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COMMENTS to the Department of Health and Human Services Centers for Medicare and Medicaid Services

RE: Patient Protections and Affordable Care Act; Establishment of Exchanges and Qualified Health Plans:

Proposed Rule CMS-9989-P

By Kentucky Voices for Health

September __, 2011

Kentucky Voices for Health (KVH) respectfully submits the following comments to the Department of Health and Human Services (HHS), Centers for Medicare and Medicaid Services (CMS) in response to the notice of proposed rule making, CMS-9989-P, Establishment of Exchanges and Qualified Health Plans.

Kentucky Voices for Health is a broad coalition of nearly 100 organizations working to improve Kentuckians' health and health care coverage. The coalition's leadership team is composed of representatives from AARP Kentucky, Advocacy Action Network, American Cancer Society, American Heart Association, American Lung Association, Catholic Conference of Kentucky, Covering Kentucky Kids and Families, Kentucky Council of Churches, Kentucky Equal Justice Center, the Kentucky Injury Prevention and Research Center, and Kentucky Youth Advocates. Kentucky Voices for Health receives grant funding from the Public Welfare Foundation through the Foundation for a Healthy Kentucky.

KVH believes that properly operating health exchanges, along with insurance market reforms and subsidies, will be important tools in expanding health coverage to the estimated 640,000 Kentuckians who are now uninsured. To best serve consumers, exchanges must not only be easy to understand and use, but should also have robust and diverse consumer representation, strong conflict of interest policies, comprehensive and competitive health benefit plans, and an efficient and effective governance structure. Our comments focus on these elements and are offered based on the relevant section of the proposed rule.

Subpart B – General Standards Related to the Establishment of an Exchange by a State

The ACA requires states to establish and operate an Exchange by January 1, 2013 or HHS will set up a federally-facilitated Exchange. As the possibility exists that Kentucky may opt for a federally operated exchange, it will be more difficult for consumers to understand how Exchanges will be developed, how they will function, and how consumers will be represented.

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We recommend that HHS involve stakeholders from a state – including representatives of consumers, state officials, insurers, health care providers, and other relevant perspectives – in the planning processes for federally facilitated Exchanges. In addition, Exchange plans for a federally facilitated or partnership Exchange should be publicly available and contain all information required of a state Exchange plan, along with a clear delineation of which party is responsible for carrying out each function. The public should have opportunities to weigh in on the plan to ensure it adequately reflects the needs of consumers and residents of the state.

§155.110 Entities eligible to carry out Exchange functions. While KVH is pleased that the proposed rule suggests that a majority of the voting member on Exchange boards represent consumer interests, we believe the rule should require that consumer representatives constitute a majority of board members. It would also be helpful if boards were required to have one or more consumer advocates, who could include individuals or nonprofit organizations with relevant knowledge and expertise. Exchanges should also be required to have a broad-based Consumer Advisory Committee to inform board decisions about operations and implementation.

The proposed rule should clearly define representatives of consumer interests to include: individuals who purchase (or are likely eligible to purchase (coverage through the Exchange; small business employees who purchase (or are likely eligible to purchase) coverage through the Exchange; and non-profit organizations that have experience representing or advocating on behalf of the individuals in the categories mentioned above.

Additionally, for purposes of board membership, the proposed rule should separately define representatives of small employers as small business owners who purchase (or are likely eligible to purchase) coverage through the Exchange.

We strongly oppose the proposed language in §155.110(c)(3) which would allow a minority of voting board members to have conflicts of interests. To ensure the best interests of consumers are truly represented, we recommend that **all** voting members of Exchange boards be prohibited from having conflicts of interest. The definition of conflict of interest should also be expanded to preclude any of the following from serving on Exchange boards: anyone who consults with, represents or is a member of an association of insurers, agents, or people licensed to sell health insurance. We further recommend that a spouse of a conflicted party be prohibited from serving on Exchange boards unless his or her professional qualifications are clearly consumer oriented.

Subpart C – General Functions of an Exchange

§155.205 Required consumer assistance tools and programs of an Exchange. The proposed rule should set performance standards to ensure that,

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for example, call centers answer their phones and resolve callers' questions within a reasonable amount of time.

§155.210 Navigator Program Standards. As consumer advocates, KVH believes that the Navigator program is one of the critical building blocks to a reformed health care system that merit serious attention and development. Consumers need information to be able to make educated decisions about their needs and the value of plans in the market. KVH believes the following consumer principles should be followed in establishing a navigator program:

- The navigators must have the consumer as their client;
- Conflicts of interest should be prohibited—navigators must be paid in a manner that does not create incentives to encourage or discourage certain consumer behavior or preferences—i.e., the consumer must trust they are being provided information that is in their best interest;
- Navigators must be able to provide information to consumers in a way that can be understood by the consumer, including presentation of information in a culturally sensitive manner or for those with low-proficiency English, and people with disabilities who have special communication needs;
- Navigators must be able to effectively serve low-income, disadvantaged, and hard-to-reach populations. To do this, navigators must also be knowledgeable about Medicaid and KCHIP and procedures for transitioning among Medicaid, KCHIP, exchange plans;
- Navigators should undergo some form of screening or credentialing process to ensure they have the experience, capacity and expertise to perform the duties required of them and to protect consumers from potential fraud;
- The state department of insurance should serve as an ombudsman to receive consumer complaints and resolve disputes involving navigators.

With respect to the proposed rule, a nonprofit consumer organization should be one of two types of organizations listed in the proposed rule that Exchanges are required to contract with to serve as a Navigator. A number of established organizations in Kentucky have a track record of helping citizens to enroll in public health insurance programs, such as K-CHIP and Medicaid, and are known and trusted by community members. To ensure continuity and ensure community involvement, these types of organizations should have the opportunity to continue these efforts with Exchanges. Exchanges should also be required to select Navigators with a demonstrated track record of conducting culturally competent outreach to the uninsured and to populations with language barriers. Navigators should be able to provide in-person, online, and telephone support to potential enrollees. In-person support should be accessible by public transportation and ADA-compliant.

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Additional detail should also be provided as to amount of grants, how they will be awarded, etc., so that community organizations can understand the compensation/funding structure and become interested in becoming Navigators.

Subpart K – Exchange Functions: Certification of Qualified Health Plans

§155.1000 Certification criteria for QHPs. The proposed rule should define what standards an Exchange must consider when determining if a health plan is "in the interest of qualified individuals and qualified employers" and should be offered through an Exchange.

§155.1050 Establishment of Exchange network adequacy standards. Clarification is needed as to what constitutes a sufficient number of essential community providers in a manner that is broad enough to ensure access to care while allowing for selective contracting to promote cost-effectiveness. An oversight process should also be put in place that will allow the regulator to step in if consumer complaints find that health networks are inadequate to meet consumer's needs.

§156.235 Essential community providers. Minimum standards should be established for the inclusion of a "sufficient number" of essential community providers in a health plan's provider network.

§155.1040 Transparency in coverage. The proposed rule should provide greater detail regarding the information a health plan must submit so that the plan will be transparent to the consumer. Information should be submitted by the insurer at least annually.

To be effective in providing comprehensive and affordable health coverage that Kentuckians will want to purchase, Exchanges must operate in a manner that reflects the needs of consumers. Towards that end, our comments are intended to strengthen consumer representation and reduce conflicts of interest on Exchange boards and in the Navigator program to help Exchanges reach their true potential.

Respectfully submitted,

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Kentucky Voices for Health