



October 4, 2010

The Honorable Kathleen Sebelius
Secretary, U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, DC 20201

Mr. Jay Angoff
Director, Office of Consumer Information and Oversight
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, DC 20201

File Code: OCIO-9989-NC

RE: Planning and Establishment of State-Level Exchanges; Request for
Comments Regarding Exchange-Related Provisions in Title I of the Patient
Protection and Affordable Care Act

Dear Ms. Sebelius and Mr. Angoff,

On behalf of the National Small Business Association (NSBA), the nation's oldest small business advocacy group reaching more than 150,000 small businesses nationwide, I am pleased to submit the following in response to the *Federal Register* Request for Comments (RFC) on the American Health Benefits Exchanges under the *Patient Protection and Affordable Care Act* [PPACA, P.L. 111-148] and *Health Care and Education Reconciliation Act of 2010* [HCERA, P.L. 111-152].

NSBA is the nation's oldest small-business advocacy group representing employers in every state. As an organization, we represent all sectors and industries of the U.S. economy from retail to trade to technology—our members are as diverse as the economy which they fuel. More than one in two people in the U.S. private workforce—70 million—work for or run a small business, according to data from the U.S. Small Business Administration Office of Advocacy and U.S. Census Bureau. The average NSBA member has an average of 11 employees.

The following comments are in response to selected questions in the RFC and reflect the input and needs articulated by NSBA's members.

Section A – State Exchange Planning and Establishment Grants

Question 3 – What are some of the major factors that States are likely to consider in determining how to structure their Exchanges (e.g., separate or combined individual Exchanges and SHOP Exchanges; regional or interstate agency versus nonprofit entity)? What are the pros and cons of these various options?

Each state should expect to face unique challenges in the pursuit of their goals for a health insurance Exchange. Therefore, federal regulations should not prescribe the constructs of an Exchange. Rather, federal regulations should provide flexibility and guidance on policy options to the states in order for them to establish an Exchange that meets their state's needs. Nonetheless, there are certain areas where federal regulations can provide guidance and states should consider to best serve the needs of small businesses, their employees, and their families, as well as consumers purchasing coverage in the individual health insurance Exchange.

PPACA provides states the option to establish a small business health insurance Exchange (i.e., SHOP) and an individual exchange or combine the two. While states should study their particular market to ascertain its needs (i.e., viability of a risk pool, etc.), NSBA encourages federal guidance and state consideration of the following argument for separating SHOP Exchanges and individual Exchanges.

SHOP Exchanges will have extraordinary responsibilities vis-à-vis the individual health insurance Exchange. SHOP Exchange operations will be more resource intensive and operationally complex than the state's individual Exchange. Thus, in order to ensure SHOP Exchange success, small businesses must have a dedicated set of operations and resources in their state's SHOP Exchange, whether it is separated from the individual health insurance Exchange or not.

PPACA offers a new model for health insurance purchase through a consumer choice model. Under this arrangement, an employer would designate a level of coverage (e.g., bronze, silver, gold or platinum) and employees could choose a carrier and plan within that level. If federal or state regulations prescribe rules for a consumer choice model in the SHOP Exchange, small businesses must have the option of consolidated billing and payment. Under consolidated billing and payment, the Exchange would perform the fiduciary responsibility of managing the billing from multiple insurance carriers to a single employer and the payment from that employer to the appropriate carrier.

However, clearly this approach leaves many questions unanswered, such as: Who will assist employees in answering questions or to make changes to their policies? In the current market, health insurance agents or brokers provide this service. Federal guidance and state establishment of exchanges should carefully contemplate the benefits of agents to small businesses and how all these actors can interact in the Exchange.

Even though there are interpretations of the Exchange statute under the premise of the aforementioned consumer choice model, NSBA also supports flexibility in the rules to encourage states, and the federal government operating Exchanges for states that opt-out, to provide employers the option of a consumer choice model or an employer choice model. An employer choice model would allow small businesses to select the plans they would like to offer to their employees – similar to how employers offer coverage to their employees now. PPACA does not preclude such an interpretation and outlining this as an option for employers would maintain similar rules inside and outside the Exchange.

Finally, federal rules should provide some guidance with respect to the purchase of insurance by an employer with employees in more than one state. Does an employer contract with the Exchange in the state in which they are based or could they contract with an Exchange in which an out-of-state employee has residence? NSBA supports maintaining consistency with current law in that an employer should contract with the Exchange in which they are headquartered to prevent the potential for cherry-picking or adverse selection.

Section C – State Exchange Operation

Question 2 – For which aspects of Exchanges operations or Exchange standards would uniformity be preferable? For which aspects of Exchange operations or Exchange standards is State flexibility likely to be particularly important?

Certain components of Exchanges should have federal regulations that provide for national uniformity, including the rules and procedures on small business tax credits, low-income subsidies, public program eligibility (e.g., Medicaid/SCHIP), individual mandate exemption determinations, and others. In particular, NSBA encourages federal guidance with respect to two separate but related components dealing with employer contributions for health insurance.

The first area of needed guidance regards meeting the eligibility requirements for the small business tax credit under a consumer choice model in the Exchange. In order to be eligible for the small business tax credit, an employer must cover at least 50 percent of the cost of health care coverage for their employees. Under an employer choice model, an employer knows exactly how much they are contributing for their employee's health coverage, whether they are making a defined or percentage of cost contribution. However, under an employee choice model, an employer does not know for sure if the contribution meets the 50 percent threshold because an employee could elect more expensive coverage, subsequently lowering the percentage of coverage the employer had intended to cover. Employers need guidance that their defined contribution amount meets the eligibility requirements for the small business tax credit. Providing a benchmark plan that sets an acceptable employer contribution amount for meeting the small business tax credit eligibility requirements would help to remove this potential ambiguity.

The second area of needed guidance is in regard to avoiding anti-discrimination violations resulting from employer's contributing a percentage of the cost of health care – similar to the scenario outlined above. In this scenario – under the consumer choice model – an employee could elect coverage that costs more than other employees. If the employer is contributing a percentage of the total costs in order to comply with the tax credit eligibility rules, then they would be contributing more for employees who elect more expensive coverage than the other employees and thus expose themselves to anti-discrimination violations. Similar to the small business tax credit remedy, providing a benchmark plan that employers can use to contribute a defined amount would ensure they do not violate anti-discrimination rules on employer contributions on health insurance.

As previously suggested, most other components of the statute that outline the constructs of Exchanges should fall under state purview, including but not limited to the following: web portals and hotlines for employers; a standard application process within the state; elements of transparency, including costs, quality measures, and health insurance carrier and plan comparisons; navigators; details on consolidated billing and payment; and, the free-choice vouchers.

Section E – Quality

Question 2 – What are some minimum standards or other factors that could be considered with respect to establishing quality measurement and improvement thresholds or quality requirements that should be met by QHPs? What other strategies, including payment structures, could be used by plans to improve the practices of plan providers?

NSBA is a strong advocate for reform that results in health care cost-reduction and containment and improved quality of care. PPACA provides for many demonstration projects, pilots and studies in the area of delivery system reform in public programs (e.g., bundling payments, incentives for quality care in lieu of quantity of care) that work towards these goals. Exchanges are well-positioned to leverage their role in the certification of QHPs to either require participating carriers to replicate and aggressively implement public program methods of cost containment or encourage the pursuit of new, innovative methods of health care cost-containment and improved quality through financial incentives.

Section K – Employer Participation

Question 1 – What Exchange design features are likely to be most important for employer participation, including the participation of large employers in the future? What are some relevant best practices?

One of the most important design features for small business participation in the Exchange will be the perceived ease of use. Employers heavily rely on agents outside the Exchange to provide customer service support to answer questions or revolve issues as they arise. Indeed, employers already feel overburdened from too much time spent performing human resource duties with respect to the purchase and maintenance of health insurance for their employees. If employers commit to participate and stay in the Exchange past the tax credit eligibility timeframe, it will be because it is easier to manage than before. Internet portals, toll-free hotlines, navigators, and other state specific initiatives can provide assistance in this regard.

Similarly, Exchanges can streamline the needs of employers by providing other products, including health savings accounts, health reimbursement accounts, flexible spending accounts, COBRA services, Section 125 plans, and wellness options. Furthermore, as previously mentioned, assuming an employer elects a consumer choice model, consolidated billing and payment will significantly reduced the administrative burden employers currently experience. Finally, easily comparable health plan options and stronger competition will also attract employer participation.

Exchanges can institute best practices by investing in providing an agent relationship to serve the after-purchase needs of small businesses. In addition, Exchanges should ensure small business buy-in by embracing small business consultation throughout the development and maintenance of Exchanges (i.e., Section 1311 (c)(6)). Also, Exchanges should provide a continuous assessment and publication of health plans and their participation inside and outside the Exchange.

Question 2 – What factors are important for consideration in determining the employer size limit (e.g., 50 versus 100) for participation in a given State’s Exchange?

PPACA allows states to limit the size of eligible employers wishing to purchase health insurance coverage in the Exchange before 2016 to firms with up to 50 employees. Otherwise, states have the option to allow employers with up to 100 employees to purchase coverage through the Exchange. Starting in 2017, Exchanges can allow larger employers to purchase coverage through the Exchange.

NSBA is skeptical of allowing larger employers into the health insurance Exchanges. Large employers are sophisticated purchasers and make calculated decisions when they are deciding to self-insure or not. They are unlikely to need an Exchange unless it financially benefits the firm. In other words, larger firms with a healthier workforce would likely choose to self-insure while firms with less healthy workforces would find it advantageous to purchase coverage through the Exchange. This phenomenon would result in adverse selection and negatively impact small businesses. At a minimum, states should perform an analysis on the impact that increasing the eligibility threshold would have on small businesses and the Exchange. If states choose to expand their eligibility threshold, then it should be done through a phase-in to minimize market disruption.

Question 3 – What considerations are important in facilitating coordination between employers and Exchanges? What key issues will require collaboration?

Previous comments alluded to considerations that are important to facilitate coordination between employers and Exchanges, including consolidated billing and payment; tracking of financial transactions between employers, employees, Exchanges and insurance carriers; enrollment plan information; subsidy and tax break eligibility and amounts; and, others.

Question 4 – What other issues are there of interest to employers with respect to their participation in Exchanges?

Employers’ number one goal for health care reform was to see a reduction in health care costs. Thus, small business owners are extremely interested in learning how Exchanges can be used to lower the cost of health care. Can Exchanges drive cost-containment initiatives and alter consumer behavior of the health care system that would ultimately alter the unsustainable utilization rates that contribute to increasing health care costs?

Additionally, any sense that purchasing health insurance coverage through the exchange, or perceptions that Exchanges are too bureaucratic and inefficient will discourage small business participation.

Finally, because small employers have logistical barriers to operating wellness programs (e.g., facility space, capitol to invest, etc), Exchanges should provide avenues for small employers and their employees to engage in wellness programs so they too can realize their benefits.

Thank you for the opportunity to provide comments in response to the RFC on the American Health Benefits Exchanges under the *Patient Protection and Affordable Care Act* [PPACA, P.L. 111-148] and *Health Care and Education Reconciliation Act of 2010* [HCERA, P.L. 111-152]. Please feel free to contact me with further questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Todd O. McCracken". The signature is stylized and includes a horizontal line extending to the right.

Todd O. McCracken
President