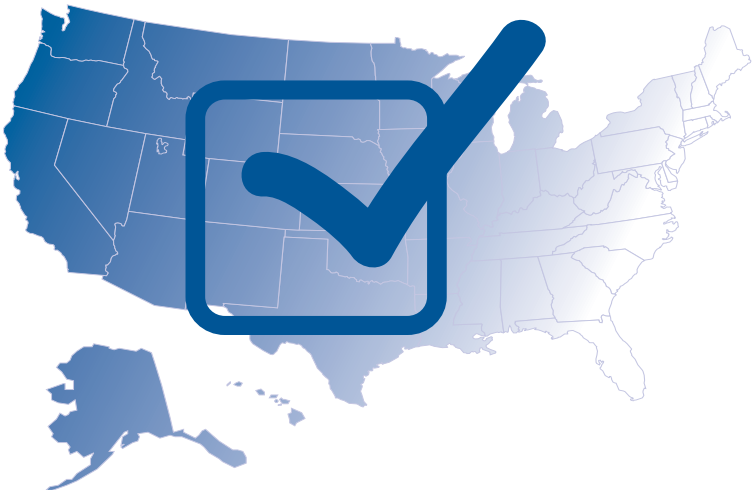

Implementing the Patient Protection and Affordable Care Act:

A 2012 State To-Do List for Exchanges, Private Coverage, and Medicaid

Implementing the Patient Protection and Affordable Care Act: A 2012 To-Do List for Exchanges, Private Coverage, and Medicaid recommends a series of tasks and issues to consider in 2012 in order to move forward with the implementation of the Affordable Care Act in the states. Specifically, it explores the following:

- Setting Up an Exchange
- Getting People Enrolled Efficiently
- Ensuring Coverage Is Affordable and Comprehensive
- Monitoring Implementation of Reforms Effective Now
- Educating Consumers on Their Current and Future Coverage Options and Rights

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Setting Up an Exchange

- ## Lay the Groundwork to Establish an Exchange
  - If your state doesn't already have legal authority to establish an exchange, advocate for the passage of a consumer-friendly exchange bill in your legislature.
  - If your state doesn't pass exchange establishment legislation by the end of the legislative session, assess whether your state has other options to establish an exchange (through executive order or otherwise) or whether your efforts should be geared toward implementing a strong federally facilitated exchange in your state.
  - If it becomes clear that your state will have a federally facilitated exchange, develop strategies to be engaged in the implementation process at both the state and the federal level.
  - Weigh in to federal officials on exchange issues regarding both federal decision making and your state's implementation process. HHS regularly hears from officials, employers, and health care industries in states, so it's critical that the consumer voice is heard as well.
- ## Advocate for Public Input on Exchanges
  - Both before and after your state's governing board or entity is established, advocate for strong public input processes regarding exchange establishment and operations and participate in those processes.
- ## Monitor Your State's Exchange Grant Process
  - Ask for the opportunity to review and provide input on state Exchange Establishment Grant submissions so that you understand what your state is planning to do and in what time frame. (To see the required exchange establishment milestones and deadlines under the grant requirements, find the grant application by searching for CFDA number 93.525 at www.grants.gov.) As the end of 2012 approaches, take this same step for your state's exchange certification application if your state pursues a state-run exchange.
  - Make sure your state has applied for its Level 1 and Level 2 Exchange Establishment Grants by June 2012.
- ## Monitor Exchange Infrastructure Development
  - Talk with state policy makers about any plans they have to partner with the federal government in operating an exchange. Work to ensure that regardless of which entity operates various exchange functions, the system is streamlined and consumers do not fall through the cracks.

- Advocate for transparency in the contracting process for exchange functions and monitor contracting choices.
- Talk with your exchange policy makers about how the exchange will be financed in 2015 and beyond. Advocate for broad-based financing mechanisms that prevent adverse selection and ensure adequate support for exchange operations.

Make Sure Your Exchange Will Work Well for Consumers

- Discuss with your exchange policy makers their vision for the implementation of the health plan certification process for the exchange. Will they implement an active purchaser model to make sure that consumers get the best value for their money? Will they adopt strong certification standards to make sure that plans can provide timely access to affordable services for all enrollees?
- Talk with your exchange policy makers about how the SHOP exchange will be implemented. How will they ensure that it is streamlined with the individual market exchange and that it makes coverage affordable for small business workers?

Plan for Consumer Assistance in the Exchange

- Initiate a comprehensive approach to consumer assistance for exchange eligible consumers. Ideally this would be built into a comprehensive consumer assistance program that can serve people with any type of health coverage, inside or outside of the exchange. Programs should be able to provide help with enrollment, premium credits, and Medicaid, and help resolve problems that might arise once someone is in a health plan. The programs should be able to guide consumers through appeals processes for all of these areas. Under the Affordable Care Act, Navigators who are conducting outreach and education should be able to refer more complex issues to an expert consumer assistance program for resolution.
- If your state already has a consumer assistance program, build its capacity to solve problems that consumers may face with premium credits or exchange plan enrollment.
- Make sure your state has applied for an Exchange Establishment Grant for Core Area 10, which provides funding for exchange-related consumer assistance, by June 2012.

Getting People Enrolled Efficiently

Help Your State Streamline Enrollment

- Make sure that your state takes advantage of opportunities for federal funding for the implementation and upgrading of enrollment systems, including the 90/10 enhanced Medicaid match rate for technology and the Exchange Establishment Grants.
- Make sure your state Medicaid agency is updating its computer system regardless of whether your state is pursuing a state-based exchange (the enhanced 90/10 federal match funding for these updates is available through 2015). If your state has not received an "innovator grant," make sure that it is following the work of innovator states to design a seamless, consumer-friendly enrollment system for the exchange and Medicaid.
- Encourage your state to create an "express lane to coverage" for likely eligible groups (for example, parents of Medicaid/CHIP enrollees and people already receiving certain other means-tested public benefits, such as SNAP).
- Ensure that your state adopts enrollment policies that minimize documentation requirements for consumers. Encourage your state to accept self-attestation of as many eligibility criteria as possible and to align requirements across coverage programs. Ensure that the state is poised to tap federal and state databases to establish eligibility for any eligibility criteria for which the state will not accept self-attestation. It is important that consumers do not have to unnecessarily submit information.
- Review and comment on template enrollment materials as they are drafted. As websites and materials are created, ensure that they are easy to read and understandable for target audiences. Encourage consumer testing and focus groups throughout the planning process.
- Ensure that your exchange is working to implement an efficient appeals process for coverage determinations that prevents residents from experiencing a gap in coverage during the process.

Establish an Effective Outreach Plan

- Share your expertise on outreach, particularly to hard-to-reach populations, with your exchange policy makers. Make sure that they fully understand the time and work needed to effectively educate consumers about coverage options and suggest organizations and communities that the state can work with to ensure effective outreach, both within and in addition to the Navigator program.
- Ensure that your state begins work on an outreach plan. This should include both research on marketing to different segments of the population and coalition building and organizing with trusted state organizations.

Advocate for a Strong Navigator Program

- Talk with your exchange policy makers about how they envision the Navigator program working, including their plan for how it will provide referrals to consumer assistance programs (see pages 2 and 9). Encourage robust funding and careful selection of Navigators that truly represent and understand the interests of individuals, families, and small businesses. Also push for strong Navigator training requirements and data collection to monitor and measure specific Navigators' effectiveness, but ensure that inappropriate licensure requirements, such as mandatory broker licenses for all Navigators, are not adopted.
- Work with your state to design an appropriate Navigator training program. Navigators should know how to advise people about their enrollment options and about premium credits, but they should provide referrals to consumer assistance programs (see pages 2 and 9) when people need help with more complex problems.

Provide Comments to Federal Agencies about Educating Consumers

- Provide comments on how the Department of the Treasury can best inform people about available premium credits. Recommend that the Treasury allow consumers to opt in to a data disclosure when they file their federal taxes so that available data can be used to initiate and pre-populate an application for coverage. Recommend other ways that people might learn about and apply for premium credits when they file their taxes or complete withholding forms with a new employer.
- Encourage the Department of the Treasury to work closely with the Department of Labor to ensure that regulations are issued that require employers to provide written notice to workers of the insurance rights and options, including potential premium credit eligibility, that they will have beginning in 2014. Notice should be provided at the start of their plan's open enrollment period and during any special open enrollment periods.

Ensuring Coverage Is Affordable and Comprehensive

Ensure that Coverage Is Affordable for Low- and Middle-Income People

- Advocate that the federal government consider several issues related to family coverage: 1) that families without affordable offers of employer coverage for the whole family should be able to receive premium credits in the exchange; and 2) that consideration be given to the plight of families who may be paying multiple premiums to separate plans—for example, to CHIP, to an employer's plan, and to a spouse's individually purchased plan—and that the combined premiums be taken into account when determining what is affordable for the family and what help they should receive with premiums.
- Comment to the Treasury on the necessity of ensuring that wellness program-based premium variation does not undermine the affordability of coverage. Suggest that both the affordability test for employer-based coverage and the calculation of premium tax credits be based on premium amounts that include any increase in premiums under a wellness plan.
- Comment on regulations regarding the actuarial value of exchange plans, how plans will structure cost-sharing, and how cost-sharing assistance will be delivered.
- Begin state-level planning for programs to educate consumers about the process of reconciliation and assist them in avoiding having to repay credits at the time of reconciliation.
- Comment on how federal agencies can ensure that hardship exemptions from the individual responsibility requirement are adequate.
- Determine if people with incomes under 200 percent of poverty in your state would be best served by exchange plans with premium credits or by Basic Health or Medicaid. Advocate for the alternative that is feasible in your state that would provide the most help.

Make Your Voice Heard on Essential Health Benefits

- Provide comments on the Essential Health Benefits bulletin released by the Department of Health and Human Services in December 2011. The comments should be based on what type of coverage you believe that consumers in your state need, and they should include discussion of appropriate limits on state flexibility to ensure that coverage is robust. Provide input on any future federal guidance, including formal regulations that HHS will likely release later this year.

- Talk to your state agencies and legislators about the decisions you'd like them to make regarding the Essential Health Benefits package. Gather information on your state's plan benchmark options and existing mandates and advocate for the Essential Health Benefits package model that you believe will work best for consumers in your state. (As a starting point, review the "Illustrative List of the Largest Three Small Group Products by State," from HHS, available online at cciio.cms.gov, and watch for further federal guidance on Essential Health Benefits benchmarks.) According to the bulletin released by HHS in December, your state may need to pick a benchmark Essential Health Benefits plan by the third quarter of 2012.

Implement Insurance Market Reforms

- Begin to develop an advocacy strategy to ensure timely implementation of the Affordable Care Act's insurance market reforms, such as guaranteed issue (no denials of coverage), modified community rating (no higher premiums based on health status or gender), the prohibition of pre-existing condition exclusions, and the new limits on age rating, which all take effect in 2014.
- Comment on National Association of Insurance Commissioners (NAIC) model laws and rules to enact 2014 market reforms and be prepared to respond to alerts about needed NAIC advocacy.
- Ensure that your state has done what it can to protect consumers from insurers threatening to leave particular markets: Has your state made arrangements to keep child-only plans on the market? Does your state require that if insurers want to remain in the most popular markets, they must also sell products in the less popular markets? If an insurer does pull out, are there state-guaranteed alternative insurers for affected consumers?
- Make sure small group reforms in your state cannot be undercut by small groups self-insuring. Watch for carriers selling "stop-loss policies" with low attachment points (resulting in the small groups bearing very little risk), which enables this problem. Watch for any state opportunities to prevent this problem and for NAIC recommendations about this—you may want to provide input.

Monitoring Implementation of Reforms Effective Now

Protect the Medical Loss Ratio (MLR) Requirements

- Watch for possible requests by your state for adjustments to the medical loss ratio requirements and comment as needed.
- Be prepared to respond to alerts regarding efforts at the federal level or among members of the National Association of Insurance Commissioners (NAIC) to weaken the MLR definition.

Monitor Rate Review Processes

- Help the public learn about and comment on proposed premium rate increases for carriers in your state that are being reviewed by your state or by HHS.
- Weigh in on what size premium increases should be reviewed in the future under federal rules. Currently, rate increases above 10 percent are subject to review, but HHS has said it will work with states to establish state-specific thresholds that will be used beginning in September 2012.
- Monitor how your state is using its rate review grant. Urge your state to establish good processes to 1) help consumers understand and comment on proposed rate increases, and 2) determine whether rate increases are justified. (See Families USA issue brief on rate review for ideas, available online at http://familiesusa2.org/assets/pdfs/health-reform/State-Progress-on-Rate-Review.pdf.)

Make Sure Your State Law Complies with External Appeals Requirements

- If your state has only passed legislation that meets the temporary, transitional standards for compliance with federal requirements on appeal, work for a state law that will meet permanent standards by 2014 or earlier. The permanent standards give consumers more time to appeal and ensure that review organizations are qualified, randomly assigned, and have no conflicts of interest.

Monitor Consumer Operated and Oriented Plans (CO-OPs)

- Consumer-run, nonprofit health insurers may be forming in your state and applying for federal loans this year. Monitor which entities are applying and decide if you might want to be on the CO-OP board or otherwise have input into these new entities.

Educating Consumers on Their Current and Future Coverage Options and Rights

Educate the Public about the Law

- Tell the public about new first-dollar preventive services coverage and how to use it. Continue to spread the word about other patient rights that are already in effect.
- Spread the word about the Pre-Existing Condition Insurance Plan (PCIP) for people who have been uninsured for at least six months and who can't get other insurance due to their health conditions. Encourage your state to reduce documentation requirements for PCIP enrollment if your state runs the program directly.
- Educate the public about the right to appeal health plan decisions to an independent reviewer. Make sure word gets out in all communities and in appropriate languages.
- Publicize the new Summary of Benefits and Coverage documents that will be available later this year and encourage consumers to use them to compare plans' offerings when they are shopping for coverage.
- Educate the public about the rights to comment on excessive premium increases, to ask for review, and to learn whether regulators believe a company's premium rates are justified.
- During or before August 2012, when the first medical loss ratio (MLR) rebates must be delivered to consumers and employers, educate the public and the media about the rebates and their positive impact on consumers and businesses.
- Educate the public about the help that will come through premium credits and the Medicaid expansion in 2014. Use the media to explain that these are important benefits of the Affordable Care Act.

Ensure that Plans Provide Good Summaries of Benefits and Coverage

- Watch for final rules about the short Summary of Benefits and Coverage (SBC) document that plans must provide. Under proposed rules, plans will begin providing these summaries at the end of March 2012. Watch for any further public comment opportunities about their implementation.
- Encourage plans in your state to do even more than is required to provide consumer-friendly summaries of benefits in all appropriate languages. Monitor your state insurance department's enforcement of the new rules and urge your insurance department to require plans to add any appropriate consumer information about state-specific health insurance requirements to their Summaries of Benefits and Coverage.

- **Promote and Advocate for Consumer Assistance Programs**
  - Publicize the availability of existing consumer assistance programs and the good work they do to help people understand their rights and to assist them with coverage problems and appeals.
  - Be aware that consumer assistance programs that received federal grants in 2011 have not received new grants for their broad functions in 2012, although they may have received more limited funding through Exchange Establishment Grants for just exchange-related activities. Tell Congress, HHS, and your state that programs that provide a full scope of assistance are important to *all* consumers who encounter problems with their coverage or who need help understanding their insurance rights. Use our Consumer Assistance Programs Resource Center at http://www.familiesusa.org/resources/resources-for-consumers/consumer-assistance-programs-resource-center/.
  - Encourage your state to find resources to continue consumer assistance programs until more federal funding is available.

Conclusion

A lot needs to be done in 2012, both to make sure that states are ready for the important Affordable Care Act reforms that will take place in 2014 and to advocate for strong implementation, oversight, and public education about reforms that have already taken place. Whether you can attend to this entire list or only take on a few of these issues, your work will be extremely important. This is a year when advocates must be especially mindful of strategies and audiences. You may be talking to state or federal policy makers about potential problems in Affordable Care Act implementation and how to fix them. At the same time, you will be reassuring the broader public that the health care law is good and educating them about all the new rights that they have already gained and those they will gain in 2014. Your work on both of these fronts is essential to the success of the Affordable Care Act.

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