficiency and disabilities. In addition, HHS should require that Exchanges seek out diverse representation from a variety of groups, including women, ethnic and cultural minorities, seniors and people with disabilities, at all stages of the planning and implementation process.

We recommend HHS add requirements in the Blueprint for states to not only attest but also provide supporting documentation that outlines the policies and procedures the Exchange will use to implement and enforce § 1557, Title VI and §504 and other applicable civil rights laws. These requirements should apply throughout the Exchange Blueprint as they affect issues related to Consumer and Stakeholder Engagement and Support, Eligibility and Enrollment, Plan Management, Organization and Human Resources, Finance and Accounting, Oversight and Monitoring, and Contracting, Outsourcing, and Agreements.

Comments on Public Transparency

HHS should ensure that each Blueprint submitted, as well as supporting documentation (with the exception of test files), be made publicly available, similar to the way that approved state plans for Medicaid and the Children's Health Insurance Program are made available. Perhaps it would be necessary in some cases to allow more time than ten days from time of approval or conditional approval, but in the interest of transparency, it is crucial to provide access to the complete set of information about how an exchange is being operated in a reasonable timeframe.

In addition, similar information should be made publicly available about the FFE; not just information about functions performed by a state in Partnership with an FFE, but also about the functions handled at the federal level. Also, information about contracts, including a copy of the contract, entered into by the state regarding any aspect of Exchange operations should be made available to the public and be located on the same webpage with other publicly-available Exchange information.

We also suggest that HHS develop and make publicly available an Exchange Blueprint or similar document for the FFE for each state in which it will operate. It appears that many states may have an FFE, at least initially, and it is critical to ensure the FFE is just as transparent in its operation and policy decisions as a state-operated Exchange.

Finally, we commend the Department's announcement in the Federally Facilitated Exchange Guidance that it will propose a regulation for further comment to consider amending the final rules regarding Medicaid eligibility determinations made by Exchanges. We look forward to the opportunity to comment regarding ways States can ensure a coordinated system when engaging non-profits and private contractors in the process of making Medicaid eligibility evaluations, while having government agencies make eligibility determinations.

We appreciate the opportunity to submit our comments and encourage the Department to incorporate our recommendations into the State Exchange Blueprint. We are available to discuss any questions you may have on our recommendations.

Very truly yours,

Steven Kreisberg
Director
Collective Bargaining and Health Care Policy