



STATE OF INDIANA
Indianapolis, Indiana 46204

Mitchell E. Daniels, Jr.
Governor

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Centers for Medicare and Medicaid Services
Office of Strategic Operations and Regulatory Affairs
Division of Regulations Development
Room C4-26-05
Security Boulevard
Baltimore, Maryland 21244-1850

Attention: CMS-10416

Dear Secretary Sebelius,

Indiana takes this opportunity to comment on the preliminary State Exchange Plan Application made available for public comment November 10, 2011, as required by the Patient Protection and Affordable Care Act (PPACA). In light of the pending Supreme Court decision regarding the constitutionality of PPACA and lack of final regulations, Indiana has not yet made a decision regarding the establishment of an Exchange. Indiana reiterates the submitted October 31, 2011 comments stating the State believes the Exchange certification and monitoring process should not mirror the cumbersome and lengthy Medicaid State Plan amendment process. Exchanges need to nimbly respond to the insurance market changes, and a complex federal approval process will prohibit agility and flexibility. While it is understood that some kind of initial certification is necessary, efficiency is paramount. Additionally, the application should consider that many critical regulation components have yet to be released, and none have been finalized. Thus, States will have limited time to achieve many of the requirements listed in this draft application and the requirements will likely necessitate adjustment and flexibility.

Comments PART 1: ENABLING AUTHORITY AND GOVERNANCE

Governance:

Regarding to the proposed requirements concerning submission of information on the exact composition of the Exchange board, it is possible that, at the time of submission of the Exchange Plan Application, a state-based Exchange may have authority to establish an Exchange and develop a governance model. However, the Exchange board may not be fully formed and staff may not have been hired. Indiana requests this section clarify that a state may provide job descriptions and a description of board seats in lieu of details on specific board members.

Regional or Subsidiary Exchanges:

The State Exchange Application omitted requesting comments on a State Partnership Exchange. Including this Exchange option for states may be important in the application dependent upon states' evaluation processes.

Non-interference with Federal Standards:

The application requires states to provide an attestation that the Exchange will not establish standards that conflict with HHS's standards. Indiana requests clarification regarding HHS's intentions. We propose this be a simple attestation by the Exchange CEO or other appointed authority. Further, Indiana requests this attestation not be required to be stated in exchange-enabling legislation.

Comments PART 2: EXCHANGE FUNCTIONS**Insurance Portal:**

The proposed application requires states to provide a description of how the insurance portal will display health plan quality rating and enrollee satisfaction information. Indiana notes at this time states cannot respond with comments adequately to this requirement as the quality rating requirements have not been released. Indiana urges prompt release of the proposed rules and standards on quality so states can adequately prepare and respond to this application.

Eligibility:

1) The proposed application requests that states provide evidence of adequate staffing. Depending on when final rules and regulations are released, including the specifications of the federal data hub, it may be unclear at the time of submission of the Exchange application what exactly would constitute an adequate level of staffing. Indiana urges prompt release of all remaining regulations so states can complete final capacity studies. In addition, the State requests the language of this requirement be identified as a plan for adequate staffing. When the Exchange Plan Application is submitted, it is likely that a large portion of a state-based Exchange's staff will not yet have been assigned. However, an Exchange will have a proper plan in place to staff appropriately, which could be identified in the application.

2) Regarding the alternative single application, CMS has not yet released any specifics regarding the proposed single, streamlined application, and, therefore, States may not have sufficient time to develop their alternative application. States should only be required to signify their intent to develop a State-specific application. The final version of the actual application should not be a condition of the January 1, 2013 Exchange approval.

3) Similarly, it is required that the State provide a description of the relevant notices on the Exchange Application. Proposed rules on notice requirements for the Exchange have not been issued. Indiana urges that these proposed rules be promptly released so states can adequately plan for required notices and be able to complete the Exchange Application in time for certification.

4) The proposed application requires the State to submit verifying documentation from the IRS certifying the ability to receive federal data required for Premium Tax Credit and cost-sharing reductions. Indiana requests that the application note that state-based Exchanges can cede these and other eligibility functions to the federal government and in these cases would not be required to provide this documentation.

Exemptions from the Individual Responsibility Requirement:

The proposed application requires a description of the State's process for granting individual responsibility exemptions. Here, as above, the application should allow states to indicate whether they will perform this function or whether they will defer responsibility for this function to the federal government.

Certification of Qualified Health Plans (QHPs) & Plan Management:

Consideration may need to be given to the release of the System for Electronic Rate and Form Filing (SERFF) enhancements given the required completion of this application. This may affect those states that utilize SERFF to manage state rate filing requirements. The procedures to implement QHPs in our state and the oversight and monitoring of QHPs, as stated in the application, may be dependent upon SERFF's release and states' implementation of those enhancements.

Financial Management:

Consideration may need to be given to the timeframe needed for states in choosing the operational components of their risk adjustment program relative to the application completion date.

Brokers, Agents, Navigators:

In determining the responsibilities of brokers, agents and navigators, states may need a more flexible timeframe to address and implement such programs as described in the application.

Reporting:

The State has not yet received guidelines on required reporting. The Exchange Application lists required reports. It is unclear whether this application is intended as a guideline for the required reports or if other reports will be required in forthcoming rulemaking. Indiana requests clarification on this issue.

Program Integration / Pre-existing Condition Insurance Plan (PCIP) Transition:

The proposed application requires states to provide a description of the State's plan for PCIP transition to the Exchange. However, states that deferred PCIP administration to the federal government currently have no way to conduct this transition. Indiana requests further guidance on this issue and, where the PCIP is administered federally, by what method states are expected to coordinate the transition of PCIP enrollees to the Exchange.

Global Comment:

Throughout the application, it is requested the State provide contractor details, including the conflict of interest assessment, if a service is to be contracted. As a global comment to this proposed application, Indiana notes that, at the time of submission of the Exchange Plan Application, it is likely that specific contractors for the Exchange project may not have been identified and selected.

Sincerely,



Michael A. Gargano
Secretary
Indiana Family and Social Services Administration



Stephen R. Robertson
Commissioner of Insurance
Indiana Department of Insurance