FamiliesUSA
The Voice for Health Care Consumers

June 18, 2012

Office of Management and Budget
Office of Information and Regulatory Affairs
Attention: CMS Desk Officer

CC: CMS Center for Consumer Information and Insurance Oversight
CMS Office of Strategic Operations and Regulatory Affairs

RE: Draft Blueprint for Approval of Affordable State-based and State Partnership Insurance Exchanges

Dear Sir or Madam:

Families USA is a national nonprofit, nonpartisan organization dedicated to the achievement of high quality, affordable health coverage for all. We are writing in regards to the "Draft Blueprint for Approval of Affordable State-based and State Partnership Insurance Exchanges" (Blueprint). We commend the Department of Health and Human Services (HHS) and other relevant agencies for the release of this document, which provides key information to states working to establish their own exchanges or to establish a federally facilitated exchange (FFE) with a state partnership role. The release of the Blueprint provides states with necessary information on essential exchange establishment deadlines, including the November 16, 2012 Blueprint submission deadline, and on processes for HHS approval of state-based and state partnership exchanges. Families USA respectfully submits the following comments for improving the Blueprint requirements.

Blueprint Submission
We support the requirement that all states seeking to operate a state-based or state partnership exchange must prepare and submit a Blueprint outlining how they will perform all required exchange functions and comply with all federal exchange standards. We strongly recommend that HHS prepare an analogous document for the FFE in each state where it will operate. Such a document is necessary to ensure that FFEs will just as thoroughly and adequately perform exchange functions for consumers and employers as state-based exchanges will. State-specific FFE Blueprints should be prepared during the FFE planning process and be publicly available so that stakeholders and the public can understand how their exchange will operate and hold responsible entities accountable for its performance.

Declaration Letter
Families USA strongly supports the required submission of a declaration letter indicating if a state will pursue a state-based or state partnership exchange for the 2014 plan year. HHS's statement that states should do so "as soon as possible… to seek technical assistance and

1201 New York Avenue NW, Suite 1100 ■ Washington, DC 20005 ■ 202-628-3030 ■ Fax 202-347-2417
E-Mail: info@familiesusa.org ■ Web site: www.familiesusa.org

consultation with HHS" is important for ensuring that exchange development happens in as timely a manner as possible. Although a declaration letter for states that plan to operate a full FFE is optional, we urge HHS to similarly encourage such states to submit declaration letters, and to do so as soon as possible. If states will ultimately have an FFE, it is ideal for consumers and other stakeholders to have FFE development processes begin promptly so that operational issues are addressed in a timely manner and so that there is sufficient time for HHS to gather input and expertise from local stakeholders regarding FFE implementation.

Regarding states that do not submit a declaration letter, Families USA supports the process to begin implementing an FFE in any state that does not submit a letter by November 16, 2012. We also support the assumption that such states will not administer their own reinsurance programs.

The guidance indicates that in states that do not submit a declaration letter and ultimately have an FFE, the small group and individual markets will be merged only if they are merged currently in the state, and the small group market will be defined based on the state's current definition. We understand that in the initial years of exchange operation these are wise decisions for ensuring that exchange operations get off the ground smoothly and that the exchange insurance market is stable. However, like for the issue of selective contracting, we recommend that HHS reexamine these issues in the future to see if policy changes relating to merging the small group and individual markets or expanding exchange eligibility to larger businesses (i.e. businesses with more than 100 workers in 2017 and beyond) would benefit both consumers and small businesses and the stability of the exchange overall. HHS should conduct studies after the first or second year of FFE operations to examine these issues in each FFE state and assess whether such policy changes would be beneficial.

Conditional Approval

The Blueprint provides further details on "conditional approval" for states that "do not meet all Exchange approval requirements on January 1, 2013, but are making significant progress toward these requirements and will be operationally ready for the initial open enrollment period beginning October 1, 2013." We support the requirement that states that receive conditional approval must have a comprehensive agreement with HHS that "sets out expected future milestones and dates for operational readiness reviews." Having such an agreement is critical to ensuring that conditionally approved states will truly be ready to serve their residents with an exchange by the required open enrollment date. Therefore, we recommend that HHS clarify that such an agreement must be in place *in order to receive* conditional approval, so that both HHS and the state understand and agree upon the implementation process and timeline *before* HHS signs-off on the state's application for conditional approval. This agreement should also be posted on HHS's website so that stakeholders in the state have a written guarantee that they will have an operating exchange by the required open enrollment deadline and so that they can track their state's progress towards that goal.

The Blueprint states that, "Provided that the state is meeting the milestones outlined in its Conditional Approval determination, a state exchange can maintain Conditional Approval." We recommend that HHS clarify at what point a state may lose conditional approval, triggering the FFE implementation process. For example, if a state falls behind on one milestone, will HHS begin FFE implementation? Or will the agreement between HHS and the state be revamped to adjust for the back-up, while still ensuring state exchange operations are functioning by the

required enrollment date? In the conditional approval process, it is important that HHS build in time to adjust and prepare if HHS ultimately has to operate some or all exchange functions for a state that initially receives conditional approval.

Public Transparency

Families USA supports that sections of the exchange Blueprint will be posted on CCIIO's website. However, we strongly believe that *all* of a state's Blueprint should be available to the public. If sections of the Blueprint contain clearly proprietary information or information that would disrupt an exchange's contracting process, those sections could be exempted, but as little Blueprint information as possible should be exempted from public transparency. Transparency for functions such as Qualified Health Plan (QHP) oversight (activity 4.0), SHOP operations (activity 6.0), and general exchange oversight and monitoring (activity 11.0) is critical to allowing stakeholders and the public to hold the exchange accountable and weigh-in on its performance.

Partnership Exchange Responsibilities

Table I: Roadmap for Completing the Exchange Application provides a very user-friendly outline of which activities are required of state-based exchanges, plan management partnership exchanges, and consumer assistance partnership exchanges.

For both plan management and consumer assistance partnerships, Table I indicates that certain activities that we believe will be necessary for all partnerships to complete in order to serve consumers well are not required of partnership exchanges. We recommend that the following activities, currently required for state-based exchanges, be added to those that are also required for all partnership exchanges:

- *2.1, Stakeholder consultation plan:* We believe it is necessary for states that are running certain exchange functions via a partnership to consult with stakeholders regarding the implementation and operation of those functions. Otherwise, critical stakeholder expertise and buy-in will be left out of the process, potentially compromising the ability of the state to develop those functions well. Partnership states should be required to have a stakeholder consultation plan and should coordinate this plan with HHS's FFE stakeholder plan for non-partnership functions.
- *2.2, Tribal consultation plan:* If applicable, plan management and consumer assistance partnership states should consult with Tribes regarding the implementation and operation of these functions to ensure that they meet the needs of American Indian and Alaskan Native populations. Partnership state tribal consultation should be coordinated with HHS's FFE tribal consultation for the state.
- *7.0 Organization and Human Resources:* If a state is going to be operating plan management or consumer assistance functions (or both), it will need to have adequate staff to operate and lead these functions. Although some of these staff may already be employed in state agencies, we believe it is still important that partner states demonstrate that they have the organizational and human resources to adequately perform these functions before they are approved for a partnership exchange.
- *8.0 Finance and Accounting:* Existing guidance and the exchange Blueprint are unclear as to what the exchange financing responsibilities are for partnership states. HHS should provide details on how partnership functions will be financed, and if partnership states are responsible for financing exchange functions, activity 8.0 should be a required state partner function.

There are also a number of activities that Table I does not list as required specifically for *consumer assistance partnerships* that we believe should be added, or at least clarified, for this partnership model:

- *2.3, Outreach and education:* Table I indicates that this is not a required activity for consumer assistance partnership states, implying that HHS will be directly responsible for this activity. However, the "General Guidance on Federally Facilitated Exchanges" does not provide much detail about how HHS will perform this activity, and also states that, "States already have relationships with local community and business organizations that will be critical for effective outreach and assistance to consumers." Another point of confusion is activity 13.3 on the exchange application, which states that consumer assistance partnership exchanges must have "a plan for providing the Consumer Assistance activities including in-person assistance for its state partnership exchange consistent with 45CFR155.205(d) and (e)." 155.205(e) covers specifically "outreach and education," and therefore this requirement appears to be in conflict with the listing for activity 2.3 on Table I. Therefore, we recommend that HHS specifically outline in guidance and in the exchange application which outreach activities will be a federal responsibility and which outreach activities will be a state partner responsibility to ensure that adequate outreach and education occur for partnership exchanges.
- *2.7, Agents/brokers and 2.8 Web brokers:* These activities are not indicated as required for a consumer assistance (or plan management) partnership state in Table I or in the "Summary of Partner Functions" in the FFE guidance. However, we have encountered some confusion from states regarding whether or not they will be responsible for oversight of producers as a partnership state. HHS should explicitly state whether the federal government or a state will have oversight of producers in a partnership exchange.
- *11.0, Exchange Oversight and Monitoring:* Given the importance of consumer assistance functions to ensuring that exchanges adequately meet consumer needs and enroll qualified individuals in coverage, we believe that state partners operating consumer assistance functions should be required to perform oversight and quality control duties for these functions and to track performance and outcomes of their exchange's consumer assistance functions. Like for plan management partnerships, Families USA therefore recommends that activity 11.0 be required for consumer assistance partnerships. For both types of partnerships, HHS must also perform oversight and monitoring, as HHS is ultimately responsible for a partnership exchange's compliance with the Affordable Care Act and corresponding regulations.
- *12.0, Contracting, Outsourcing, and Agreements:* Since consumer assistance functions, like plan management functions, could involve contracts and agreements with vendors and/or government agencies, consumer assistance partner states should be required to submit information about contractors in their exchange applications.

For plan management partnerships, Table I does not list activity 6.1, SHOP compliance with 45 CFR 155 Subpart H, or activity 6.2, SHOP premium aggregation, as required state activities. Since these functions directly relate to QHPs (for example, enforcing standards for the frequency of SHOP QHP rate increases, ensuring SHOP QHPs meet state standards for the small group market, and making sure that required billing processes work with QHPs), it is unclear how they will be completed in a plan management partnership exchange if they are not at all required of a state partner. Families USA recommends that HHS specify in guidance and the exchange

Blueprint how these functions will be completed in a plan management partnership exchange.

Exchange Activities
The comments below pertain to specific exchange activities that HHS will assess via the exchange application.

Activity 1.2, Legal Authority and Governance
Families USA recommends that the supporting documentation required for this activity be amended as follows:
*Brief description of the board composition, including board members' affiliations**, an indication of which members are serving as** consumer representation, **and an attestation that a majority of voting representatives do not have a conflict of interest.***
These modifications track more closely with the final exchange rule, which requires each exchange governing board to have at least one voting member who is a consumer representative (155.110(c)(3)(i)) and prohibits boards where a majority of voting representatives have a conflict of interest, including representatives of health insurance issuers or agents or brokers, or any other individual licensed to sell health insurance (155.110(c)(3)(ii)).

Activity 2.4(c), Consumer and Stakeholder Engagement and Support
In addition to indicating adequate training and resources to operate the required consumer call center, states should be required to indicate that they have quality standards and quality monitoring processes in place for the call centers in their exchange applications. States should have call center quality standards regarding operations, including standards for the maximum allowable hold time for callers, and should track performance on those standards. States should also have processes to track the types of calls they receive (who they are from, what issues they are in reference to, etc.) and their success rates resolving consumer questions in order to improve performance over time and to help the exchange address systemic problems.

Activity 2.6, Consumer Stakeholder Engagement and Support
Families USA supports the submission of documentation regarding a state's Navigator program in the exchange application process, and urges HHS to expand this documentation requirement to include descriptions of three other Navigator program features: 1) How the Navigator program will inform the public of its services (i.e. outreach and education strategies, presence on the exchange website, etc.); 2) The capacity of the Navigator program in relation to the size of the population likely eligible for the exchange/ Medicaid; and 3) The selection criteria used for awarding Navigator grants and how that criteria will ensure the availability of Navigators to serve different population needs.

Activity 2.6(b), Consumer Stakeholder Engagement and Support
The language under this activity does not accurately reflect the regulatory requirements regarding eligible Navigator entities. To ensure that the language in the application reflects that *at least* one Navigator must be a *community or consumer-focused non-profit group*, the language of 2.6(b) should be modified as follows:
*The exchange has a plan for the ongoing funding of an exchange Navigator program, and has awarded grants to at least two (2) types of entities, **at least one** of which is a **community or consumer-focused non-profit group."***
These modifications are important to ensuring that it is clear that more than one consumer-

focused entity can be awarded a Navigator grant, and also that the non-profits referenced in this standard must be community or consumer-focused. (We are concerned that Activity 2.6(b) as written implies that any non-profit could meet this standard, and therefore suggest this modification.)

Activity 2.7, Consumer Stakeholder Engagement and Support

Families USA supports that supporting documentation, including the exchange's compensation policy for agents/ brokers, must be submitted with the exchange application for states that permit agents and brokers to sell QHPs through the exchange. We recommend the following two additions to the required documentation for submission under activity 2.7: 1) The content of the agreement between the Exchange and participating agents/ brokers and 2) A plan for monitoring broker enrollment for steering, including a plan to collect data to compare the enrollment trends of people enrolling on their own through the exchange to those enrolling through agents and brokers to uncover patterns or evidence of steering. Requiring the submission of this information with exchange applications will help minimize adverse consequences of allowing brokers and agents to sell QHPs through the exchange.

Activity 3.2, Eligibility and Enrollment

Robust coordination between the exchange and state agencies administering insurance affordability programs is critical to achieving the seamless, streamlined consumer enrollment experience required by the Affordable Care Act. Families USA supports the requirement that states provide a brief description of their strategy for coordinating with other agencies administering insurance affordability programs and the SHOP. We recommend that states also be required to submit the memorandums of understanding required by the Exchange and Medicaid and CHIP eligibility rules that identify roles, responsibilities, and timelines with respect to eligibility determinations, to demonstrate their ability to coordinate eligibility and enrollment activities.

Activity 3.4a, Eligibility and Enrollment

Families USA supports the requirements that exchanges make applications and notifications accessible to those with disabilities and limited English proficiency, as required in 45 CFR 155 subpart D. HHS should require states to submit copies of the written notices as supporting documentation for activity 3.4a so that HHS can adequately assess their compliance with access requirements.

Activity 3.7b2, Eligibility and Enrollment

Families USA is concerned about the impact on consumers of the bifurcation of eligibility assessments and determinations for Medicaid and CHIP. We strongly suggest that states that opt to have the exchange conduct only an assessment of Medicaid and CHIP eligibility be required to include a description of their process for transferring applications from the exchange to the state agencies for a full determination as supporting documentation for activity 3.7b2. This description should include timeliness guarantees and the steps the Medicaid and CHIP agencies will take to prevent duplication of steps in the assessment and eligibility determination processes to minimize harm to consumers caused by bifurcation.

Activity 3.9, Eligibility and Enrollment

Families USA supports the requirements that exchanges make notices available in plain language, as required in 45 CFR 155 subpart D. HHS should require states to submit copies of the written notices as supporting documentation for activity 3.9 so that HHS can adequately assess their compliance with requirements for content, audience, and simplicity.

Activity 3.11, Eligibility and Enrollment

A clear and effective system to appeal eligibility determinations is a critical exchange function. As noted on page 15 of the General Guidance on Federally Facilitated Exchanges, guidance on coordination of appeals processes between the exchange and state Medicaid and CHIP agencies is forthcoming. We encourage HHS to provide this guidance as soon as possible so that states understand what they must do to develop effective coordination between the exchange and state agencies on these important processes.

Activity 3.14, Eligibility and Enrollment

Families USA supports that states must have a "transition plan for high-risk pools including state-based PCIP programs and other similar programs" to operate an exchange. We believe this is an important activity and that it should require the submission of supporting documentation , specifically to outline a state's plan to ensure that people in high-risk plans do not experience gaps in coverage or gaps in treatment during a transition period. Since individuals in high-risk pools or PCIP plans may be in the midst of critical treatment, states should ensure that people do not have to switch doctors during an episode of care due to the transition, as this could cause a disruption in necessary treatment and pose a significant health risk.

Activity 4.6, Plan Management

Families USA supports the requirement that state must submit supporting documentation regarding transitions from decertified QHPs, and recommend also requiring the additional supporting documentation under activity 4.6: 1) A description of the decertification process, including at what point a plan will be decertified (i.e. whether the state will first give plans opportunities to come back into compliance with QHP standards, etc.) and any sanctions a state may impose on non-compliant plans short of decertification, and 2) A description of the frequency with which the exchange plans to have QHPs undergo full recertification.

Activity 4.7, Plan Management

To ensure that QHP accreditation takes place within a reasonable amount of time given that accreditation is a statutorily required QHP standard, Families USA urges HHS to require states to submit their accreditation timelines as supporting documentation for activity 4.7 in their exchange applications.

Activity 6.1, Small Business Health Options Program (SHOP)

Given that the SHOP policy decisions that states will make will have significant effects on the stability of the SHOP market and how well the SHOP will serve employers and their workers, we believe that, in addition to the supporting documentation for SHOP functions currently required in the exchange Blueprint, states should also have to submit:

- A description of any plan selection models that they will permit in the SHOP in addition to the required model described under activity 6.1a, and a description of how the state will address adverse selection concerns in any employee choice models.
- A description of the minimum participation requirements the state will impose for the SHOP

under activity 6.1d, if applicable, and a description of how the state will ensure sufficient SHOP participation to keep the market viable if minimum participation requirements are instated.

- A description of the employer premium contribution models that will be available in the SHOP and any options that employers will have for mitigating rating differentials for individual workers.

Activity 7.0, Organization and Human Resources

Families USA supports the required supporting documentation for this activity and recommends that it be expanded as follows:

Brief description o the hiring strategy that addresses competencies, roles, and responsibilities need to perform key Exchange activities ***and disclosures and reviews of candidate conflicts of interest.***

We also recommend that the requirement for activity 7.1b incorporate this language. It is important to the effective functioning of exchanges that staff not have financial, personal, or other conflicts of interest that will prevent them from performing their duties in a way that ensures that the exchange meets all statutory and regulatory requirements and serves consumers well.

Activity 8.0, Finance and Accounting

Families USA supports the required supporting documentation for this activity and recommends that it be expanded as follows:

Brief description of the methods the Exchange will use to generate revenue, ***including a description of how the state will ensure that these methods do not negatively impact the stability of the exchange market through adverse selection or otherwise,*** *and how the Exchange will address any financial deficits.*

We also recommend that this consideration be included in the language for activity 8.1b as follows:

The Exchange has defined methods for generating revenue (e.g. user fees) pursuant to the Affordable Care Act 1311(d)(5)(A), ***has considered how these methods will impact the stability of the exchange market (including any adverse selection that may result from them),*** *and has the appropriate legal authority.*

We believe that adding this content is important to ensuring that states seek to identify funding sources for the exchange that will not undermine its ability to be viable and serve consumers and employers well.

Activity 12.0, Contracting, Outsourcing, and Agreements

To ensure that exchange contracting, outsourcing, and agreements meet required statutory and regulatory standards, we recommend the following modifications to activity 12.1:

The Exchange has executed appropriate contractual, outsourcing, and partnership agreements with vendors and/or State and Federal agencies for all Exchange activities and functionality as needed, including data and privacy agreements. ***Exchange contracting entities meet the requirements for eligible contracting entities outlined in 45 CFR 155.110.***

Families USA also recommends that the supporting documentation requirement for this activity include this consideration via the following modification:

List of all contractor(s) with which Exchange has contracted, ***demonstration that contractors meet the eligible contracting entities standards outlined in 45 CFR 155.110,*** *and a notation of*

the services that the contractor(s) will support.

We appreciate the opportunity to provide comments on the Draft Blueprint for Approval of Affordable State-based and State Partnership Insurance Exchanges. If you would like to discuss any of our comments, please contact Claire McAndrew at cmcandrew@familiesusa.org or 202-628-3030.

Sincerely,

Claire McAndrew
Senior Health Policy Analyst
Families USA