



May 9, 2012

Marilyn Tavenner  
Acting Administrator

Re: Patient Protection and Affordable Care Act: Establishment of Exchanges and Qualified Health Plans; Exchange Standards for Employers, Final Rule, Interim Final Rule

File Code: CMS-9989-F

*Federal Register*, March 27, 2012 (77 FR 18310).

Dear Acting Administrator Tavenner:

AARP is pleased to respond to the CMS Request for Comment on the interim provisions of the rule published on March 27, 2012, related to establishment of Exchanges and Qualified Health Plans. We appreciate the efforts that CMS has made to implement these very critical coverage expansion provisions of the Affordable Care Act (ACA).

**Section 155.220(a)(3) -- Ability of a State to permit agents and brokers to assist qualified individuals in applying for advance payments of the premium tax credit and cost-sharing reductions for QHPs**

AARP anticipates that agents, brokers, and navigators will play a significant role in the individual and small group health insurance markets in 2014 and thereafter. We appreciate that the success of the Exchanges will in part depend on the actions of agents and brokers in filling such roles as assisting qualified individuals to apply for advance payments of premium tax credits and cost-sharing reductions for QHP coverage. We are concerned, however, that the newly added provision in paragraph (a)(3) of §155.220, which clarifies that agents and brokers may assist individuals in applying for advance payments of the premium tax credit and cost-sharing reductions for QHPs, does not include specific requirements governing such assistance. Given the likely variability in state licensing requirements for agents and brokers and the terms of agreements for such individuals with Exchanges, we do not think the cross references to paragraphs (d) and (e) will provide for adequate consumer protection against inappropriate – be they intentional or inadvertent -- disclosures of personal information, including tax-related information.

AARP thus urges the Department to provide for more consumer safeguards in this regard. At a minimum, we recommend that the Department provide the states and Exchanges with standardized training modules for agents and brokers as potential facilitators of enrollment in a QHP and in their potential role in helping individuals apply for premium and cost sharing assistance. An essential element of such training should include proper handling of personally sensitive information including information on personal income. The preamble of the rule related to §155.210 indicates that the Department intends to issue guidance on model standards for Navigator training. We believe similar training also should be directed at agents and brokers. In addition, we believe that states/Exchanges permitting agents and brokers to carry out this form of assistance should be required to include such training as mandatory for those agents and brokers who choose to participate in assisting consumers with Exchange-related enrollment/subsidy eligibility activities.

AARP also is concerned that the final rules do not provide for sufficient clarity in distinguishing the roles and responsibilities of agents and brokers versus that of navigators, particularly with respect to assisting individuals with applications for the advance payment premium credits. In the preamble (p. 18334), examples of navigator responsibilities include providing information regarding various health programs (beyond private health plans) and providing information in a manner that is culturally and linguistically appropriate to the needs of the population being served by the Exchange. We recommend that §155.220 be modified to include clarification of the distinct roles provided by Navigators and agents/brokers. This is particularly important to the extent that the latter may collect commissions or other fees for their services from QHPs.

AARP is also concerned that the final rule (§155.210) fails to provide for adequate specification related to conflict of interest standards for Navigators. We do not believe that it is sufficient to rely on the Exchanges to promulgate sufficiently detailed standards that will safeguard consumers from inappropriate steering or other potential effects resulting from Navigator conflicts of interest. Moreover, HHS should provide guidance to states and Exchanges on how best to monitor potential conflicts of interest that go beyond the reporting and disclosure of potential conflicts by entities and individuals carrying out Navigator functions.

### **Section 155.305(g)—Related to eligibility standards for cost-sharing reductions**

Section 155.305(g)(3) adds a provision for situations where multiple tax households are covered by a single policy. This section proposes a hierarchy of available income-related cost-sharing provisions and provides that the Exchanges would apply only the first category of cost sharing reductions for which one of the applicants is eligible. It remains unclear how the rule will be applied in a multi-tax household situation if one of the tax households has an income above 250 percent of the FPL and is ineligible for cost sharing reductions and the other tax household has an income in the range that qualifies for cost sharing deductions. In addition, it appears that there is a typo in

(g)(3)(iv) which reads “Paragraph (g)(3)(i)”. Based on the items (i) and (ii), it seems that this should read, “Paragraph (g)(2)(i)”.

**Sections 155.310(e) and 155.340(d). Timeliness standards for Exchange eligibility determinations and for transmission of information for the administration of advance payments of the premium tax credit and cost-sharing reductions**

New paragraph (e) of §155.310 adds a provision for timeliness standards for transmission of information for the advance payment of premium tax credit and cost-sharing reductions that requires an Exchange to determine eligibility “promptly and without undue delay.” This is also the time period that will be used to assess timeliness of the Exchange’s eligibility determinations.

Interim provisions §155.310(e) and §155.340 (d) are positive additions to the Exchange rule. AARP is pleased consumers are given an assurance that there will be a standard for timeliness in the processing of applications to participate in QHPs through the Exchange and receive insurance affordability assistance. As HHS, Exchanges, and the States move forward, it is important that regardless of how or where someone files an application, they receive the same standard of service in terms of prompt, accurate processing of their application and notification of the outcome of that process. No one should be disadvantaged because they apply through an Exchange or conversely through the Medicaid or CHIP agency. We understand that Exchanges and state agencies have technology, process, and many other issues to work out that require some flexibility. But we urge that future guidance on timeliness standards continue moving toward the goal of real time processing of applications, so people will know whether they can enroll in a QHP through an Exchange and what level, if any, of premium and cost sharing reductions they qualify for in time to make informed choices when selecting and enrolling in a QHP.

**§155.315(g)—Related to verification for applicants with special circumstances**

Under the final rule, when an individual attests to information and such attestation is inconsistent with other data in the records of the Exchange, the Exchange must make a reasonable effort to identify and resolve the issues. A process is established for notifying the individual and for the individual to provide the correct information. The Department has added, on an interim basis, paragraph (g) which provides a case-by-case approach to resolving inconsistencies for applicants for whom documentation does not exist or is not reasonably available. More specifically, paragraph (g) provides that, in the case of an applicant who does not have documentation with which to resolve information inconsistencies related to their eligibility for enrollment and eligibility for advance payments of the premium tax credit and cost-sharing reductions because documentation does not exist or is not reasonably available, the Exchange must provide an exception, on a case-by-case basis, to accept the applicant’s attestation as to the information which cannot otherwise be verified along with an explanation for circumstances as to why the applicant does not have documentation. (The rule

provides an exception in the case of an inconsistency related to citizenship or immigration status).

AARP supports this provision. We do not think individuals should be penalized for not having the correct documentation. AARP also recommends, however, that the provision be modified to include a requirement that the individual attest to his or her understanding of the consequences of providing falsified information.

### **Sections 155.345(a) and 155.345(g) – Coordination of the Exchanges with Medicaid, CHIP and the Basic Health Plan**

AARP supports paragraphs (a) and (g) of §155.345 relating to the coordination of Exchanges and state agencies administering Medicaid, CHIP and, where applicable, the Basic Health Plan (BHP). Paragraph (a) requires Exchanges to enter into agreements with state agencies administering these programs to provide for such coordination, clearly delineating responsibilities of each program to minimize burden on enrollees and ensure prompt determinations of eligibility and enrollment. Paragraph (g) requires the Exchange, in consultation with the state agencies administering Medicaid, CHIP, or the BHP, to establish procedures to ensure that an eligibility determination for enrollment in a QHP or advance payments of the premium tax credit and cost-sharing reductions is performed when an application is submitted directly by an individual to one of those agencies. Specific procedures are described.

We support both paragraphs (a) and (g), although we believe that an additional provision is needed. The specific requirements contained in both of these paragraphs are consistent with our goal that the eligibility and enrollment process for the different insurance affordability programs be as seamless as possible. However, while we expect that many states' Exchanges will seek these agency coordination agreements, we are concerned that some may not seek these agreements in the absence of an explicit sanction for non-compliance. Accordingly, we urge that §155.345 be amended to include a specific sanction for failing to adopt the requisite agreement as specified in this section.

### **Subpart F: CO-OPs**

The CO-OP program is one of a number of provisions in the Patient Protection and Affordable Care Act (ACA) intended to improve access to care. AARP supports the availability of the CO-OP Program; however, we have some continued concerns and questions regarding consumer protections against conflict of interest, the governance structure and loan terms.

Acting Administrator Tavenner

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Thank you for the opportunity to comment on this important matter. If you have any questions, please feel free to contact Leah Cohen Hirsch on our Government Affairs staff at 202-434-3770.

Sincerely,

A handwritten signature in black ink, appearing to read "David Certner". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

David Certner  
Legislative Counsel and Legislative Policy Director  
Government Affairs