June 18, 2012

Mike Hash
Interim Director
Center for Consumer Information and Insurance Oversight
Centers for Medicare & Medicaid Services
U.S. Department of Health and Human Services

RE: CCD Responds to General Guidance on Federally-facilitated Exchanges

Dear Director Hash,

The Consortium for Citizens with Disabilities (CCD) Health Task Force appreciates this opportunity to provide comments on the "General Guidance on Federally Facilitated Exchanges," released by CCIIO on May 16, 2012. The Guidance articulates a vision for the federally-facilitated exchanges (FFE), which will operate in states that do not have a fully operational state Exchange in place by 2014.

CCD is a coalition of national consumer, service provider, and professional organizations who advocate on behalf of persons with disabilities and chronic conditions and their families. CCD's Health Task Force is working to ensure that the ACA's implementation achieves access to high quality, comprehensive, affordable health care for all Americans, including people with disabilities and chronic conditions.

CCD believes strong federal oversight is critical to successful implementation of the ACA. We commend HHS for reiterating that the federal government is ultimately responsible for the elements of Exchange implementation performed by the state in the case of a Partnership Exchange. We also agree that where an FFE operates without a state partnership, HHS should carry out all exchange functions, including certifying, recertifying and decertifying Qualified Health Plans (QHPs). Finally, CCD strongly recommends HHS publish, in addition to exchange applications, HHS' plan and materials for ongoing monitoring and enforcement of the performance of and standards for all exchanges – state-based, state partnership and FFE.

II. State Partnership in Federally-facilitated Exchanges

CCD strongly supports HHS' plan retain authority over inherently governmental functions of and to administer an approval process for State Partnership Exchanges. CCD recommends that this approval process be administered on an ongoing basis and that HHS and State agreements be updated on a regular basis. Since state partners can elect to use the Federal plan management system to carry out plan management activities, we request the plan management system to be made public as soon as possible, and to allow for stakeholder feedback.

CCD urges HHS to exercise utmost vigilance when approving a state partner's plan for conducting plan management functions, particularly the QHP certification review. The QHP

certification process will ultimately determine whether plans provide adequate provider networks, follow essential health benefits standards and avoid discriminatory benefit design. Without an adequate certification process that monitors and enforces these critical elements of plan function, people with disabilities and chronic conditions will remain vulnerable in the reformed health care insurance market.

III. Approach to Key Exchange Functions in a Federally-facilitated Exchange

In the guidance, HHS states that it is developing a unified FFE administrative infrastructure supporting all FFEs that can address a wide range of State needs. CCD supports the goal of creating a unified administrative structure and strongly recommends that HHS develop, whenever possible, a uniform federal framework for all FFEs. CCD also requests that in addition to reaching out to states and local stakeholders on the development of FFEs in various states, that HHS meet with and provide opportunity for feedback from consumer and provider stakeholders at the national level.

Plan Management in a Federally-facilitated Exchange

CCD strongly supports the proposal that HHS evaluate each potential FFE QHP against all applicable certification standards. We request that HHS make available for stakeholder feedback the QHP Issuer Application as soon as possible.

In addition CCD strongly recommends that HHS develop a detailed QHP Issuer Application that focuses on the following elements of network adequacy and essential community providers:

1. Access to community-based providers, including non-profit providers, with a documented experience in serving persons with disabilities;
2. Access to community-based providers defined in Section 340 (B) (a) (4) of the Public Health Service Act, as required by Section 1311 (c)(1) (C) of the Affordable Care Act (ACA);
3. Geographic access, so persons with disabilities are not burdened with great traveling distances;
4. Access to disability-specific specialists and services;
5. Choice – each health exchange and qualified health plan (QHP) enrollee should have a choice of primary and specialized provider.
6. Access—non-discrimination accommodation – all exchange and QHP providers must fully comply with the Americans with Disabilities Act and related civil rights requirements to ensure that persons with disabilities are appropriately services with respect and dignity and access to adequate accessible facilities and program;
7. Consistency with other HHS and ACA initiatives such as money follows the individual, home and community-based expansions, and person-centered medical/health home.

In addition, CCD strongly recommends that HHS provide further explanation of the rate and benefit data submission vehicle HHS will use for reviewing each QHP against the essential health benefits standard, actuarial value standards, and discriminatory benefit design. When developing this tool, HHS should consider how and if states comply with the nondiscrimination requirements of the Affordable Care Act, § 1557, Title VI and § 504. HHS should ensure that the

FFE have specific plans and policies to evaluate plans on compliance with ACA non-discrimination standards, to reduce health disparities and provide equitable services, and to ensure networks accessible to all groups, including individuals with disabilities.

Additionally, CCD supports the plan to test notices and applications with consumers to ensure that they are understandable as well as the plan to ensure that information is accessible to people with disabilities. HHS should provide detailed policies and guidance specifying how the FFE will provide services to assist individuals with disabilities (including sign language interpreters, braille and large print materials, and other auxiliary aids and services or augmentative and alternative communication). In all states, the FFE should meet minimum federal standards designed to ensure information is accessible to people with disabilities, with consumer and stakeholder input.

Other Plan Management Functions

CCD recommends that HHS establish a standard recertification process for FFEs. While we appreciate that the guidance describes in very brief detail the minimum for this process, CCD believes HHS should provide more clarification on this process. CCD strongly recommends HHS include compliance with essential health benefits standards and discriminatory benefit design standards to the recertification process. CCD also strongly recommends that HHS develop a national standard for the decertification process for QHPs that fall out of compliance with QHP certification standards.

Accreditation and Quality Reporting

CCD recommends immediate use of, and publicly reporting of, CAHPS (Consumer Assessment of Healthcare Providers and Systems) for accreditation of QHPs. However, existing CAPHS programs do not adequately address the life situation and health plan situation faced by persons with disabilities. Supplemental quality and satisfaction measures are required. The March 2012 MACPAC annual report acknowledges this critical gap and urges HHS and the states to update and improve quality assessment for enrollees with disabilities. The MACPAC annual report recommendations are attached.

CCD further recommends that HHS fund third-party, independent, consumer and family operated monitoring teams as an additional method of improving quality. These teams focus on documented dis-satisfaction and regularly meet with health plans to resolve areas of dis-satisfaction. These teams exist in at least 4 states and are demonstrating promise in improving quality and consumer satisfaction with plans. The core features of these teams are consumer-led evaluation teams: collecting consumer feedback through face-to-face peer-to-peer interviews and strong emphasis on provider and funder accountability using regularly scheduled meetings with senior authorities.

Eligibility for Insurance Affordability Programs and Enrollment in the Individual Market

The guidance on the FFE affirms that the process of determining eligibility and enrollment should be streamlined and seamless regardless of whether a state has an FFE or a state-based

exchange. Clearly, coordinating the eligibility process conducted by the FFE with each state's Medicaid and CHIP programs will be challenging. To the greatest extent possible, it will be critical to minimize the differences in how the FFE conducts Medicaid and CHIP eligibility determinations and assessments, and how the state does the actual eligibility determination.

The guidance also states, however, that the verification procedures used by the FFE may not be the same as those used by the state. We are concerned that even small differences in the verification procedures used by the FFE and by the state Medicaid and CHIP agency could lead to erroneous assessments or determinations of eligibility. CCD believes that alignment of the verification procedures used by the FFE and the state agency, which in large part determine how the eligibility rules are implemented, is critically important to ensuring a seamless eligibility determination process.

We also suggest that consumers and their advocates be included in the planning process intended to ensure coordination of the FFE and the state's Medicaid and CHIP programs. In most states, consumer groups and community-based agencies provide assistance and support to applicants and beneficiaries. Their on-the-ground knowledge of the strengths and shortcomings of current processes would provide helpful input in developing interagency agreements and outreach plans for the launch of the FFE.

IV. Stakeholder Input

In the guidance, HHS stated that it would continue to engage with stakeholders through forums and workshops regarding FFEs. It is critical that HHS implement a comprehensive plan for stakeholder feedback. HHS should be a model for states and ensure that stakeholder input is incorporated into the planning process and ongoing operation of the FFE. Stakeholder engagement must be meaningful, robust, and ongoing. The disability community is an important stakeholder and representatives of the community must be engaged throughout the process. Due to the short time-frame for establishing an exchange, CCD suggests that HHS begin engaging stakeholders prior to the January exchange certification process.

HHS also states that it is exploring with the National Association of Insurance Commissioners whether an advisory board can or should be created in States where such boards do not already exist. CCD strongly supports the creation of such boards.

Recommendations for Draft Blueprint for Approval of Affordable State-based and State Partnership Insurance Exchanges

We recommend HHS add requirements in the FFE and Blueprint for states to not only attest but also provide supporting documentation that outlines the policies and procedures the Exchange will use to implement and enforce non-discrimination requirements within the ACA, § 1557, Title VI and §504 and other applicable civil rights laws. These requirements should apply throughout the Exchange Blueprint as they affect issues related to Consumer and Stakeholder Engagement and Support, Eligibility and Enrollment, Plan Management, Organization and Human Resources, Finance and Accounting, Oversight and Monitoring, and Contracting, Outsourcing, and Agreements.

Specifically, we request that in the Public Transparency section on Page 15, HHS include the entire Section 4.0 (Plan Management) in those sections that it plans to post on the CCIIO website. We also strongly recommend that HHS require supporting documentation for all of the Plan Management sections of the blueprint, especially the sections related to evaluating an exchange's ability to certify and monitor plans against standards for essential health benefits, network adequacy, discriminatory benefit design, actuarial value and other critical market reforms.

Thank you for considering our positions on this important set of issues. Please contact any of the HTF co-chairs below with questions.

Sincerely,

Health Task Force Co-Chairs

Mary Andrus, Easter Seals

Lisa Ekman, Health and Disability Advocates

Tim Nanof, American Occupational Therapy Association,

Angela Ostrom, Epilepsy Foundation,

Peter Thomas, Brain Injury Association of America

Julie Ward, The Arc of the United States.