Comments to the Department of Health and Human Services
Centers for Medicare & Medicaid Services
Center for Consumer Information and Insurance Oversight

RE: Interim Final Portions of the Regulations to Establish Exchanges
CMS–9989–F

by the Utah Health Policy Project

May 11, 2012

The Utah Health Policy Project respectfully submits the following comments to the Department of Health and Human Services (HHS) Centers for Medicare & Medicaid Services (CMS) and the Center for Consumer Information and Insurance Oversight (CCIIO) in response to the interim final sections of the regulations establishing Exchanges, published in the Federal Register on March 27, 2012.

The Utah Health Policy Project (UHPP) is a nonpartisan, nonprofit organization dedicated to lasting solutions to the crisis of the uninsured and rising health care costs. Our mission is to create quality, affordable, comprehensive health care coverage for all people in Utah through research, policy development, education, and community engagement activities. UHPP has been involved in Utah's health reform, which began in 2006, and the creation of the Utah Health Exchange, launched in 2009, from the beginning. See our website for examples of our consumer advocacy and policy work around health reform and the exchange in Utah. http://www.healthpolicyproject.org/CoverageInitiatives.html.

The Utah Health Policy Project recognizes and appreciates the work of CCIIO in responding to comments in the recent Exchange regulations. The final regulations are a positive, important step in implementing the Affordable Care Act and moving toward health coverage for all Americans.

We are focusing our comments on areas of the regulations that are interim final to ensure consumer protections on these issues.

§155.220(a)(3) – Brokers and web-based brokers

The interim rule recognizes agents and brokers - specifically web-based agents - as potentially having an active role in marketing and selling Exchange products. While web-based brokers may play an important role in spreading the word, about insurance, they also may create confusion for consumers and potential challenges to Exchange sustainability and consumer protections.

We are concerned that web-based brokers may promote some health products over others. This could create adverse selection and threaten the sustainability of the Exchange - in fact, it could completely undermine its success. Additionally, this may confuse consumers and lead them to make plan choices that are not in their best interests, placing their health and financial well-being at risk. CCIIO should provide clear rules about how QHPs are organized on broker websites to prevent steering to certain plans based on brokers' financial incentives. Web-based brokers should also be required to show information on plans' quality ratings from HHS. Finally, brokers should be required to post a disclaimer on their websites stating that they are not the official Exchange, and directing consumers to the Exchange website.

We applaud CCIIO's decision in the final regulation to prohibit brokers from receiving compensation from enrollment in non-QHP plans while serving as a Navigator. This rule will help to protect consumers from being steered to certain plans due to broker bias.

In addition, we encourage CCIIO to create rules on Exchange oversight of agents and brokers. While agents and brokers are required to register with the Exchange, it is not clear what consumer protections will be included. States that allow agents and brokers to assist consumers should be required to develop rules specifying when, how, and what agents and brokers must disclose to consumers regarding financial compensation and conflicts of interest. Brokers and agents should also be required to meet privacy, conflict of interest, and training standards developed by the state. Finally, brokers should be held to standards for all members of a household, even if only some are eligible for QHPs. CCIIO rules reinforcing transparency and oversight will ensure consumers are provided with impartial information and will support the viability of Exchanges.

§155.302 – Options for conducting eligibility determinations

With the new options for Exchanges to divide responsibility for eligibility determinations between agencies, HHS and states must ensure that the system remain seamless, so applications are not lost or slowed between different agencies. The consumer experience should not be different based on which entity makes the determination for affordability programs. To safeguard consumers, a state that bifurcates the eligibility process between agencies should be required by HHS to show that it has adequate data sharing and IT systems to coordinate the eligibility process between agencies. In addition, HHS should develop a monitoring and enforcement process to determine if states are performing adequately toward the goal of a seamless system of eligibility and enrollment.

Considering the recent security breach and theft of an estimated three quarters of a million records of personal health information and personal identity (including social security numbers) data from a Utah Department of Technology Services computer that stores Medicaid and CHIP data, security during the data-transfers between the Exchange and all other agencies is paramount. (For more information see http://www.healthpolicyproject.org/Publications_files/Medicaid/2012/BreachUpdate.pdf)

. Exchanges must be able to demonstrate that the PHI and identity data collected from applicants is indeed safe. They should also be required to have in place a protocol for dealing with theft such as happened in Utah in April 2012.

§155.310(e) - Timeliness standards

It is critical that, for the system to work seamlessly and for consumers to be enrolled quickly in appropriate coverage, the eligibility process for an Exchange is as timely as possible. The regulations require Exchanges to make a determination "promptly and without undue delay," which is not sufficiently specific. However, we are encouraged that HHS intends on developing a more specific standard in further guidance. We urge HHS to create standards that set a maximum number of days that any individual application can take to be processed. We recommend establishing a 30-day standard for both the exchanges and the Medicaid and CHIP agencies, measured from the date of application to the final determination of eligibility. We also recommend creating a stricter aggregate standard. This aggregate standard would require the majority of applications to be processed in a very short period of time, but would allow 30 days for a smaller percentage of outlier cases. Finally, we encourage HHS to require a shorter amount of time for processing electronic applications, since most of those applications should rely solely on electronic data sources. Most electronic applications should be able to be processed within a day or two.

§155.345(a) and §155.345(g) – Agreements between agencies administering affordability programs

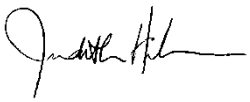
The final regulations should ensure that agreements between the Exchange and Medicaid/CHIP agencies contain safeguards to ensure a seamless eligibility determination process, including those proposed in this interim provision, regardless of where an individual applies for coverage and what entity makes final determinations.

Again, we emphasize the need to ensure the security of all data taken by Exchanges (see comment above re: section **§155.302).**

Guidance on Federally-facilitated and Partnership Exchanges

Finally, we urge CCIIO to release guidance and provide greater clarity on the process and standards for Federally-facilitated and Partnership Exchange models. In developing these standards, CCIIO should be mindful of the needs of consumers and ensure these Exchanges are seamless to consumers and do not create barriers to enrolling in the right coverage. In addition, the structure of the Federal and Partnership Exchanges should enable consumers to hold them accountable to providing high-quality and affordable health care through transparent processes, consumer representation in governance, and coordination between stakeholders.

Please contact us with any questions.
Respectfully submitted,



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