

## **New York State Comments on Proposed State Exchange Certification Application, CMS-10416**

New York appreciates the opportunity to provide comments on the proposed State Exchange Certification Application.

While we agree that states should be required to demonstrate readiness to operate an Exchange well in advance of January 2014, it is critical that HHS consider the following realities at both the state and federal levels as it finalizes the Certification Application.

### **1) Federal Guidance Critical to Readiness Has Not Yet Been Issued or Finalized**

When determining the readiness of a state, we urge HHS to recognize that, despite best efforts, as of January 2012, there remain a number of critical areas where states await federal issuance or finalization of guidance. They include:

- 1) Final federal eligibility and enrollment guidance;
- 2) Further guidance on Medicaid benchmark;
- 3) Appeals requirements;
- 4) MAGI equivalent levels and methodology;
- 4) Streamlined application;
- 5) Notice requirements;
- 6) IRS safeguard requirements;
- 7) Approved FMAP claiming process(es);
- 8) CMS approval of automated Exchange eligibility processes, including Medicaid and CHIP determinations that rely on validated rules engines;
- 9) Quality ratings for Qualified Health Plans (QHP) (beyond that provided in the November 29, 2011 State Exchange Implementation Questions and Answers); and
- 10) Appeals of eligibility determinations.

### **2) The Efforts of States Working Collaboratively with CMS**

For States that are working collaboratively with CMS on aspects of Exchange development, we urge HHS to accept that work as evidence of the State's effort to comply with relevant certification requirements. For example, the efforts of states, including New York, that are working with CMS on the web-based application for eligibility should be considered in determining readiness.

### **3) The Legislative Landscape**

A number of states have pending legislation authorizing a state operated health insurance exchange. While it has always been understood that state enabling legislation and governance structure would be needed to demonstrate state readiness, the certification application goes well beyond this intent. We urge HHS to consider a two-part process in which enabling legislation setting forth the governance structure would satisfy the initial certification requirement, followed by detailed information including the resumes and disclosure statements of individual board members by early 2013.

### **4) Operational Readiness Process**

Finally, we urge HHS to further clarify the process it intends to use to determine “operational readiness,” and the relationship of that process to the gate reviews required for information systems. The better states understand the certification process, the better they can prepare for certification. In particular, we seek clarification of how the certification process relates to IT gate reviews.

### **Technical Comments**

In the sections below, we take this opportunity to pose specific questions, organized by section of the HHS draft application, related to preparing for operational readiness.

#### I.c. Insurance Portal.

Meeting this requirement is highly dependent on outcomes from collaborative work with CMS and other States, including the UX 2014 project. Further, it is dependent on answers to outstanding questions, such as how State portals will interface with healthcare.gov and whether health plans will continue to be required to submit data through the Health Insurance Oversight System (HIOS) for healthcare.gov and/or to the Federal Exchange?

With regard to the interface between state portals and healthcare.gov, once State sites are operational, will state-specific information still be available on the federal site? To avoid the potential for inconsistent or different information on the two sites, we request that healthcare.gov operate as a “gateway” to the State’s portal.

With regard to plan data submission, if plans continue to submit data through HIOS, how will this information conform with information regarding QHPs certified by State Exchanges? This function has to track with decisions made by States/CMS regarding leveraging the National Association of Insurance Commissioners (NAIC) System for Electronic Rate and Form Filing (SERFF). If plans continue to be required to submit data through HIOS or a successor system, then per ongoing discussions involving CMS, CCHIO, NAIC, states, insurers, and the recently formed “NAIC SERFF

technology workgroup,” we support the concept of a shared “data dictionary” which would provide the ability to enter data one time and share it among systems (e.g. SERFF, HIOS) to meet required Exchange plan management functionality.

## II. Eligibility

We seek clarification on the requirements for “evidence of capacity” (Section b). Specifically, please clarify whether this relates to initial, ongoing, or peak capacity, because with an annual enrollment window, there will most likely be different numbers at these various points.

## VII. Reporting

What, if any, reporting requirements will there be in this area if a State chooses to utilize Federally-managed services for these functions, as described in the November 29, 2011 State Exchange Implementation Questions and Answers?