

September 6, 2011

Kathleen Sebelius, Secretary, Department of Health and Human Services
Centers for Medicare and Medicaid Services
Department of Health and Human Services, Room 445-G
Hubert H. Humphrey Building
200 Independence Avenue, SW
Washington, DC 20201

RE: CMS-9989-P - Patient Protection and Affordable Care Act; Establishment of Exchanges and Qualified Health Plans

Dear Secretary Sebelius:

The *Patients' Access to Responsible Care Alliance* (PARCA), a national coalition representing the interests of hundreds of thousands of non-MD/DO health care providers and millions of patients in need of high-quality, cost-effective health care services, welcomes the opportunity to comment on the proposed rule, CMS-9989-P- Patient Protection and Affordable Care Act; Establishment of Exchanges and Qualified Health Plans. Our comments are outlined below.

Representing twelve leading national health care provider organizations, PARCA is the preeminent national voice for America's non-MD/DO health care professionals and the millions of patients they serve. Overall, the PARCA coalition aims to provide federal policymakers with access to information from all areas of the health care community, in order to assist in the formulation of responsible, well-rounded health care policy. The coalition is committed to quality, cost-effective care, and ensuring patients have options in the delivery of such care.

Our comments relate to the following sections of the proposed rule:

- Section §155.110(c)(2) and (4) - Entities Eligible to Carry Out Exchange Functions.
- Section § 155.120(c) - Non-interference with Federal Law and Non-discrimination Standards.
- Section §155.130 - Stakeholder Consultation.
- Section §155.140 - Establishment of a Regional Exchange or Subsidiary Exchange.
- Section §155.205 (b)(1)(viii) - Required Consumer Assistance Tools and Programs of an Exchange.

- Section §155.1050 - Establishment of Exchange Network Adequacy Standards.

Section §155.110(c)(4) - Entities Eligible to Carry Out Exchange Functions

We applaud the agency for its attention to ensuring that voting members of the Exchange governing board have the requisite experience in health benefits administration, health care finance, health plan purchasing, health care delivery system administration, public health, or health policy issues. The PARCA coalition believes that including health care professionals, such as our respective members, will help ensure that Exchange boards possess a wide range of health care expertise to ensure successful operations. Therefore, the PARCA coalition recommends that qualified licensed health care professionals, including non-MD or DO providers who bill for Part B services under Medicare, should be provided a place on the Exchange governing boards.

Section §155.110(c)(2) - Entities Eligible to Carry Out Exchange Functions

The PARCA coalition supports HHS' proposal to require Exchange boards to hold regular public governing board meetings to provide the public with opportunities to observe and comment on Exchange policies and procedures. Ensuring public input into Exchange policies and procedures is critical to the success of the Exchange by allowing for transparency and accountability in the design and operation of Exchanges. The PARCA coalition recommends that HHS further outline the frequency with which Exchange boards hold regular meetings, and suggests that the agency require Exchanges to convene public meetings no less than quarterly each year.

Section § 155.120(c) - Non-interference with Federal Law and Non-discrimination Standards

We applaud HHS for including in the proposed rule a requirement that states and their Exchanges must comply with applicable non-discrimination statutes. The PARCA coalition calls to the Agency's attention the fact that, in today's delivery system, health plans may discriminate against whole classes of health care professionals based solely on their licensure or certification. This can limit or deny patient choice and access to a range of beneficial, safe and cost-efficient health care professionals.

Therefore, we urge HHS to ensure full application of existing state provider non-discrimination laws. Further, to better ensure patient access to this high-quality, cost-effective care, we recommend that HHS require states and Exchanges to adhere to the federal provider non-discrimination provision in the Affordable Care Act (ACA) (Sec. 1201, Subpart 1, creating a new Public Health Service Act Sec. 2706, "Non-Discrimination in Health Care, 42 USC §300gg-5) slated to take effect January 1, 2014.

As HHS is aware, this provision indicates that "a group health plan and a health insurance issuer offering group or individual health insurance coverage shall not discriminate with

respect to participation under the plan or coverage against any health care provider who is acting within the scope of that provider's license or certification under applicable State law.”

To ensure that Exchanges provide the access to care that patients need, PARCA believes that HHS should require states to attest that plans operating in Exchanges are in compliance with all federal insurance reforms included in the Affordable Care Act, particularly the “Non-Discrimination in Health Care” provision mentioned above.

Section §155.130 - Stakeholder Consultation

We support HHS' proposal to include health care professionals in the groups of stakeholders with whom Exchanges are required to consult as they establish their programs and throughout ongoing operations. However, we believe that HHS should clearly identify the specific types of providers who will be included in Exchange consultation. Because health care delivery hinges on the services of millions of non-MD/DO health care professionals, states should look beyond the advice of physicians solely in determining and evaluating the appropriate operations of exchanges. The PARCA coalition recommends that qualified licensed health care professionals, including non-MD or DO providers who bill for Part B services under Medicare, also be included in the group of health care providers who must be consulted in Exchange development and operations.

Section §155.140 - Establishment of a Regional Exchange or Subsidiary Exchange

The proposed rule is vague, providing few details regarding how regional and subsidiary Exchanges would operate. The PARCA coalition is concerned with how varying health care provider state scope of practice laws will be respected by these types of Exchanges. For example, under the proposal, it may be possible for some regional Exchanges to limit the procedures that a particular health care provider type can perform, and thus direct that the most restrictive state scope laws effectively apply over the entire regional Exchange, reducing patient choice and increasing health care costs without improving quality. The PARCA coalition recommends that state laws regarding provider scope of practice in the state where the service is delivered must be followed in the operations of both regional and subsidiary exchanges.

Section §155.205 (b)(1)(viii) - Required Consumer Assistance Tools and Programs of an Exchange

The PARCA coalition supports the proposal that requires Exchanges to maintain up-to-date web sites that include a provider directory for each QHP available to the Exchange [§156.230 and §155.205 (b)(1)(viii)], and recommends that qualified licensed health care professionals, including non-MD or DO providers who bill for Part B services under

Medicare, be included in these directories. We also recommend that a process be put into place that would allow health care providers to review their information and provide input to the Exchange to address any errors. Both of these recommendations are critical to ensuring that the provider directory is effective and useful to consumers.

Section §155.1050 - Establishment of Exchange Network Adequacy Standards

The PARCA coalition applauds HHS' effort to establish exchange network adequacy standards by requiring each Exchange to ensure their QHP networks offer a sufficient choice of providers for enrollees. However, without strong patient access safeguards in place, the PARCA coalition is concerned that lax network adequacy standards could limit the number of providers or the types of providers on their panels, which could severely limit patient access to needed care. As the Agency prepares to implement these standards, we recommend that HHS also require QHPs to adhere to the provider non-discrimination provision in the ACA mentioned above, and to demonstrate network adequacy with evidence.

Thank you for the opportunity to provide comments and recommendations on this proposed rule. If you have any questions, please contact the PARCA Chair Jack Dusik, Director of Federal Government Relations at the American Chiropractic Association at 703-812-0246 or jdusik@acatoday.org.

Sincerely,

The Patients Access to Responsible Care Alliance

- American Academy of Audiology
- American Academy of Nurse Practitioners
- American Association of Nurse Anesthetists
- American Chiropractic Association
- American College of Nurse Midwives
- American Occupational Therapy Association
- American Optometric Association
- American Podiatric Medical Association
- American Psychological Association
- American Speech-Language-Hearing Association
- National Association of Social Workers