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Office of Management and Budget
Office of Information and Regulatory Affairs,
Attention: CMS Desk Officer
SENT VIA EMAIL: OIRA_submission@omb.eop.gov

To whom it may concern:

Kentucky Equal Justice Center (KEJC) respectfully submits the following comments to the Office of Information and Regulatory Affairs (OIRA), in response to the “Draft Blueprint for Approval of Affordable State-based and State Partnership Insurance Exchanges.” We appreciate the opportunity to provide comments on these important rules.

KEJC is a statewide civil legal services organization that works closely with legal services programs across Kentucky. We represent the interests of low-income Kentuckians on civil legal matters, including the right to access high quality, affordable health care. We plan to be involved in the state’s process of establishing an Exchange and have commented on the state level.

1. Exchange Blueprints and Declaration Letter are due November 16, 2012.

We support having a defined deadline by which a state must make a decision and demonstrate commitment towards a state-based exchange or partnership exchange, but are worried that November 16 may be too late. To give time for adequate stakeholder consultation and planning, we encourage an earlier date.

2. 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.”

HHS should specify when is the absolute last date by which a state must demonstrate that is “conditionally approved”. Exchanges 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.

3. Exchange Declaration Letter – required as part of the Exchange Blueprint submission by November 16, 2012

We encourage OIRA to provide a form for states to fill out. This would simplify their efforts to respond. Additionally, OIRA should require the Declaration Letter to clarify which entity 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 or whether the Exchange will make an initial assessment of potential Medicaid eligibility with the final determination being made by the state Medicaid agency.

4. Exchange application consultation with CMS

We support HHS's decision to provide consultation and assistance to states that indicate their commitment early. Specifically, states that submit their Declaration Letter twenty or more business days prior to the submission of their blueprint should be eligible to receive targeted support to assist the state in completing its Exchange Blueprint submission towards successful certification.

5. Roadmap for Completing the Exchange Application

Table 1 includes a very useful checklist of state requirements and responsibilities, depending on whether a state will operate a state-based exchange, handle plan management in Partnership with an FFE, and/or handle consumer assistance in partnership with an FFE. We believe, however, that "2.0 Consumer and Stakeholder Engagement and Support" should be amended so that Stakeholder Consultation and Consumer Assistance are separate sections, reflecting the separateness of these functions. Additionally, the partnership exchange checklist should be bolstered to include greater detail about how consumer assistance services will be provided and should require a stakeholder consultation plan.

6. 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 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 that states not only attest to 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.

6. Public Transparency: The Exchange Blueprint specifies that only certain sections of a state exchange blueprint be made public within ten (10) business days of an Approval or Conditional Approval.

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. Making the Blueprint publicly available might make it necessary to allow more time than 10 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 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.

We strongly believe that HHS should 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 as transparent in its operation and policy decisions as a state-operated Exchange must be.

Thank you for this opportunity to comment the Exchange Blueprint process. We appreciate your attention to our comments to ensure that Exchanges provide the best service possible for all consumers.

Respectfully submitted,

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