

Centers for Medicare & Medicaid Services
Department of Health and Human Services
P.O. Box 8010
Baltimore, MD 21244-8010

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

Dear Sir/Madam:

Thank you for this opportunity to submit comments regarding the establishment of health insurance Exchanges and qualified health plan (QHP) requirements of the Affordable Care Act.

Essential Health Benefits

NAMI MARYLAND commends the Patient Protection and Affordable Care Act (ACA) requirement for Qualified Health Plans (QHP) in every state Health Insurance Exchange (Exchange) to comply with the Mental Health Parity and Addiction Equity Act. The parity requirement will help improve lives by promoting early identification and treatment.

Recommendations:

- Explicitly recognize and enforce the *Essential Health Benefits* as a requirement for every QHP, including the ACA requirement that every QHP must cover mental health and substance abuse treatment at parity with medical/surgical benefits.
- *Essential Health Benefits* guidelines should require states to include an array of core mental health and addiction services that support positive outcomes, including early intervention, treatment and rehabilitative and recovery-oriented support services.
- Require Exchanges to coordinate with Medicaid, state mental health authorities and other payer sources to make a full continuum of benefits available as needed.

Consumer Protections

NAMI MARYLAND applauds the ACA requirement for Exchanges to ensure that every QHP meets consumer protection requirements. Final Exchange regulations should also include strong consumer protections and enforcement mechanisms.

Recommendations:

- Enforce strong consumer protections to ensure that individuals enrolled in QHPs can easily access the type, level, and duration of care they need.
- Decisions about who needs what services, and for how long, should be made by treatment professionals in collaboration with patients and should be based on clinically valid criteria, not simply cost containment. Medical management tools such as utilization review and preauthorization should be used appropriately and not be used to deny needed care.
- Private insurers should be prohibited from denying claims for criminal justice-involved patients who are otherwise eligible to receive care.

- Exchanges should enforce strong transparency requirements to ensure that criteria and reasons for denial of care are disclosed and subject to a meaningful, independent review process that includes examination of plan benefit utilization patterns and enables individuals to effectively challenge a denial.

§115.110

Exchange Governance - Stakeholder Involvement

NAMI MARYLAND commends the provision requiring Exchange Governing Boards to have a majority of voting members who represent consumer interests. Maryland is ahead of other states and has already formed an exchange board that includes advisory committees that includes diverse participation. At the federal level, we recommend the following:

Recommendation:

- Include the Administrator of the Substance Abuse and Mental Health Administration (SAMHSA) on the governing membership of the federally-administered Exchange.

§155.130

Stakeholder Consultation

Individuals living with mental health and/or substance use disorders are overrepresented among the uninsured and historically have encountered barriers to needed treatment. As a result, the opportunity for affordable coverage with parity of mental health and substance use treatment via Exchange plans and Medicaid expansion is of profound significance.

Recommendation:

- Require Exchanges to consult with advocates for individuals living with disabilities and chronic conditions, including mental illness, as Exchanges are developed.
- All Exchanges should be required to have a formal Consumer Advisory Committee of consumer advocates and non-profit organizations with expertise in serving people with disabilities including mental illness and/or substance use disorders.

§155.200 (d)

Appeals and Review of Eligibility Determination

The Affordable Care Act ensures that consumers of health care services have the right to appeal or request reviews of insurance plan decisions that they believe to be erroneous. These include both internal and independent reviews of appeals. People living with mental illness or substance use disorders are frequently unaware of these rights and how to access them.

Recommendation:

- Health Insurance Exchanges should require all participating plans to develop clear, easily understandable appeals procedures. All states should be required to establish Consumer Assistance Programs to inform individuals of their rights and help file appeals or request reviews.

§155.205

Consumer Assistance Tools and Programs

Successful implementation of the Exchanges will require a strong outreach and education effort to help eligible individuals, employers and others understand how to access coverage and services and to identify consumer rights violations. NAMI MARYLAND appreciates that the preamble of the proposed regulations encourages Exchanges to conduct outreach broadly and to target specific groups and hard-to-reach populations, including individuals with mental illnesses and substance use disorders, but urges specific requirements.

Providers, including those delivering mental health and substance abuse services, must also be the targets of outreach and education efforts to enable them to help eligible people access coverage and care.

Recommendations:

- Exchanges should be required to implement strong outreach efforts to traditionally under-enrolled and hard-to-reach populations, including individuals living with mental illness and/or substance use disorders and should include education on identification of consumer rights violations.
- Providers, including those delivering mental health and substance abuse services, must be included as targets of outreach and education efforts to enable them to help eligible individuals access coverage and care and to identify violations of consumer rights.

§155.210

Navigator Program Standards

NAMI MARYLAND commends regulations for navigators to provide assistance with enrollment and retention of health care coverage. A robust Navigator program is critically important to ensure effective Exchange outreach, enrollment and engagement in appropriate services.

Recommendations:

- Ensure easily accessible, adequate coverage for those eligible through the Exchange
- Ensure that Navigator programs are sufficiently funded and staffed to facilitate enrollment for those who may find the process burdensome and for those transferring between Medicaid and the Exchanges. While the ACA prohibits federal funding for the Navigator programs, HHS should monitor Navigator programs to ensure sufficient funding to reach all potential Exchange enrollees.

§115.210(b)

Entities Eligible to be a Navigator

The proposed rule recommends that at least one of the entities serving as Navigators include a community and consumer-focused non-profit organization. Inclusion of non-profit organizations who have built trust with hard to reach populations will enable the Navigator program to better meet the diverse needs of those seeking coverage through the Exchange.

Recommendations:

- Require that at least one of the Navigator entities include a community and consumer-focused non-profit organization serving hard to reach populations.
- Recommend engagement of a non-profit organization to serve in a training and coordination role.

§155.210(d)

Duties of a Navigator

A robust Navigator program is especially important for individuals living with mental illnesses as they are more likely to experience difficulties navigating a complicated system.

Recommendations:

- Navigator requirements must include training on working with diverse populations, including people with disabilities such as serious mental illness to ensure that individuals with chronic health conditions are connected to health insurance coverage that is appropriate for their needs.
- Navigators should be equipped to help with service access and referral to ombudsman programs when consumer rights violations are identified.

§155.260

Privacy and Security of Information

NAMI MARYLAND appreciates federal HIPAA requirements to maintain privacy of health information. However, privacy is the privilege of the patient, not the provider, and should not be used to deny sharing of information with family members and others if the patient wishes.

Recommendation:

- Confidentiality should be protected, although information release opportunities should be required to be offered at regular points in the treatment process to allow individuals to involve others of their choosing in supporting the care process.

§155.1040

Transparency in Coverage

Given the projected high prevalence of mental health and substance use conditions among potential Exchange enrollees, it is critical that consumers be able to easily understand and compare mental health and substance use benefits and true cost-sharing between plans.

Recommendation:

- Ensure that Exchange plan information is readily understandable and comparable, particularly regarding benefits for individuals living with high mental health and/or substance use treatment needs.

§155.1050

Exchange Network Adequacy Standards

Although nearly 10 million adults live with a serious mental illness, only a fraction of receive the treatment they need to experience recovery. One factor contributing to this problem is the shortage of qualified mental health professionals in private insurance and Medicaid provider networks. NAMI MARYLAND strongly supports the goal of making health coverage and health care available to consumers in areas where it may be challenging to access health care providers. To achieve this goal the proposed rule requires Exchanges to “ensure that the provider network of each QHP offers a sufficient choice of providers for enrollees.”

Recommendations:

- Qualified Health Plans in state Exchanges should be required to meet or exceed a minimum *federally-defined* standard for network adequacy for behavioral health professionals, rather than delegating this responsibility to each Exchange.
- Network adequacy standards should be developed and enforced to ensure access to all essential health benefits, including mental health and substance abuse disorder benefits.
- Explicitly require all QHPs to demonstrate that they have a sufficient choice of providers accepting their health plan to meet the minimum national network adequacy standards.

NAMI MARYLAND supports additional proposed requirements that the Exchange establish specific standards under which QHP issuers would be required to maintain the following:

- (1) sufficient numbers and types of providers to assure that services are accessible without unreasonable delay;
- (2) arrangements to ensure a reasonable proximity of participating providers to the residence or workplace of enrollees, including a reasonable proximity and accessibility of providers accepting new patients;
- (3) an ongoing monitoring process to ensure sufficiency of the network for enrollees; and
- (4) a process to ensure that an enrollee can obtain a covered benefit from an out-of-network provider at no additional cost if no network provider is accessible for that benefit in a timely manner.

§156.235

Essential Community Providers

Community mental health centers (CMHCs) have a long history of providing services to low-income and medically-underserved populations, including youth and adults living with mental illness. Often a community mental health center is the only behavioral health provider accessible to rural or frontier communities.

Recommendation:

- It is critical to identify community mental health centers (CMHCs) that are licensed or certified by the state as essential community providers in the final Exchange and QHP regulations.

§ 156.405

Single Streamlined Application

NAMI MARYLAND commends the ACA requirement for a single streamlined application to ease the application process and increase eligibility coordination between the Exchange, Medicaid, CHIP and other public programs. Individuals affected by mental illness and/or substance use disorders are highly likely to be eligible, but not enrolled in health care coverage, and to experience disruptions in health coverage.

Recommendations:

- Ensure effective enrollment processes that reduce opportunities for enrollment gaps for those who may be uninsured, transferring between private insurance, public health coverage (in particular Medicaid) and/or uninsured status, or transitioning out of the criminal justice system.
- Require the following: (1) real time, pre-populated electronic application and redetermination systems; (2) Navigator support and other outreach and enrollment initiatives targeted to those who are most vulnerable, including those transitioning out of the criminal justice system; (3) presumptive eligibility and other expedited or streamlined eligibility processes for those likely to be found eligible; (4) training and education for Navigators and eligibility workers; and (5) the establishment of performance metrics to increase enrollment and decrease disenrollment of eligible individuals; and (6) suspension, rather than termination, of Medicaid eligibility for individuals who lose coverage due to their status as an inmate of a public institution or as a resident in an Institution for Mental Disease (IMD).

§155.245

Health Care Homes

Bi-directional integration of health, mental health and substance abuse care in person-centered health homes holds the promise of more effectively and cost-efficiently meeting the whole health needs of individuals living with serious chronic or co-morbid conditions.

Recommendations:

- Encourage development of person-centered healthcare homes to serve individuals with mental health and/or substance use disorders.
- Encourage community mental health agencies to develop care coordination and primary care capacity necessary to serve as health homes for people with serious mental health and/or substance use conditions.

§155.430

Termination of Coverage

NAMI MARYLAND is pleased with the ACA rule prohibiting QHPs from unfairly dropping or withdrawing coverage for enrollees who get sick. Because of this provision individuals with mental illness will be able to keep coverage when they need it most. When coverage termination is indicated for other reasons, people with mental and/or substance use disorders will need extra assistance navigating procedures to prevent wrongful termination.

Recommendations:

- Establish standards for termination of coverage that require issuers of QHPs to provide reasonable accommodations to individuals with disabilities, including mental illness.
- Require Navigators and Consumer Assistance Programs to assist consumers facing potential termination in understanding the reason for potential termination and, when appropriate, with filing a timely appeal.

Respectfully submitted,

Lynn H. Albizo

Lynn H. Albizo, Esq.
Public Policy Consultant
NAMI Maryland
410.733.1098
lalbizo@verizon.net