



October 27, 2011

Mr. Steve Larsen  
Director  
Center for Consumer Information and Insurance Oversight (CCIIO)  
Centers for Medicare & Medicaid Service (CMS)  
U.S. Department of Health and Human Services (HHS)  
**Attention: CMS-9974-P, RIN 0938-AR25**  
P.O. Box 8010  
Baltimore, MD 21244-8010

Dear Director Larsen:

The National Business Group on Health appreciates the opportunity to comment on the proposed rule regarding the process for eligibility determinations for exchange participation and employer participation in the SHOP (small employer) exchanges. We believe in the potential of the exchanges to promote competitive marketplaces and transform the health care delivery system. In addition to these comments, we also plan to submit comments on the separate exchange rule implementing the health insurance premium tax credit.

The National Business Group on Health represents over 330 companies, including many of America's largest employers (68 of the Fortune 100) who voluntarily provide health benefits and other health programs to over 55 million American employees, retirees, and their families.

We applaud the provisions in the proposed rule that would streamline eligibility determinations and create a central database for employers to voluntarily submit information on employees' incomes and health coverage. Both of these provisions promote administrative simplicity and national uniformity.

In our September 26<sup>th</sup> comment letter on the initial proposed rule, we applauded several proposals including requiring the exchanges to consult with large employers; including board members with the relevant experience necessary to set up the exchanges; requiring exchange plans to meet national accreditation standards similar to Medicare Advantage plans; and streamlining premium collection from employers and distribution to plans. We also recommended allowing the Office of Personnel Management (OPM) to provide the administrative functions of the multi-state exchange plans for multi-state employers. In regards to eligibility determinations for tax credits and other qualified coverage, we recommended that states share eligibility and enrollment information between individual and SHOP exchanges and share these processes.

Many of our members and other employers may interact with the exchanges if they have potentially eligible populations (individuals with coverage the government deems “unaffordable” or not “comprehensive”, low-to-moderate income employees (up to 400% of federal poverty or \$74,120 for a family of three), early retirees, COBRA eligibles, spouses, dependents or contract, part-time or temporary employees) in 2014 and if states or the District of Columbia permit them to participate in 2017. Accordingly, we make the following recommendations to the proposed rule, which reflect the specific suggestions and concerns of our member companies:

**The National Business Group on Health applauds the following provisions in the proposed rule**

- **Establishing a streamlined eligibility and enrollment system**
- **Creating a central database where employers may voluntarily send information for the verification process**

**The National Business Group on Health provides the following recommendations where the proposed rule specifically asks for comments**

- **Require HHS, rather than the state exchanges, to make eligibility determinations for the tax credits and cost sharing reductions**
- **Require SHOPS to notify employers 45 days before October 1 of their upcoming annual election period to select plan (s)**
- **Allow employers to designate where exchanges should send notices when their employees become eligible for exchange coverage or when their exchange eligible employees terminate exchange coverage**
- **Only verify employer-sponsored coverage when employee attestations clearly do not “reasonably” compare with other data already submitted electronically**
- **Require the exchanges to notify employers in a timely manner when they make redeterminations (either during a benefit year or annually) and to refund amounts mistakenly assessed under the employer penalty**
- **For redeterminations, limit the need for individuals to report income changes greater than five percent to the exchanges**
- **Allow individuals without any notable income or employment changes to opt-out of annual redeterminations**
- **Establish a September 15<sup>th</sup> cut-off date for redeterminations across all exchanges**
- **Require exchange plans to maintain exchange coverage to the end of the month after eligibility changes under redeterminations**
- **Establish a stronger residency requirement for exchange coverage in the state of residence than Medicaid’s lax “intent to remain” standard**

We look forward to continuing to work with the CCIIO on this process. Please contact me or Steven Wojcik, the National Business Group on Health’s Vice President of Public Policy, at (202) 558-3012, if you would like to discuss our comments in more detail.

Sincerely,

A handwritten signature in cursive script that reads "Helen Darling".

Helen Darling  
President and CEO

cc: Ms. Nancy-Ann DeParle, Deputy Chief of Staff, The White House  
The Honorable Kathleen Sebelius, Secretary, U.S. Department of Health and  
Human Services  
Laurie McWright, Alissa DeBoy, Michelle Strollo, Naomi Senkeeto. CCIIO

**Details of The National Business Group on Health's Recommendations on the Eligibility Determinations for Exchange Participation and Standards for Employer Participation in the SHOPs**

**The National Business Group on Health applauds the following provisions in the proposed rule**

- **Establishing a streamlined eligibility and enrollment system**

In an earlier proposed rule, CCIIO required the Secretary of Health and Human Services (HHS) create a single, streamlined application form for determining eligibility for exchange tax credits, cost-sharing reductions, Medicaid, CHIP and the Basic Health Plans (BHP) if states choose to offer them. This proposed rule codifies the provisions in the law requiring the exchanges accept applications and make eligibility determinations for applicants seeking them at any point during a benefit year.

We continue to support the CCIIO's efforts to create a single, streamlined application form to determine eligibility for exchange tax credits and cost-sharing reductions, Medicaid, CHIP and the BHPs for states choosing to offer them.

We also support the provision in the proposed rule that would allow the exchanges to enter into agreements with state Medicaid or Children Health Insurance Programs (CHIP) to transmit enrollments to Medicaid managed care organizations or other programs since exchanges will already have the capacity to determine Qualified Health Plans (QHPs).

- **Creating a central database where employers may voluntarily send information for the verification process**

In the proposed rule, CCIIO considers creating a central database that employers could voluntarily populate as a potential resource for the verification process of applicants seeking eligibility for the exchange tax credits and cost-sharing reductions. The proposed rule specifically asks for comments on how to interact and communicate with employers to verify if applicants' have employer-sponsored coverage. CCIIO is also considering allowing state exchanges to create a template that both employers and employees could use to capture information to verify coverage under employer-sponsored plans. CCIIO wants to know: (1) whether state exchanges would find a template helpful and, if so, how HHS should design the template to capture plan-level information employers/plans already must report to employees, the IRS and/or the Department of Labor, and (2) whether employers would find the development of a central database an attractive option to provide information about the coverage offered under eligible employer-sponsored plans. The Treasury Department and the Internal Revenue Service (IRS) also intend to request comments on employer information reporting.

We support HHS' proposal that would allow employers to voluntarily submit health plan information and costs to one central federal database rather than to each state exchange. The latter would likely create a situation where information templates and processes could vary between the states. If states have their own data hubs, we do support one-

federal template because it would create a uniform verification process that would simplify multi-state employers' interactions with the exchanges.

Employers also recommend that submissions of employer information to the new, central federal hub be electronic. From our experience, paper based applications only increase administrative costs and the risks to receive partial, inaccurate or illegible information. Exchanges can easily verify electronic information and it lowers administrative costs and allows for quick feedback. Employers will also find submitting and receiving information electronically more cost effective and efficient.

**The National Business Group on Health has the following recommendations where the proposed rule specifically asks for comments**

**§ 155.330 Eligibility Redetermination During a Benefit Year, § 155.335 Annual Eligibility Redetermination**

- **Require HHS, rather than the state exchanges, to make eligibility determinations for the tax credits and cost sharing reductions**

The law and the proposed rule allow the state exchanges to perform the eligibility determinations for the tax credits/exchange coverage. HHS had considered establishing a system where the Secretary would determine eligibility for the tax credits because the federal government fully funds the subsidies with uniform rules across all of the states. Under this option, states still would have handled the other eligibility and enrollment functions (redeterminations, employer verification, etc.), but HHS chose not to take this approach.

We support CCIIO modifying the current rule to allow the HHS Secretary to determine eligibility, rather than the state exchanges, so that employers can send employee and plan information (lowest cost option, employees' cost share, employees' salary or actuarial value information) or eligibility and enrollment information (for redeterminations, employer verifications, etc.) to one federal source. Otherwise, employers will have to deal with 50 or more different state exchanges that will duplicate federal-led exchanges' efforts and increase bureaucracy, costs and confusion.

**§ 157.205 Qualified Employer Participation Process in a SHOP**

- **Require SHOPS to notify employers 45 days before October 1 of their upcoming annual election period to select plan (s)**

The proposed rule seeks comments on the feasibility and the implications for small employers and their employees on the requirement for employers' who remain eligible for SHOP coverage and do not take action during the annual employer election period to continue to offer the same plan, coverage level or plans selected the previous year for the next plan year unless the exchanges no longer offer their QHP (s). The initial proposed rule also requires the SHOP exchanges to notify employers when their annual election period is approaching (potentially 30 days in advance).

In our previous comments we recommended allowing participating employers 90 days from July 1 to choose the level of coverage and specific plan (s) they want to offer to their employees in the exchanges. To ensure employers have ample time to determine if they can continue to participate in the exchanges without HHS requiring them to continue their previous year's coverage, we recommend the SHOPS notify them of their annual election period 45 days before October 1 or near the end of the 90 day time frame that began on July 1 to select their plan (s) available to their employees if they have not done so already. This reminder will help employers, exchanges, and employees have a smoother open enrollment process.

### **§ 155.310 Eligibility Determination Process**

- **Allow employers to designate where exchanges should send notices when their employees become eligible for exchange coverage or when their exchange eligible employees terminate exchange coverage**

The proposed rule states that exchanges will notify employers and employees when they have determined applicants eligible to receive tax credits or cost-sharing reductions in the exchanges if the federal government deems their employers' coverage "unaffordable" or not "comprehensive". The proposed rule also states the exchanges will transmit the names, Social Security numbers and the effective dates of the individuals eligible for exchange tax credits that terminate coverage in QHPs during a benefit year to HHS, which will transmit it to Treasury and their employers.

We recommend that CCIIO allow employers to designate where within their companies and to whom exchanges send notices when their employees become eligible for exchange coverage or when their exchange eligible employees terminate their exchange coverage. This method has improved the Medicare Secondary Payer notification process.

### **§ 155.320 Verification Process Related to Eligibility for Insurance Affordability Programs**

- **Only verify employer-sponsored coverage when employee attestations clearly do not "reasonably" compare with data already submitted electronically**

The proposed rule requires exchanges accept employees' attestation of employer-sponsored coverage without further verification, except in cases where information does not reasonably compare with existing data.

Employers do not want the additional administrative burden, particularly in the current economy, to submit additional information to the exchanges to verify the coverage status of every employee. Employers prefer to only submit/verify coverage for those employees likely eligible for tax credits/exchange coverage rather than data for every employee. Accordingly, CCIIO should only require verification of employer-sponsored coverage for reasonable cases when applicants' attestations clearly do not match up with other sources of electronic data already available to the exchanges/HHS to ensure the exchanges do not unnecessarily increase employers' administrative costs and further strain existing benefit resources.

## **§ 155.330 Eligibility Redetermination During a Benefit Year, § 155.335 Annual Eligibility Redetermination**

- **Require the exchanges to notify employers in a timely manner when they make redeterminations (either during a benefit year or annually) and to refund amounts mistakenly assessed under the employer penalty**

The proposed rule states the exchanges will redetermine the eligibility of applicants for QHPs on an annual basis. However, the proposed rule also allows the exchanges to redetermine the eligibility of enrollees in QHPs during the benefit year in two situations: first, if enrollees report updated information and the exchanges verify it; and second, if the exchanges identify updated information through limited data matching. The proposed rule establishes a redetermination process that primarily relies on individuals to provide the exchanges with updated information during the benefit year, as opposed to having the exchanges examine electronic data sources and/or contact the individuals in order to determine whether a change has occurred during the year. Individuals who enroll in QHPs with or without tax credits must report any changes to their eligibility for the exchanges within 30 days including, but not limited to, changes resulting from incarceration status, residency, immigration status, household income or household size, or the availability of qualifying coverage in eligible employer-sponsored plans when they get new jobs. The proposed rule solicits comments on if the state exchanges should also utilize ongoing data matching and if the exchanges should provide periodic reminders for enrollees to report any changes in their eligibility.

Employers strongly recommend CCIIO require the exchanges/Treasury Department or exchange enrollees to notify employers in a timely manner when they make redeterminations (either during a benefit year or annually based on either information from enrollees or limited data matching) and to stop and refund amounts assessed under the employer penalty. Under the health care law, beginning January 1, 2014, employers must pay \$3,000 for each employee for whom the plan pays <60% of coverage costs or the employee pays > 9.5% of their modified adjusted gross income for coverage if the employee is enrolled in an exchange plan eligible for a tax credit (below 400% of federal poverty). Employers not offering coverage pay \$2,000 for all employees if at least one employee is enrolled in an exchange plan eligible for a tax credit (below 400% of federal poverty). Employers want to ensure that HHS/Treasury/the exchanges do not assess them for penalties when their employees enrolled in exchange plans are no longer eligible for tax credits. The federal government could utilize or implement a system similar to the existing COBRA subsidy infrastructure as the model to distribute timely notifications/refunds to employers.

The health care law already requires all state exchanges to have data matching agreements with the federal government to determine eligibility for exchange coverage, Medicaid, CHIP or employer coverage based on income and eligibility data from information already collected under the Social Security laws. Accordingly, we support state exchanges utilizing ongoing data match programs and providing periodic reminders to enrollees to report any changes in their eligibility.

- **For redeterminations, limit the need for individuals to report income changes greater than five percent to the exchanges**

The proposed rule specifically seeks comments on if CCIIO should require or allow the exchanges to limit the requirement for individuals to report income changes to changes of a certain magnitude. For example, one alternative could permit the exchanges to require individuals to report all changes to non-income information that affect his or her eligibility within 30 days of a change, but only income changes of greater than five, ten, or 15 percent.

We recommend CCIIO limit income changes individuals need to report to those greater than five percent. By making this change, CCIIO will eliminate the number of unnecessary income changes reported and limit income verifications between employers and the exchanges to only those individuals with income changes significant enough to affect their eligibility for the tax credits/exchange coverage.

- **Allow individuals without any notable income or employment changes to opt-out of annual redeterminations**

The proposed rule seeks comments on when the exchanges could allow individuals the choice to opt out of having their eligibility redetermined based on the information contained in the annual redetermination notice.

We recommend allowing individuals to opt-out of having their eligibility redetermined if they have not had any change in employment status or notable income changes. If exchanges' annual redetermination notices do not reveal any notable changes then exchanges do not need to undertake time-consuming, costly redeterminations or employment verifications for individuals who have not likely had any changes in their eligibility status.

- **Establish a September 15<sup>th</sup> cut-off date for redeterminations across all exchanges**

The proposed rule allows the HHS Secretary to permit the exchanges to establish a “cut-off date” for changes resulting from redeterminations during the coverage year in order to take effect the first day of the month following the month of the redeterminations. For example, states could determine that exchanges must complete their redeterminations by September 15th in order to take effect on October 1. The proposed rule seeks comments on this policy and the effective dates for changes.

We recommend that CCIIO establish a uniform timeframe with a cut-off date of September 15<sup>th</sup> for redeterminations across all of the exchanges in order to take effect on October 1 to add uniformity and predictability to verifications. By establishing a cut-off date, CCIIO can reduce costs, increase efficiency and ease the transitions among the exchange plans, employer-sponsored coverage, and Medicaid coverage or between exchanges from annual redeterminations. Changes in eligibility after that date will be

close enough to the end of the year that they will be picked up by the annual redetermination process.

- **Require exchange plans to maintain coverage to the end of the month after eligibility changes under redeterminations**

The proposed rule states that if eligibility redeterminations result in individuals losing their eligibility for the exchanges the exchanges will maintain individuals' eligibility for enrollment in QHPs for a full month after the month the exchanges sent them determination notices—although the exchanges will discontinue the tax credits and cost-sharing reductions. The determination notices will include (any updated tax return data and current household income data obtained by the exchanges, the exchanges' predicted eligibility determinations, individuals' predicted tax credits and cost sharing reductions). Individuals will have 30 days to respond to a determination notice with additional information to maintain their eligibility for exchange coverage. The proposed rule specifically requests comments on the continuation of coverage for a full month after the month in which the exchanges sent them determination notices to avoid any coverage gaps for individuals who lose their eligibility for exchange coverage.

We recommend maintaining coverage for a full month after individuals experience changes in exchange eligibility resulting from redeterminations. Maintaining exchange coverage for one full month after individuals lose eligibility resulting from redeterminations will eliminate gaps in coverage, allow these individuals to choose other coverage and smooth transitions from one type of coverage to another.

### **§ 155.305 Eligibility Standards**

- **Establish a stronger residency requirement for exchange coverage in the state of residence than Medicaid's lax "intent to remain" standard**

The proposed rule states the exchanges will use the Medicaid residency standards for individuals eligible for exchange coverage unless the states' Medicaid or CHIP agencies, where the exchanges operate, choose not to allow verification of residency based solely on attestation.

As we stated in our previous comment letter, we recommend the exchanges establish a residency requirement to avoid "gaming the system" under the special enrollment periods for when exchange eligible populations move. In particular, employers recommend that exchanges establish a stronger residency requirement than Medicaid's lax "intent to remain" standard where individuals only have to sign a statement saying they intend (attest) to remain at a certain address.