

Status Report on Planning for Health Insurance Exchanges

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CMS Regulations

The Centers for Medicare and Medicaid Services (CMS) plans to issue about 6 notices of proposed rule-making (NPRM) for Health Insurance Exchanges created under the Affordable Care Act. It is important for Self-Governance Tribes to be aware of the proposed rules and how they may impact Tribal health programs. The first NPRM was issued on Establishment of Exchanges and Qualified Health Plans (QHPs) on July 15, 2011, and comments are due September 28, 2011. Another NPRM on Premium Stabilization was issued also on July 15 with comments due September 28. It is anticipated that additional NPRMs will be issued later in the summer on the following aspects of Exchanges:

- Eligibility and Enrollment
- Standards and Quality Reporting
- Medicaid Expansion
- IRS rules for Implementation of Exchanges

A workgroup has been established by the National Indian Health Board (NIHB) Medicare and Medicaid Policy Committee (MMPC) to review the regulations on behalf of Tribes. Tribes will receive the workgroup's recommendations and have the option of submitting letters of endorsement.

The following information is a summary on some of the recent State activities and Tribal consultation on Exchanges.

State Activities

States are at different places in the development of their Exchanges. Two states have already established health insurance exchanges: Massachusetts and Utah. A number of states have passed legislation to plan or establish Exchanges, including California, Colorado, Connecticut, Mississippi, North Dakota, Nevada, Oregon, Washington, Wyoming, and North Carolina. Several states have legislation pending, including North Carolina. A few states have done this by Executive Order from the Governor, including Alabama.

The legislation and/or Executive Orders in these States establishes the governance and structure of the Exchanges. Now that CMS is publishing the proposed rules for Exchanges, the States will likely begin to develop the programmatic aspects of the Exchanges.

Initially, all States were offered a planning grants between \$800,000 and \$1 million. Forty-nine states and the District of Columbia received planning grants late last year. In addition, CMS awarded Early Innovator Grants to six states on February 16 and they are assumed to be the most advanced in their planning, including the following States with Tribes: Oregon, Wisconsin, Kansas, and New York.

CMS is awarding Level 1 Establishment Grants to States through 6 rounds of competition. The first grants, announced May 23, 2011, went to three states, including two with tribes: Washington and Rhode Island.

In addition to CMS, the Robert Wood Johnson Foundation (RWJF) is awarding grants for technical assistance to several states to help them with Exchange planning, including Alabama, Colorado, New York, Michigan, Minnesota, Oregon, and Rhode Island.

Oklahoma was awarded an Early Innovator Grant, but the governor elected to return the grant, legislation for an Exchange failed, and it is not clear whether planning for an Exchanges is going forward in that State. In New Mexico, legislation was passed, but the governor vetoed it, yet planning for a State Exchange is continuing. The State of New Mexico has awarded two grants -- for studies of on-reservation and off-reservation American Indians -- as part of the Exchange planning process.

Alaska refused the initial planning grant funding and it is assumed that they will have a Federally-operated Exchange. In Louisiana, the governor announced that there will be no State Exchange. The governor of Florida has said they will be returning their planning grant, and they are expected to have a Federally-operated Exchange. In some States where legislation has failed or legislation has never been proposed, it is likely that the State is expecting to have a Federally-operated exchange. States with Tribes where this is possible include Arizona, Idaho, Iowa, Maine, Montana, Nebraska, South Dakota, and Texas.

No later than January 1, 2013, the Federal government will decide whether states meet the qualifications to operate Exchanges. If a State is not prepared, the Federal government may operate the Exchange in that State. The NPRM on Establishment of Exchanges envisions partnerships where portions of the Exchange are operated by the State and portions are operated by the Federal government. If Exchanges meet certain requirements, States can apply for Level 2 Establishment Grants to provide funding

through 2014. Starting in 2015, Exchanges are expected to be financially self-sufficient by charging fees to insurance companies that offer plans on the Exchange.

Tribal Consultation on Planning Exchanges

The NPRM that has been issued on Establishment of Exchanges calls for consultation with Federally-recognized tribes. However, in many States it is the office of the State Insurance Commissioner that is tasked with planning the Exchange. Tribes have generally not established a relationship with their State Insurance Commissioner, and most State Insurance Commissioners are not well informed about the Indian health system and federal Indian law.

In other states like Oregon and Washington, enacted legislation has placed responsibility of developing the Exchange in health and human service agencies (usually where Medicaid is administered). Despite the fact that many Tribes may have an established relationship with these offices, they may not be included in the preliminary developments of the Exchanges.

States are moving quickly to develop their Exchanges and Tribes need to be assertive if they are to be included. Many States have already announced requests for proposals to develop policy issues around the Federal Basic Health option, criteria for qualified health plans, preventing adverse selection, Exchange financing, navigator roles and functions, and Federally-defined essential health benefits and relation to state-mandated benefits. Because States are moving quickly and because of the consultation requirements, Tribes will need to be forthright about their involvement in the development of Exchanges.

It is not clear how the Federal government plans to handle Tribal consultation for Federally-operated Exchanges. The first NPRM states that the rules that are being developed by CMS for States will also apply to the Federally-operated Exchanges. However, the rules create a great deal of flexibility for Exchanges, and many decisions will be needed. While both Federal and State governing bodies designing Exchanges are required to elicit input from Tribes, this will only happen if Tribes request a seat at the table.

For background information and a summary of Exchange issues, see "Tribal Planning for Health Insurance Exchanges Begins Now," by Kris Locke and Mim Dixon, April 13, 2011, posted on-line at: http://www.npaihb.org/policy/health_reform_the_indian_health_system/.