

State of New Mexico
Legislative Council Service

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Raúl E. Burciaga, Director



September 6, 2012

Amanda Cowley, Director
State Exchange Group
Center for Consumer Information and Insurance Oversight
Centers for Medicare & Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244

Re: Our August 28, 2012 Teleconference Regarding New Mexico's
Health Insurance Exchange Efforts

Dear Ms. Cowley:

On August 28, 2012, you and the Center for Consumer Information and Insurance Oversight's (CCIIO) Shelly Bain and Rachel Clement participated in a teleconference with me. You answered several questions I posed regarding our state's efforts to establish a health insurance exchange. In my effort to summarize these questions and answers for our legislators' understanding, I am writing in hopes that you will clarify or correct my characterization of your answers.

Question 1: Representatives of New Mexico's Human Services Department have informed the Legislative Health and Human Services Committee that the department may delay the implementation of the state health insurance exchange with regard to offering qualified health plans in the individual market. (The department did not provide a start-up date for the delayed individual-market exchange.) Will the CCIIO approve a state's blueprint application if the state proposes only to create a small-group (SHOP) exchange and delay creation of an individual-market exchange?

You responded that the United States Department of Health and Human Services (DHHS) would confront two issues if New Mexico submitted a blueprint proposing only a SHOP exchange to be

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ready by January 1, 2014 and the individual-market exchange to be ready at a later date: (1) compliance with the federal law's requirement for a January 1, 2014 operational date for both the SHOP and individual-market exchange; and (2) a need to hold state residents harmless from enforcement of the mandate that nonexempt individuals purchase health insurance starting in 2014 or incur tax penalties.

You explained that the final regulations do not contemplate a federal partnership or federal exchange that would take over only the individual-market components of an exchange. To accommodate a state's good-faith efforts to comply with the exchange requirements, the secretary of health and human services may conditionally approve the state's blueprint and, hypothetically, may allow an extension until mid-2014 for New Mexico to have both the individual and SHOP exchanges operational.

You suggested that the DHHS may be forced to establish a federal exchange in New Mexico if the state's exchange did not offer qualified health plans for both the SHOP and individual markets by mid-2014.

In the event of a delay in establishing an exchange for the individual market, you stated that the DHHS would likely seek cooperation from the federal Internal Revenue Service to delay enforcement of the individual mandate in New Mexico until an exchange would be able to offer individuals qualified health plans on the exchange. "It would be surprising," you stated, "if the government aggressively enforced the individual mandate" [in the event of such a delay in the establishment of an exchange to sell plans in the individual market].

Question 2: If a state's blueprint was submitted and the blueprint demonstrated a state health exchange that was not fully compliant with federal law, would a federal exchange be established in that state?

If a state submitted a noncompliant blueprint, the secretary of health and human services could issue conditional approval, provided that the state set concrete deadlines for attaining compliance with federal law.

If the state was not timely compliant with federal law, the DHHS would be forced to consider establishing a federal health exchange in that state.

Question 3: If New Mexico submitted a blueprint and that blueprint did not provide for the proper state legal authority to establish the exchange in New Mexico, would the DHHS approve the state's blueprint?

You explained that the DHHS may offer conditional approval, with the condition that New Mexico obtain the legal authority in accordance with state law in a timely fashion. The New

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Mexico Legislature will next be in regular session from mid-January to mid-March 2013. If legislation does not pass at that time, the DHHS may question the executive's legal authority to continue on its course of establishing the exchange.

Thank you very much for your consideration, Ms. Cowley. I look forward to your reply.

Sincerely,



MICHAEL HELY
Staff Attorney

cc: The Honorable Dede Feldman, Chair, LHHS; New Mexico State Senator, District 13
The Honorable Danice Picraux, Vice Chair, LHHS; New Mexico State Representative,
District 25
Rachel Clement, CCIIO

MH:kf