BNA's
Health Care Policy Report™

Key Takeaways From HHS Newly Released Guidance on Exchanges

By Patricia Boozang and Rachel Sam

On Nov. 29, 2011, the Department of Health and Human Services (HHS) released new guidance[1] on the implementation of affordable insurance exchanges (exchanges), in the form of a questions-and-answers (Q&A) document and an amended funding opportunity announcement (FOA)[2] for exchange establishment cooperative agreements. This guidance follows proposed rules issued earlier this year, including and proposed regulations related to exchange functions and qualified health plans (QHPs)[3] and reinsurance, risk adjustment, and risk corridors,[4] released by HHS in July 2011, and a set of three draft regulations[5] from HHS and IRS providing implementation detail on seamless eligibility and enrollment, released in August 2011.

Taken together, these two new documents confirm and extend the federal government's commitment to providing states with maximum flexibility to implement exchanges.

The Q&A and amended FOA were released simultaneously with the Center for Consumer Information & Insurance Oversight's announcement[6] of exchange establishment cooperative agreement awards to 13 states, collectively receiving awards of $220 million. To date, 29 states have received exchange establishment funding totaling $440 million.

Taken together, these two new documents confirm and extend the federal government's commitment to providing states with maximum flexibility to implement exchanges. The guidance is consistent with previous federal decisions to transition from the initial binary ''State versus Federal Exchange'' approach to a more fluid partnership concept that states may tailor to their unique needs. This evolving HHS vision is reflected in a continuum of federal-state partnership models for exchange implementation, providing a range of choices for how states might collaborate with the federal government to implement core exchange functions. HHS also expands access to and allowable uses of federal funding, including extending the deadline by which states must apply for exchange establishment funding.

Overview

The Q&A provides clarity and new information in a broad range of areas, including:

Exchange Establishment Funding. The guidance confirms the availability of federal funds for establishing

[1] The guidance is available at http://cciio.cms.gov/resources/files/Files2/11282011/exchange_q_and_a.pdf.pdf.

[2] The announcement is available at http://apply07.grants.gov/apply/opportunities/instructions/oppIE-HBE-11-004-cfda93.525-cidIE-HBE-11-004-012241-instructions.pdf.

[3] The proposed regulations are available at http://www.gpo.gov/fdsys/pkg/FR-2011-07-15/pdf/2011-17609.pdf.

[4] The proposed rule is available at http://www.gpo.gov/fdsys/pkg/FR-2011-07-15/pdf/2011-17609.pdf.

[5] Information on the three draft regulations is available at http://www.hhs.gov/news/press/2011pres/08/20110812a.html.

[6] The announcement is available at http://www.hhs.gov/news/press/2011pres/11/20111129a.html

Patricia Boozang, a managing director at Manatt Health Solutions, provides government relations, policy and regulatory advice to a wide range of health care and social service organizations, and has particular expertise in Medicaid and CHIP. She is currently advising foundations, state governments and health plans on health care reform implementation. She may be contacted at pboozang@manatt.com. Rachel Sam is a senior analyst with Manatt Health Solutions.

 ISSN 1068-1213

exchanges, building state-run functions in a partnership exchange, and supporting state activities to build interfaces with a federally facilitated Exchange (FFE).

State Cost for Federal Exchange and Federal Data Hub. State Medicaid and CHIP programs will not be required to contribute to the costs associated with the FFE, and state-based exchanges will not be charged for use of the federal data hub.

Basic Health Program (BHP) Funding. Establishment grants may be used for exchange establishment activities that would coordinate or overlap with BHP-related activities, but funds cannot be used to support BHP operations or to investigate BHP feasibility.

Plan Management. HHS plans to work with states to leverage existing functions of state insurance departments when establishing FFE plan management in a state.

Eligibility Functions. HHS intends to permit a spectrum of federal-state partnership options for determining eligibility under a state-based exchange and the FFE.

IRS Data Elements. The Q&A provides some detail on the specific data that IRS will provide to support eligibility verification.

Multistate Plans. HHS acknowledges and states its intent to address the need for a level playing field related to multistate plans.

Risk Adjustment Data Collections. HHS clarifies that neither the federal nor state governments would collect personal identifying data for the risk adjustment program.

Quality Certification Requirements. HHS urges states to focus their quality rating efforts on determining quality information necessary for QHP certification and consumer shopping decisions.

Advance Payments of Premium Tax Credits (APTCs). The guidance confirms that APTCs would be available through state-based exchanges and an FFE.

Program Integrity. HHS reiterates the principle that when applying the Payment Error Rate Measurement (PERM) program to Medicaid and CHIP, as long as federally approved state procedures are followed, PERM classifies the case as an accurate determination. Federal error rate measurement programs will be reviewed to ensure alignment with this principle.

States now have more choices for meeting the ACA exchange requirements and will have to grapple with the pros, cons, and implications of pursuing a state-based, federally facilitated, or partnership exchange model.

Key Takeaways: State Flexibility

Continuum of Partnership Exchange Models. According to the Q&A, the final rule on exchange eligibility will create a range of federal-state partnership options for implementation of eligibility functionality of both state-based exchanges and the FFE. Specifically, state-based exchanges may elect to perform eligibility determination for the full range of insurance affordability programs (Medicaid/CHIP, Basic Health Program, advance premium tax credits, cost-sharing reductions); alternatively, a state-based exchange could rely on ''federal managed services'' to make eligibility determinations for advance premium tax credits/cost-sharing reductions and exemptions from the individual responsibility requirement. The guidance also suggests that HHS is exploring the feasibility of providing a federally managed employer sponsored insurance verification service to state-based exchanges.

In terms of the FFE, the Q&A indicates the federal government could be responsible for eligibility determination of the full range of insurance affordability programs, including Medicaid/CHIP determinations pursuant to state rules. Alternatively, the new guidance allows for the FFE to make an ***initial*** Medicaid/CHIP eligibility assessment, with the state Medicaid/CHIP agency responsible for the final eligibility determination. Notably, the guidance reiterates that regardless of the eligibility functionality model elected by a state, Affordable Care Act (ACA) requirements for a streamlined, seamless and real-time eligibility determination process prevail.

Funding Access and Use. The Q&A and amended FOA provide new guidance that addresses state concerns related to availability of federal funding to states that elect the FFE or partnership exchange models. Specifically, the Q&A clarifies that exchange establishment funding authorized under Section 1311 of the ACA is available to states not only for establishing a state-based exchange but also for building functions that a state elects to operate under a partnership exchange, and to support state activities to build interfaces with an FFE.

The Q&A further indicates that Section 1311 funding may be awarded until Dec. 31, 2014, for approved establishment activities after that date, including for activities related to improving and enhancing key exchange functions. This reflects a significant extension of federal funding availability to states. However, it is notable that the amended FOA was not revised to reflect establishment awards through the end of 2014. It is also unclear how funding for activities conducted after December 31, 2014, fits in with the requirement for exchanges to be self-sustaining by Jan. 1, 2015; such coterminous requirements may compel states to differentiate exchange *operational* costs from concurrent *establishment* costs. These changes significantly ease the pressure on states to meet the original federal funding and implementation timelines.

Funding Deadlines. Consistent with the Q&A guidance, the amended FOA adds two new Level One establishment funding application deadlines: March 30 and June 29, 2012. This aligns Level One application dates with Level Two dates, extending the last Level One application deadline by six months. However, the project performance periods remain consistent with those outlined in the original FOA: for Level

   ISSN 1068-1213

One grants, up to one year, and for Level Two grants, up to four years starting from date of award and ending Dec. 31, 2014. As noted above, these performance periods conflict with the funding availability time frames discussed in the Q&A—which extend beyond 2014—suggesting that additional establishment grant application guidance will be released.

State Costs for Federally Managed Services. The Q&A suggests that HHS will not charge states for the use of federally managed services. Specifically, state Medicaid and CHIP programs will not be required to contribute to FFE costs, including the costs associated with an FFE making Medicaid/CHIP determinations. States remain responsible, however, for the cost of establishing, testing, and maintaining shared interfaces to transfer information to and from the FFE. The guidance points to available federal funding to help alleviate state costs for building and maintaining shared eligibility services.

Further, HHS ''does not anticipate'' charging state-based exchanges for the use of the federally managed data services hub, although HHS is ''considering the treatment of charges for fiscal year 2014.'' Based on comments submitted to HHS in October on proposed regulations, potential state costs for use of the federal data hub was an area of state concern.

****

The new guidance contained in the Q&A and amended FOA continues HHS movement in the direction of maximizing state flexibility related to exchange implementation and reflects HHS responsiveness to state concerns related to funding availability, timelines, and respective roles of states and the federal government in exchange establishment.

But with this flexibility comes new challenges. States now have more choices for meeting the ACA exchange requirements and will have to grapple with the pros, cons, and implications of pursuing a state-based, federally facilitated, or partnership exchange model.

Those states that elect to pursue a federally facilitated or partnership exchange, either as an interim or a permanent solution, will face challenges related to aligning and interfacing state exchange functions with federal exchange functions. These challenges are even more daunting considering that states are making decisions on and implementing necessary functionality in advance of key federal policymaking with respect to all exchange models. Indeed, states are implementing right alongside their federal partners responsible for setting up the FFE.

In the coming months the exchange operation and funding flexibility articulated in the November Q&A will be further refined, as states and the federal government negotiate common ground with respect to shared responsibility and financing of exchange functions. Regardless of the implementation details that emerge with respect to the continuum of exchange models, the goals, requirements, and imperatives of health insurance exchanges remain the same: to provide access to affordable health insurance coverage to all Americans through a consumer-oriented, best-in-class commerce experience. This vision will be best achieved through intensive collaboration between states and the federal government.