



October 26, 2011

Donald Berwick, MD
Acting Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Room 445-G, Hubert H. Humphrey Building
200 Independence Avenue, SW
Washington, DC 20201

Submitted via the Federal Rulemaking Portal: www.regulations.gov

Re: Proposed Rule for Patient Protection and Affordable Care Act: Establishment of Exchanges and Qualified Health Plans (CMS-9989-P)

Dear Dr. Berwick:

I am writing on behalf of the Idaho Association of Health Underwriters a professional association representing 300 licensed health insurance agents, brokers and consultants in the state of Idaho. Our national association, the National Association of Health Underwriters (NAHU), has submitted detailed comments concerning the proposed regulation entitled "Patient Protection and Affordable Care Act (PPACA): Establishment of Exchanges and Qualified Health Plans (QHPs)" as published in Volume 76, Number 136 of the *Federal Register* for your consideration.

We fully support—and helped craft—the NAHU letter, but we wanted to take this additional opportunity to highlight some key concerns and cite observations about the proposed rule for your consideration when crafting the final exchange regulation.

Ensuring a Role for Traditional Health Insurance Agents and Brokers

Exchanges should always include an option for participating individuals and businesses to contact a certified, state-licensed and independent agent/broker for assistance with their exchange-based coverage. Agents and brokers have a unique position in the insurance and health care marketplace, which makes their participation crucial. Brokers are the sole industry segment that understands and interacts with all stakeholders in the system: they advise individual consumers and employers of all sizes about health plans which fit their personalized needs and budgetary requirements; they intercede with providers when clients receive an erroneous medical bill or cannot get a referral; they assist consumers with insurers if a claim is denied and handle a myriad of other issues for both individual and employer clients.

Since it is the professional role of our members to provide consumers with accurate information about their health coverage options, exchange participation is a natural fit. In fact, all successful state-level private purchasing pools and exchanges have elected to utilize the services of traditional independent agents and brokers for this reason. The use of traditional health insurance agents and brokers in exchanges will help increase access and overall coverage rates, and it will also give exchange consumers access to legally accountable professionals who are licensed and trained to serve their long-term needs.

Current laws in every state allow licensed health insurance agents and brokers to sell and service all health insurance policies offered in the state, provided that they meet all related state requirements. We believe these existing state licensure laws would cover the sale and service of all exchange-based qualified health plans by state-licensed agent and brokers unless a state or the federal exchange specifically acted to exclude them. We very strongly believe that any state or federal action to exclude traditional agent and broker exchange participation would be to the exchange's extreme detriment. Furthermore, we believe independent agents and brokers should continue to be compensated for providing consumers with their services in exchanges using fair market rates through the health insurance carriers with which they contract to do business.

Consumer Protection

We appreciate the potential of exchange navigator programs to reach populations that have special needs or are currently underserved. However, these populations absolutely deserve all of the protections currently offered to traditional private market consumers under current law.

We are concerned that unless subject to strict oversight, such as the regulatory control state insurance departments have had over health insurance producers for decades, the new navigator program could be vulnerable to poorly trained and potentially unlicensed entities exploiting the program for their own gain. Toward that end, we believe that strong measures are needed to ensure that only established and legitimate entities serve as exchange navigators.

Our association also believes that the final exchange rule should specify that all individuals selling coverage or providing coverage option advice to consumers through any exchange should be subject to existing state insurance licensure and continuing education requirements, as well as all other applicable state-based regulations. This would include both traditionally compensated health insurance agents, as well as anyone else who helps "facilitate enrollment in qualified health plans," one of the PPACA-specified duties of a navigator. It would also include individual employees or volunteers of entities that receive navigator grant funds, any exchange employees, call-center operators or other individuals who, as part of their exchange business practices, engage in the activities that currently trigger the need for producer licensure in all 50 states.

Exchange Governance

The proposed rule expresses concerns about potential conflicts of interest if exchange boards are made up of an excessive number of individuals who are connected to the insurance industry, including licensed agents and brokers. However, we believe all individuals and entities that meet the experience requirements specified as necessary for exchange board participation outlined in the proposed rule could also have inherent conflicts of interest, not just those affiliated with the insurance industry. By merely requiring that exchange boards have proportional representation from all stakeholder groups and operate under strong ethics provisions, CMS could ensure that exchange boards have a balanced perspective and the requisite amount of expertise about all facets of the health care industry. It is not necessary to target conflict of interest provisions at any one stakeholder group.

Dangers of Enrollment Over-Simplification and Need for Continued Personalized Service

One of the central promises of moving towards an exchange-based health insurance marketplace is that it will greatly simplify enrollment processes, exponentially increasing coverage rates. Many claim that health insurance purchasing will become as simple as purchasing an airline ticket online is today. But in reality, buying health insurance coverage is absolutely nothing like buying a plane ticket! An airline ticket is a one-time purchase that takes you to a known destination. The variables for how you get there may

cost you time and frustration, but that's all. Health insurance is a complex financial product, and price alone does not determine the best coverage choice.

Health plan enrollment is merely one of a myriad of touch points in the health insurance placement process. Health insurance producers work with clients before the sale, through the installation of the policy and for years afterward to ensure that the policy pays according to the contract or continues to meet the consumers' needs. They assist consumers with plan selection, insurance billing and claim filing, and contract interpretation. Brokers and agents often intercede on behalf of clients to obtain payment for services that may not be typically or otherwise covered under a plan, i.e. services that may be new or deemed experimental. For employers, they frequently serve as an extension of the human resources department and design comprehensive benefit programs, provide employees with information about the selected plans, process enrollees and handle compliance matters, as well as service employee claims concerns. Finally, agents and brokers help save their clients significant money each year by ensuring that they are getting the best value for their dollar at renewal time; and if there is an issue with renewal premiums, they assist them in finding alternate coverage.

Clearly, health insurance is not a transactional, one-shot purchase. Simplifying and speeding the coverage enrollment process may increase initial coverage rates, but it may also lead to an increased degree of buyer remorse. If someone purchases the "wrong" plan, he/she may not have coverage for needed services, the ability to see a preferred doctor or the ability to go to a preferred hospital. Businesses that make the wrong SHOP exchange decisions could face severe economic consequences and hurt their employees' access to appropriate coverage.

When developing the final exchange rule, CMS will need to consider how they will address the potential long-term consequences of enrollment over-simplification. One key way of doing so would be to ensure continued consumer access to the services of licensed, trained and professional health insurance producers.

Exchange Cost Containment

Since our members work with employer and individual health insurance consumers every day, we know the first concern a consumer has about their health insurance coverage is its cost. That's why we believe exchanges should strive to contain expenses and supplement the current private health insurance marketplace structure whenever possible. There is no reason to duplicate existing functions of state departments of insurance, private insurance companies and/or health insurance producers. To that end, we encourage you to modify the proposed rule in a manner which keeps costs out of the exchanges whenever possible. Utilizing this strategy of exchange design will be less costly to taxpayers and will grant consumers a greater degree of satisfaction and consistent protection.

The Idaho Association of Health Underwriters sincerely appreciates this opportunity to provide this feedback. We look forward to working with you, either directly or indirectly through NAHU, as implementation of PPACA and exchanges specifically move forward. If you have any questions, would like more information, or if we can be of further assistance, please feel free to contact me at 208-377-1428 or saladl@aol.com .

Sincerely,

Scott Leavitt

Idaho Association of Health Underwriters

Legislative Chair/ Past President