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CMS-9989-N2
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-9989-P and CMS-9989-N2
P.O. Box 8010
Baltimore, MD 21244-8010

Dear Ladies and Gentlemen:

On behalf of our 1.5 million members, the American Federation of Teachers (AFT) welcomes the chance to respond to the proposed rule on the Establishment of Exchanges and Qualified Health Plans.

The AFT represents many employees who have negotiated strong employer-sponsored health coverage, often forgoing wage increases in favor of strong health benefits. However, our members still have a stake in the creation of strong state health insurance Exchanges for three reasons.

First, the AFT represents some low- and moderate-wage workers who do not have access to affordable employer-sponsored health insurance. For instance, some adjunct faculty and some public school employees are either not offered health insurance, or are offered insurance that consumes a large percentage of their income. These union members and other similarly situated employees stand to benefit from well-run Exchanges.

Second, states may choose to allow large employers to offer employee coverage through state Exchanges in 2017. Strong Exchanges that offer high-quality plans at reasonable prices will be better-positioned to attract large employers in 2017, perhaps including some employers with unionized staff.

Finally, strong, well-managed state Exchanges have the potential to extend affordable health insurance to nearly all working people, a long-time goal of the AFT. As an organization committed to strengthening public institutions and promoting human rights for all, the effective functioning of Exchanges is important to us.

We urge HHS to issue a final rule that encourages consumer-friendly Exchanges. We believe that the following suggestions are consistent with the Patient Protection

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and Affordable Care Act's goal of expanding access to high-quality, affordable health coverage.

Consumer Representatives Should be in the Majority on Exchange Governing Boards

State health insurance Exchanges should be governed by boards that protect the interests of consumers. We applaud the Agency's proposal to require in Section 155.110, paragraph (c) (3) that "the majority of the voting members of [Exchange] governing boards" be individuals who support the interests of consumers. We strongly support the proposed requirement that health insurance industry representatives or those licensed to sell insurance remain in the minority on the Exchange governing boards. This rule will help ensure that Exchanges are focused on serving the needs of consumers, rather than protecting industry interests.

Further, all representatives serving on Exchange governing boards should be required to disclose any ties to the insurance industry that they currently have or have had in the past.

Labor Representatives Should Be Included on Exchange Governing Boards

The Agency invites comments on "the types of representatives that should be on Exchange governing boards to ensure that consumer interests are well-represented, and that the Exchange governing board as a whole has the necessary technical expertise to ensure successful operations." We believe that labor unions fulfill both roles.

Unions bring together a cross-section of healthcare consumers from a range of geographic locations, income levels and ages. Unions also have established methods of communicating effectively with their membership and of advocating for substantive programs and policies that improve public services and quality of life for working families.

Because of their experience researching and negotiating collectively bargained health insurance benefits, including union-administered healthcare trusts, unions have technical expertise that would benefit state health insurance Exchanges.

Unions are among the only groups that combine technical health insurance expertise with experience advocating for consumer interests. They should be explicitly included on the state Exchange governing boards, given the value and quality they will add to the final product.

Conflicts of Interest Should Disqualify Exchange Board Members

HHS also invites comment on the proposed Section 155.110, paragraph (d) (2), which would require that each Exchange "implement procedures for disclosure of financial interest by members of the Exchange board or governance structure."

We strongly agree that Exchanges should have such procedures in place. In fact, the Exchange governing boards should go beyond merely requiring disclosure of financial interest by members of the Exchange governing body. If Exchange governing board members have a conflict of interest, they should not be allowed to serve on the Exchange governing board. This would help ensure that the Exchanges operate in the best interests of consumers.

Labor Unions Should Be Included as Stakeholders

The proposed Section 155.130 (f) through (k) includes six new groups of stakeholders with whom the Exchanges are required to consult. The new groups of stakeholders include insurance issuers, agents, and brokers.

As the representatives of a wide cross-section of consumers, labor unions should also be called upon to contribute their expertise to the Exchanges and acknowledged as shareholders. Labor unions can help Exchanges succeed by ensuring that consumers' interests are considered.

Navigators Should Include a Community- and Consumer-Focused Non-Profit

The proposed Section 155.210 includes a requirement that each Exchange include as Navigators at least two types of entities. Comments are solicited on whether one of the entities should be a "community and consumer-focused non-profit." We strongly believe that at least one of the Navigators should be from a community- and consumer-focused group.

If Navigators simply reflect a cross section of stakeholders as defined in the proposed regulation, then it would be entirely possible for both Navigators to have ties to the insurance industry. Such a possibility should be preempted in the final regulation to avoid even the appearance of a lack of true impartiality. This appearance of partiality would persist despite the prohibition against Navigators receiving "any consideration directly or indirectly from any health insurance issuer in connection with their enrollment of" consumers in Exchange plans.

In short, consumers would be better served by a community- and consumer-oriented Navigator who has the interests of the consumer at heart. HHS rightly acknowledges that "Exchanges are intended to support consumers." In keeping with this mission, at least one consumer advocate should be available to help consumers navigate the Exchange.

Brokers Should Not Be Permitted to Advertise on Exchange Websites.

Proposed Section 155.220 (b) would allow an Exchange to post on its website information about for-profit insurance brokers and agents. Even if this were done in the spirit of providing helpful information to consumers, this practice would result in Exchange funds being spent on advertising for for-profit insurance industry operatives. Brokers and agents should be required to pay the Exchange for

any promotional information that the Exchange displays, or have their listings relegated to an external link.

Active Purchasing Should be Encouraged

The proposed Section 155.1000 (c) (2) allows each state Exchange to offer the plans it determines to be in the interest of qualified individuals and employers. The proposed rule would allow states to choose whether to allow all minimally-qualified plans into an Exchange, or whether to be selective in their offerings. Selective (or “active”) purchasing could mean, for instance, that an Exchange only sells plans that have earned an Exchange “seal of approval” for value or quality.

While we applaud the decision not to require Exchanges to accept all eligible plans, it is important that the rules explicitly allow, if not encourage, Exchanges to have a competitive bidding or selective contracting process so as to ensure that consumers are offered high-quality healthcare at fair rates.

Thank you for the opportunity to comment on the proposed regulation.

Sincerely,



Kristor W. Cowan
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