



May 16, 2011

NAIC Exchanges (B) Subgroup

Dear Director McRaith, Commissioner Praeger, and Members of the Exchanges (B) Subgroup,

Families USA appreciates the opportunity to provide comments to the National Association of Insurance Commissioners (NAIC) regarding the White Paper entitled *Health Insurance Exchanges Under the Affordable Care Act: Governance Options and Issues*. Families USA is a nonprofit, nonpartisan consumer advocacy organization dedicated to the achievement of high-quality, affordable health care for all Americans.

Families USA believes that the NAIC exchange governance White Paper presents a strong analysis of the key issues associated with governing state exchanges. It clearly presents the various options that states will have when deciding where to house their exchanges and how to govern their exchanges, highlighting the fact that there will be different advantages and disadvantages for different exchange models. We are pleased that the White Paper includes best-practice state examples, including a description of the governance structure of the Massachusetts Health Connector and an overview of the conflict of interest provisions of the California Health Benefit Exchange. Families USA believes that the White Paper as drafted will serve states well in developing effective, consumer-friendly exchanges and would like to offer the following comments for consideration. The comments reflect Families USA's belief that when creating the governing structure of exchanges, it is important to prevent conflicts of interest, promote transparency and public accountability, and ensure that exchanges will work well for consumers, particularly for those who may transition between coverage programs. These elements are essential to creating fair, competitive, and effective exchanges.

#### Preventing Conflicts of Interest

Families USA supports the NAIC's White Paper language in Section IV(E) that begins with the statement: "Regardless of the board's size, composition, and appointment process, it is important to protect against possible conflicts of interest among board members." To ensure that a state exchange functions in the best interests of the public and that board members are not serving on the governing board for financial or other reasons of personal gain, we believe that individuals employed by or affiliated with carriers or insurers, agents or brokers, information technology or other vendors who may seek business from the exchange, active health professionals, or health care facilities should be prohibited from serving on the exchange governing board. Thus, we support the NAIC in its assertion to protect exchange governing boards from possible conflicts of interest. Furthermore, in the event that insurers, brokers, or others with conflicted interests are permitted to serve on an exchange governing board, they must not outnumber representatives of consumer and small business interests.

### Transparency and Public Accountability

Families USA supports the inclusion of the issues of transparency and public accountability in the NAIC exchange governance White Paper. We believe that it is crucial to have a transparent governing structure that solicits and incorporates consumer input in order to ensure that exchanges are truly providing coverage that is “in the interests of qualified individuals and qualified employers” who will obtain coverage through the exchange, as required by the Affordable Care Act.<sup>1</sup> Consumer input is necessary to make sure that the exchange – and the plans that it offers – meets the needs of consumers, providing coverage that is affordable and of high quality.

As mentioned in Section IV(A)(1) of the NAIC White Paper, states will have to balance flexibility regarding procurement, hiring, and other state laws with public accountability responsibilities. We agree that deciding what procurement laws and other state laws the exchange will abide by will be a balancing act, as states will want to both hire qualified staff quickly and pay them an attractive salary *within reason*, while ensuring that the governing structure is transparent and accountable and is not subject to corruption.

In order to promote transparency and public accountability, Families USA recommends adding two sentences to the end of paragraph two in Section IV(A)(1): “Regardless of where the exchange is housed, the exchange board should abide by state open meeting laws and open record laws, as well as hold public hearings on its activities. In addition, the exchange should adopt fair hiring processes and worker protections for its staff.”

### Coordination between Medicaid, CHIP, and the Exchange

In Section IV(A), the NAIC White Paper highlights that exchanges will need to coordinate with other state agencies, such as the Medicaid agency and the department of insurance, and that such coordination may be more or less difficult depending on where the exchange is located. Regardless of where the exchange is housed, Families USA believes it is of particular importance to ensure coordination between the exchange and the agencies that oversee state public coverage programs, such as the state Medicaid agency and the state Children’s Health Insurance Program (CHIP) agency. Such coordination is crucial because Medicaid and CHIP enrollment will be integrated with the exchange. As stated in the “Board Expertise” section of the White Paper, states such as California and Massachusetts have official seats on their exchange governing boards for the directors of relevant state agencies, facilitating such coordination.

The National Academy of Social Insurance (NASI) also stresses the need for coordination between Medicaid, CHIP, and the exchange in its publication, *Designing an Exchange: A Toolkit for State Policymakers*:

“The Exchange shall...Coordinate the policy and operations of the Exchange with those of other state agencies whose policies and operations relate to those of the Exchange, including but not limited to the state agency that administers title XIX of the Social Security Act [Medicaid], the state agency that administers title XXI of the Social Security Act [CHIP], and other [insert names of other relevant agencies].”<sup>2</sup>

In order to ensure that the exchange functions effectively and efficiently for those enrolling in subsidized coverage programs, Families USA recommends adding a sentence to Section IV(D) of the NAIC exchange governance White Paper that reads: “Because Medicaid and CHIP enrollment will be integrated with the exchange, it is important to have an official seat on the exchange governing board for the director of the Medicaid agency, or otherwise have the agencies that oversee public coverage programs officially involved in the establishment and operations of the exchange.”

Thank you for considering our comments. If you have any questions, please do not hesitate to contact Elisabeth Rodman at [erodman@familiesusa.org](mailto:erodman@familiesusa.org).

Sincerely,

Elisabeth Rodman  
Villers Fellow

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<sup>1</sup> *Patient Protection and Affordable Care Act*, Public Law 111-148 (March 23, 2010), as modified by the *Health Care and Education Reconciliation Act of 2010*, Public Law 111-152 (March 30, 2010), Title 1, Subtitle D, 1311(e)(1)(B).

<sup>2</sup> National Academy of Social Insurance, *Designing an Exchange: A Toolkit for State Policymakers* (Washington: NASI, January 2011).