

NM center on law and poverty

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VIA ELECTRONIC MAIL

RE: Legal Requirements for the Exchange to do Medicaid Outreach and Enrollment

Dear Superintendent Franchini and Mr. Nuñez,

We write to highlight the Exchange's legal obligation to do outreach and enrollment assistance that includes Medicaid. While federal law requires that there be no wrong doors when accessing health insurance at the Exchange or through Medicaid, the Exchange does not appear to be developing an outreach and enrollment system that meets this requirement. This January 1st, more than 350,000 uninsured New Mexicans are expected to gain access to health coverage through expanded Medicaid eligibility and the Health Insurance Exchange. It is critical that the Exchange create an outreach strategy that includes Medicaid as well as an integrated eligibility and enrollment process to connect as many people as possible to health insurance coverage.

The New Mexico Center on Law and Poverty is dedicated to advancing economic and social justice through education, advocacy and litigation. We work with low-income New Mexicans to improve living conditions, increase opportunities and protect the rights of people living in poverty. Since the passage of the Affordable Care Act, we have been focused on the impact that changes under the ACA will have on individuals and families living in or near poverty.

We are pleased to see that the Exchange was awarded a second Level One Establishment Grant to fund outreach, education and consumer assistance programs. However, the Exchange currently has no plans to include Medicaid in its outreach and enrollment efforts and has specifically stated that all such activities will be done solely by the Human Services Department. The only coordination between

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enrollment systems appears to be an electronic interface that the Human Services Department is developing with the Exchange application through its IT system. This lack of outreach and enrollment coordination with Medicaid is inconsistent with federal law governing Exchange operations.

1. Exchange Obligation to Assist Consumers with Medicaid Enrollment

The Exchange has a legal obligation to screen for and assist applicants with Medicaid enrollment. The Affordable Care Act calls for a streamlined, user-friendly approach to health insurance enrollment to ensure the same consumer experience regardless of the type of coverage for which a person is eligible.¹ Federal regulations seek to minimize the burden on applicants and ensure the prompt determination of eligibility and enrollment in the appropriate program without undue delay.²

To comply with this requirement, the Exchange's consumer assistance programs must help people with Medicaid enrollment. The ACA dictates the use of a single streamlined application, meaning that applicants must receive eligibility determinations for 1) premium tax credits, 2) Medicaid, and/or 3) CHIP **based on one application**.³ Applicants must be able to then enroll in the program for which they are eligible regardless of where their application was completed.⁴ For this reason, federal regulations require Navigators and Non-Navigator entities to provide information to consumers about the full range of QHP options and insurance affordability programs for which they are eligible.⁵ Insurance affordability programs are specifically defined in federal regulations to include both financial assistance to purchase coverage through the Exchange and public programs such as Medicaid and CHIP.⁶

When the Exchange identifies an applicant as potentially eligible for Medicaid, the Exchange must immediately transmit all information provided on the application and any information obtained and verified by the Exchange to the State Medicaid Agency.⁷ The Exchange then has a continued obligation to notify the applicant that the information has been transmitted and hold their application for a premium assistance eligibility determination until the State Medicaid agency determines whether the applicant is eligible for Medicaid.⁸ The Exchange must also follow up with the application and process it for premium tax credits if the applicant is determined ineligible for Medicaid.⁹

In issuing its final federal regulation for Navigator and Non-Navigator Assistance Personnel, Health and Human Services made clear that all Exchange consumer assistance entities will **"provide consumer-focused assistance with applications for and enrollment in QHPs and insurance affordability programs."**¹⁰ Therefore, the Exchange must perform Medicaid enrollment assistance for individuals seeking coverage that may be eligible. The Exchange has indicated an intention to "refer" Medicaid eligible individuals to the state Medicaid office. This would be a clear violation of federal law, as the Exchange must assist applicants with Medicaid applications and enrollment.

¹ ACA § § 1413 & 2201

² 45 CFR § § 155.310(d)(3) & 155.345(a).

³ ACA § 1413

⁴ ACA § 2201(b)(1)(C)

⁵ 45 C.F.R. § § 155.215 (a)(1)(iii) and 155.205(d).

⁶ See 45 C.F.R. § 155.300(a) *citing* 42 C.F.R. § 435.4

⁷ 45 C.F.R. § 155.345(a)(1)-(2) &(d); 45 C.F.R. § 155.302(b)(2) & (b)(4)(ii)(A).

⁸ 45 C.F.R. § 155.345(e); 45 C.F.R. § 155.302 (b)(4)(ii)(B)

⁹ 45 C.F.R. § 155.302 (b)(4)(ii)(B)

¹⁰ 79 Fed. Reg. 137 (July 17, 2013) p. 42826.

2. Exchange Obligation to do Outreach that includes Medicaid Information

The Exchange also has a legal obligation to include information about Medicaid in outreach and education efforts. Federal law requires every exchange to “conduct outreach and education activities . . . to educate consumers about the Exchange *and insurance affordability programs* to encourage participation.”¹¹ For this reason, Navigators and Assisters are must be trained in the full range of insurance affordability programs, including Medicaid and the Children’s Health Insurance Program (CHIP).¹² Furthermore, all Exchange consumer assistance workers are required to provide fair, accurate, and impartial information about health insurance that includes Medicaid and CHIP.¹³ Health and Human Services emphasized this requirement in issuing its final rule, stating that “the in-person assister program is meant to ensure that the Exchange provide outreach, education, and assistance to as broad a range of consumers as possible so that *all consumers can receive help* when accessing health insurance through the Exchange.”¹⁴

Current plans leave Medicaid information out of all outreach materials, including informational documents and media campaigns. The Exchange has further stated in communications with CCIIO, that all Medicaid outreach, education, and enrollment assistance will be conducted solely by the New Mexico Human Services Department. It is unclear how the Exchange will meet its federal obligation to do Medicaid outreach and enrollment assistance, or its obligation to provide fair and impartial information while excluding Medicaid eligibility in educational materials, outreach plans, and enrollment assistance. We urge the Exchange to operate in compliance with federal law to create an outreach and enrollment program that ensures that the Exchange is not a “wrong door” for thousands of New Mexicans seeking health insurance. To do this, the Exchange must include Medicaid eligibility information in all of its consumer education and outreach activities and ensure that applicants are screened and enrolled in Medicaid if eligible.

In New Mexico, we have hundreds of thousands of uninsured people who may, at different times, need to be connected to Exchange coverage, Medicaid, or both. Tens of thousands of New Mexico families are likely to have family eligibility split between the Exchange and Medicaid. The process of applying for healthcare coverage would be easier, more successful, and most cost-effective if people could access assistance for their entire family’s needs in one place. In addition, many families experience frequent income fluctuation – meaning that a family that is Medicaid-eligible at one point in the year may be Exchange-eligible at another point in the year. This means that many families who are initially helped by Assisters or Navigators to apply for coverage and are determined Medicaid eligible are future Exchange customers.¹⁵

The Exchange must include Medicaid outreach and enrollment assistance in its activities not just to remain in compliance with federal law, but also to connect the most uninsured people to coverage, reduce barriers for families who are split across eligibility lines, minimize confusion, and effectively leverage federal dollars. If New Mexico is successful with maximizing coverage, we stand to gain billions

¹¹ 45 C.F.R. § 155.205(e)

¹² 45 C.F.R. § 155.210(b)(2)(iii); 45 C.F.R. § 155.215(b)(2)(ii); *see also*, 79 Fed. Reg. 137 (July 17, 2013) p. 42837.

¹³ 45 C.F.R. § 155.210; 45 C.F.R. § 155.215 (b)(ii).

¹⁴ 79 Fed. Reg. 137 (July 17, 2013) p. 42826.

¹⁵ Matthew Buettgens et al., *Churning Under the ACA and State Policy Options for Mitigation* (Robert Wood Johnson Foundation Timely Analysis of Immediate Health Policy Issues, June 2012).

in new revenues and over 8,000 new jobs by the year 2020. This will help strengthen the healthcare infrastructure in our state for all New Mexicans.

Thank you for your attention to this important issue. If you have any questions or would like additional information, please do not hesitate to contact the New Mexico Center on Law and Poverty by phone at (505) 255-2840 or by email at or sovereign@nmpoertylaw.org.

Sincerely,

Sovereign Hager, Staff Attorney

cc: **New Mexico Health Insurance Exchange Board**

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