

## Table of Contents

### Clarification of NPRM:

1. To Allow Qualified Web-Based Entities to Enroll Tax-Benefit-Qualified Individuals
2. Schemata of Proposal
3. Nine Reasons for Clarification
4. Supporting Letters from Governors
  - a. Governor Martin O'Malley (MD)
  - b. Governor Jack Markell (DE)
  - c. Governor Haley Barbour (MS)
  - d. Governor Nathan Deal (GA)
5. Supporting Letters from Members of Congress
  - a. Senator Thomas Carper (DE)
  - b. Senator Bill Nelson (FL)
  - c. Rep. John Dingell (MI)
  - d. Rep. Ed Markey (MA)
  - e. Rep. Anna Eshoo (CA)
  - f. Rep. Lois Capps (CA)
  - g. Rep. Emanuel Cleaver, II (MO)
  - h. Rep. Chaka Fattah (PA)
  - i. Rep. John Conyers (MI)
6. Legislative History
7. FAQs

**Proposed Clarification in Final Rule on "Establishment of Exchanges" (July 15, 2011)**

Below is the language of the clarification we propose:<sup>1</sup>

To clarify that an otherwise eligible individual who enrolls in a Qualified Health Plan through a Qualified Web-Based Entity will be eligible for premium tax credits and cost-sharing reductions:

"An enrollment in a Qualified Health Plan ("QHP") through a web-based entity ("WBE") shall be deemed an enrollment "through an Exchange" under Section 1311 of the Affordable Care Act (ACA), for purposes of individuals qualifying for advance premium tax credits and cost-sharing reductions, if the WBE is "qualified" (hereafter, "Qualified WBE"), and meets the conditions of subparagraphs A, B, C, D, and E below.

- (A) The Qualified WBE will provide access to all QHPs listed on the state Exchange, including those QHPs that do not pay commissions to the WBE. In the event that a health insurance issuer does not participate on the WBE, the WBE shall inform the potential enrollee of the availability of that issuer's QHP(s) on the state Exchange.
- (B) The Qualified WBE lists these same QHPs that have the same premiums and same benefits, and are part of the same risk pool as the QHPs on the state Exchanges.
- (C) The Qualified WBE is licensed at the option of a state and complies with additional state requirements inherent in such licensing authority.
- (D) The Qualified WBE is limited to the enrollment function only, which means that eligibility determinations and administrative functions, such as access to advance payments of the premium tax credit and cost-sharing reductions, are exclusively left to the state Exchange to perform.
- (E) The Qualified WBE displays only QHPs listed on the state Exchange that are for sale to individuals who have been determined by such Exchanges to be eligible for premium tax credits and cost-sharing reductions.

Individuals and small businesses who are determined by the government to be eligible for premium tax credits and cost sharing reductions shall also have access to these benefits when enrolling in a QHP through a Qualified WBE in a state where a federal exchange is operating.

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<sup>1</sup> To be added to 45 C.F.R. § 220. See discussion in NPRM, Part 155, Subpart C, section (d), at 76 Fed. Reg. 41878 (July 15, 2011).

# The Exchange Environment (Potential Players)



Private Web  
Based Entity



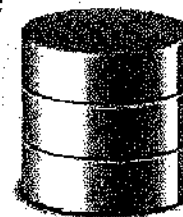
State Exchange



HealthCare.gov

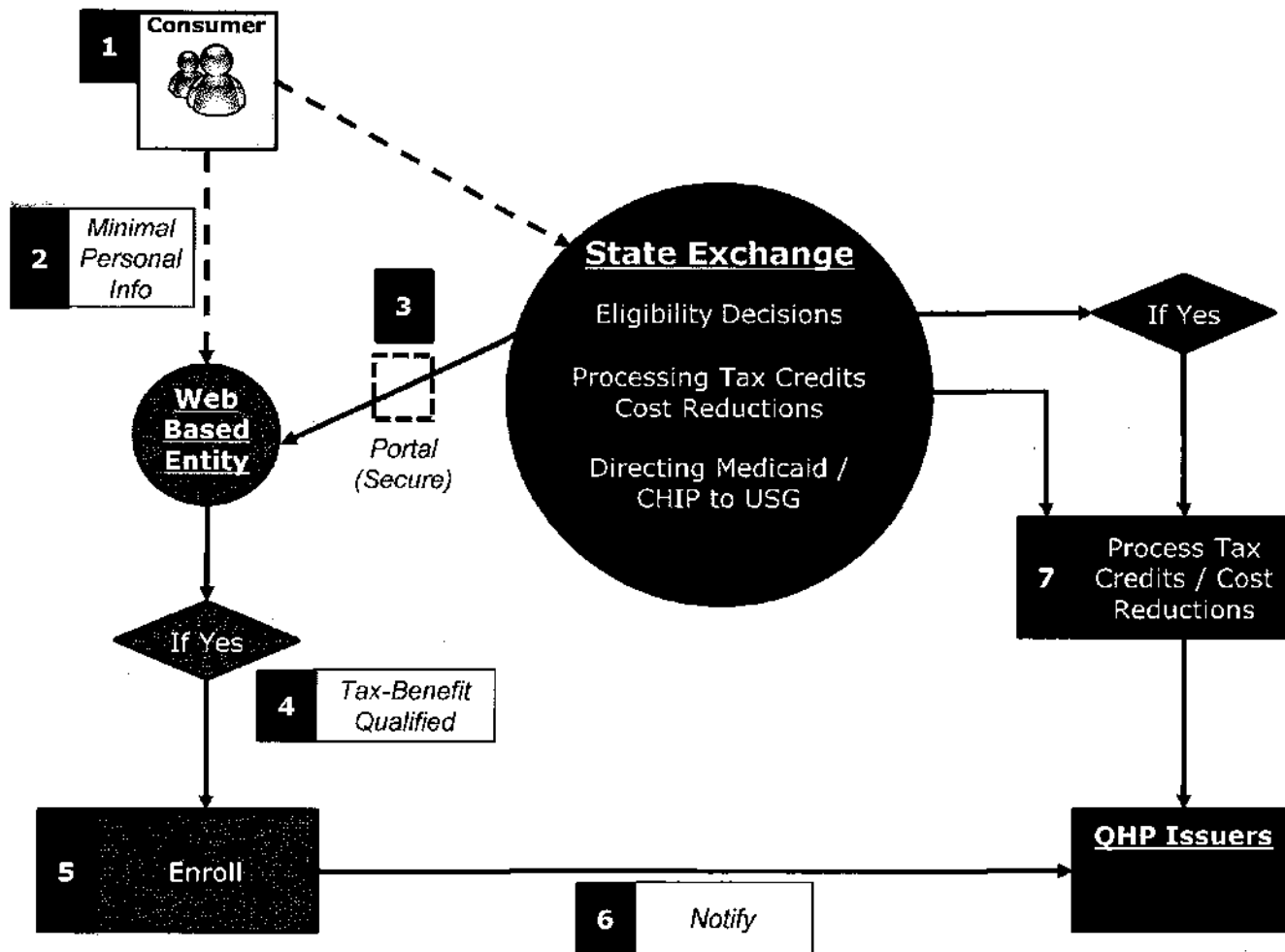


Issuers



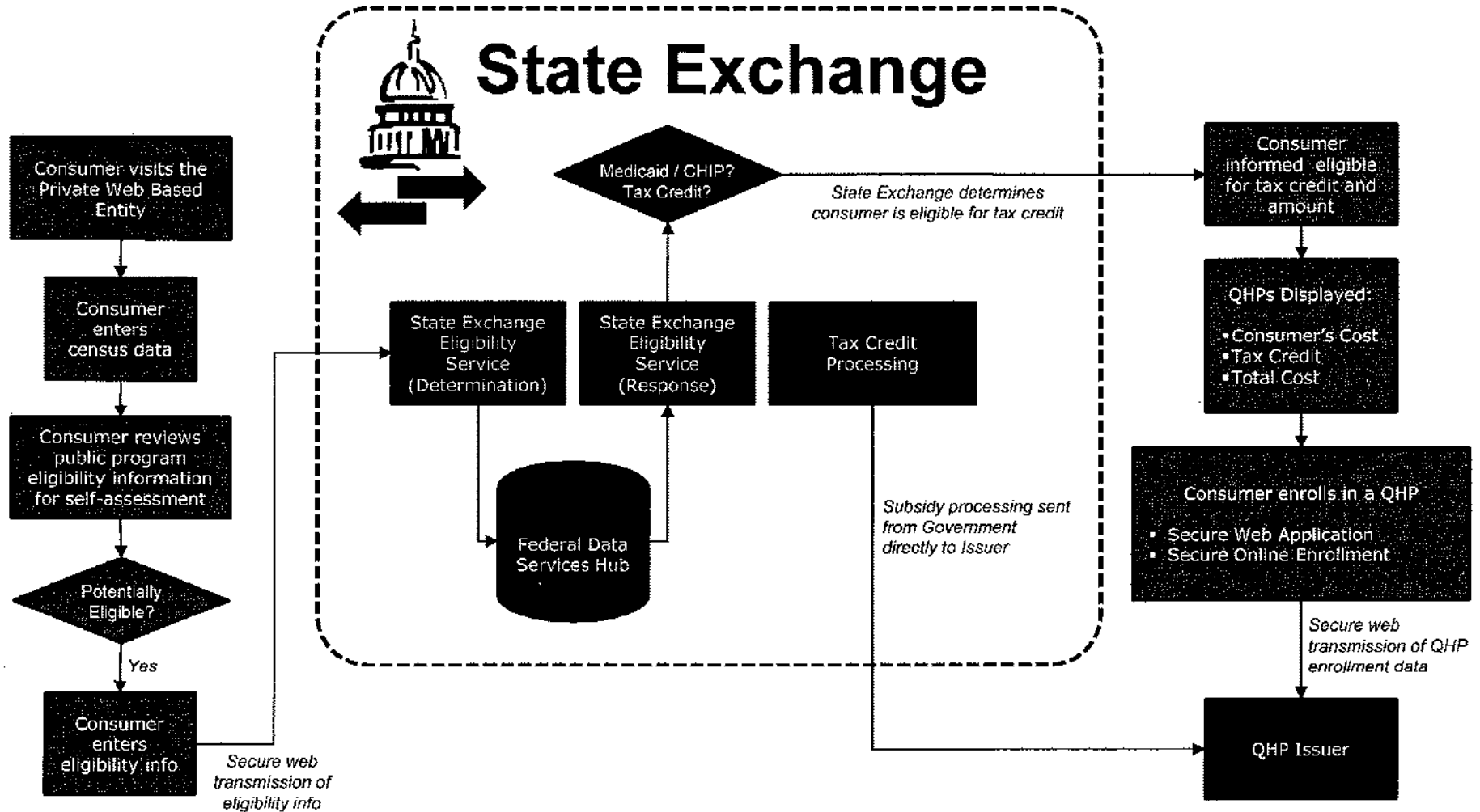
Federal Data  
Services Hub

# Limited Role of Private Web Based Entity to Enroll Tax-Benefit Qualified



<b>1</b>	Consumer visits qualified web-based entity's website.
<b>2</b>	Consumer enters minimal personal info to determine eligibility for assistance.
<b>3</b>	Eligibility info is transmitted electronically from qualified web-based entity to state exchange service via secure web transmission. State exchange determines eligibility and notifies the qualified web-based entity.
<b>4</b>	Qualified web-based entity informs consumer of eligibility amount for tax-benefit.
<b>5</b>	Consumer enrolls in a QHP on qualified web-based entity site: <ul style="list-style-type: none"> <li>▪ Secure web application</li> <li>▪ Secure online enrollment</li> </ul>
<b>6</b>	Qualified web-based entity notifies QHP issuer of enrollment via secure web transmission.
<b>7</b>	Tax credit processed by the appropriate government agency and sent directly to the QHP issuer.

# Limited Role of Private Web Based Entity to Enroll Tax-Benefit Qualified (Flowchart)



## Reasons for the Proposed Clarification to be Included in Final Rule

The following points make clear that it is good public policy for the final regulations to make clear that Qualified WBE's can enroll into QHPs individuals and groups who qualify for premium tax credits and cost-sharing reductions under the ACA to advance the objectives of the ACA to reach 100% enrollment of tax-benefit-qualified individuals:

### 1. Granting States the Option Only

In the preamble of the July 15, 2011 NPRM regarding the implementation of state Exchanges, at 76 Fed. Reg. 41878, HHS specifically recognized that WBEs are seeking to assist enrollment by "acting independently of a [state] Exchange to perform similar outreach and enrollment functions to the Exchange." Note that the proposed clarification retains for each state the "option" to permit WBEs to supplement enrollment capacity of tax-benefit-qualified individuals – they also retain the option to say no. But not to allow the option in the final rule would foreclose allowing states to have the option when they are ready to begin to operate their Exchanges; in other words, that option is meaningful only if they can enroll individuals or groups who qualify for federal premium tax credits and cost-sharing reductions under the ACA.

### 2. Endorsements by Governors Who Want to Reserve Right to Exercise Option

This is why Maryland Governor Martin O'Malley, Delaware Governor Jack Markell, Mississippi Governor Haley Barbour, and Georgia Governor Nathan Deal endorsed this clarification in letters written to Secretary Sebelius, urging HHS to allow "individuals who qualify for premium tax credits and cost-sharing reductions to also access these same benefits if they enroll in qualified health plans through a web-based entity."<sup>2</sup>

On the other hand, if this proposed clarification is not included in the final rule, states would be foreclosed from being able to exercise that option when their Exchanges are ready to become operational. There appears to be no policy reason to foreclose states from exercising that option at this time – thus, there is need for this clarification to be included in the Final Rule.

### 3. Independent Private Sector Qualified WBEs.

The option made available to states under the proposed rule includes allowing WBE's – in the words of the NPRM at p. 41878 of 76 Fed. Reg. – to act "*independently*" of a state Exchange "to perform similar outreach and enrollment functions to the Exchange." Thus, this proposal gives states the discretion to permit independent, private sector alternatives to enroll tax-benefit-qualified individuals.

### 4. No requirement for WBEs to serve as "contractors" to state Exchanges.

It would not be good policy, i.e., would not advance the goal of the ACA to enroll 100% of tax-benefit-qualified individuals, to preclude states from exercising this option and, instead, to require states only to "contract" with one or more WBEs to enroll tax-qualified individuals through an Exchange. WBEs are constantly innovating and developing new technologies for the use of consumers. A government contracting business model does not optimize the incentives

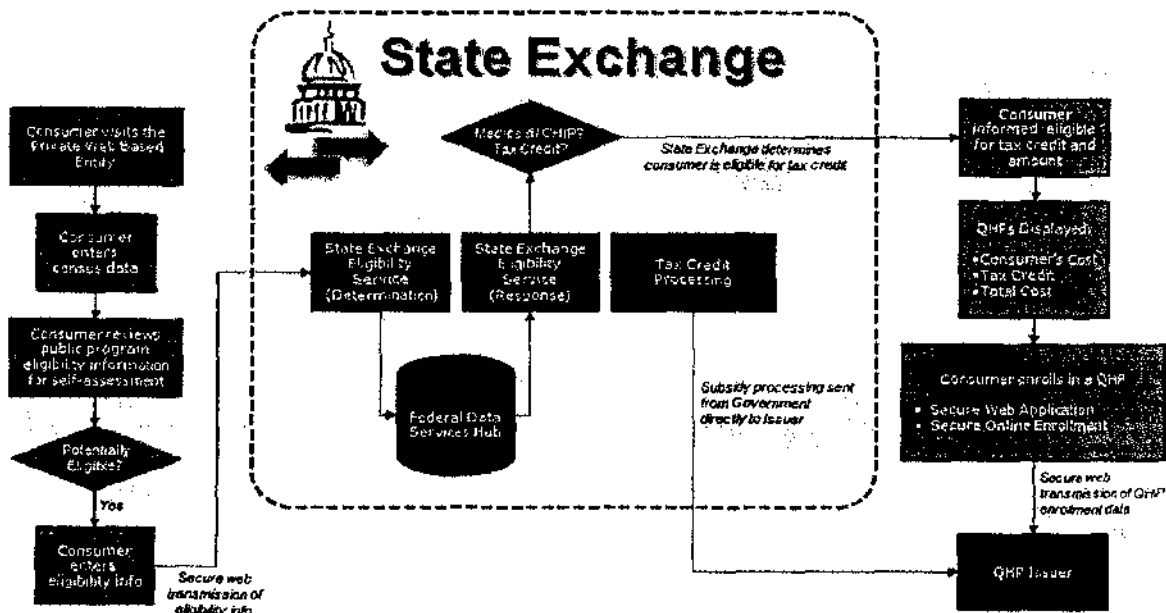
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<sup>2</sup> Letter from Governor Haley Barbour to Secretary Sebelius, July 29, 2011.

for innovation that a stand-alone consumer facing entity has. For example, the Massachusetts Connector which for six years did not have a physician finder, was only very recently able to take advantage of and implement eHealth's technology which enables an individual to see only those health plans that support his or her physician. Under this proposal, other states will similarly benefit from WBE technological innovations. Continued innovation like this will help state Exchanges become more consumer friendly.

5. Limiting Qualified WBEs to Enrollment Functions Only – Not Eligibility or Administrative/Financial Access Functions.

Under the proposed clarification, qualified WBEs would be limited to enrollment functions – i.e., WBEs will transmit basic census data electronically via secure web transmission to the Exchange. The Exchange will query the Federal Data Services Hub in order to determine eligibility for premium tax credits and cost-sharing reductions. Then, the Exchange will transmit the determination and amount of subsidy, if any, to the WBE via secure web transmission. The WBE will then notify the consumer of the subsidy assistance to which they are entitled through a web portal and present and enroll the individual in a qualified health plan (see chart below).



The Exchanges would thus retain the exclusive eligibility determination functions (based on income, age, citizenships status, etc) and exclusive access to advance payments of the premium tax credit and cost-sharing reductions. Thus, this clarification is consistent with the statement in the NPRM that “advance payments of the premium tax credit and cost-sharing reductions may only be accessed through an Exchange.” Under this clarification, WBEs would have no such access – as stated, only Exchanges would, and payments could be made directly from the U.S. Department of the Treasury to the health plan issuers. Moreover, all government eligibility functions impacting individual privacy, security, and financial issues will be conducted and protected by Exchanges.

6. Independent Qualified WBEs: Potential Additional Revenues for States. Giving states such an option has the added advantage of possibly generating additional revenues to help states, using their licensing authority, to cover the costs of their Exchanges and for other purposes. These revenues could come from states choosing to assess fees for each policy enrollment, whether purchased through the Exchange or through a WBE.
7. Independent Qualified WBEs Will Increase the Risk Pool Size  
WBEs that are enrolling tax benefit qualified individuals, will be increasing the number of individuals enrolled in the same plans in each state Exchange, thus increasing the size of the risk pool. This is especially important in those states which plan to use the size of their risk pools to negotiate prices with health plan issuers or providers.
8. Legislative History Consistent With This Proposed Clarification  
Note that the ACA’s legislative history – both earlier House Committee Report language as well as Senator Tom Carper’s amendment that became Section 1312(e) and the Chairman’s Mark explanation of it expressly support this proposed clarification (see Exhibit A). Specifically, the Senate Chairman’s Mark, the basis of Section 1312(e) of the ACA, stated that “individuals...obtaining a health plan through a [web-based entity licensed by a state as] an agent or broker would not be discriminated against for tax purposes.”
9. Reaching the 100% Enrollment Goal  
Private-sector, independent Qualified WBEs have demonstrated that they can be efficient and effective in outreach to and enrollment of uninsured Americans. Some states may be less aggressive than others in outreach and enrollment efforts. Ultimately, the success of the ACA will in large part be measured on how many of the uninsured achieved coverage. Allowing private WBEs to assist States in enrolling the uninsured who qualify for premium tax credits and cost-sharing reductions will increase the number of people who became insured as a result of the ACA.





MARTIN O'MALLEY  
GOVERNOR

May 25, 2011

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(TOLL FREE) 1-800-811-8336

TTY USERS CALL VIA MD RELAY

Kathleen Sebelius  
Secretary  
US Department of Health and Human Services  
200 Independence Avenue SW  
Washington, DC 20201

Dear Secretary Sebelius:

The Affordable Care Act (ACA) provides states with flexibility to provide their residents with unprecedented access to health care. We appreciate the federal government's support of states as they move forward with continued implementation of ACA.

We are writing to support inclusion of a provision in forthcoming regulations to provide for additional flexibility by giving states the option of utilizing "Alternative Internet Entities" or "AIEs" for enrollment into qualified health plans. Through such a provision, individuals who qualify for premium tax credits and cost reductions would also qualify for the same tax benefits if they enroll in qualified health plans through an AIE.

The Department of Health and Human Services (HHS), through regulation, could give states an option of using AIEs to supplement the capacity of state exchanges to enroll tax-benefits-qualified individuals. Such a regulation should also require HHS to certify AIEs as having "functional equivalent enrollment capabilities," offering qualified health plans with the same premiums and benefits and part of the same risk pool as on the state exchanges. In addition, the regulation should require that the AIE be licensed by the state to sell health insurance and might set additional rules and standards for AIE operations. Not every state may opt to use AIEs, but some may find them a useful partner to the public exchange.

Thank you for your consideration in making this option available to states as they work to create new efficiencies and achieve the goals of the Affordable Care Act.

Sincerely,

Governor



STATE OF DELAWARE  
OFFICE OF THE GOVERNOR  
FURNACE BUILDING, SECOND FLOOR  
WILMINGTON STREET, DOVER, DE 19901

JACK A. MARKELL  
GOVERNOR

PHONE: 302-744-4101  
FAX: 302-739-2775

June 15, 2011

Secretary Kathleen Sebelius  
U.S. Department of Health and Human Services  
200 Independence Avenue SW  
Washington, D.C. 20201

Dear Secretary Sebelius:

As Delaware moves forward with implementation of the Patient Protection and Affordable Care Act ("PPACA") we appreciate the federal government's support of our state's efforts. We are working to implement the Health Benefit Exchange requirements to support improved access and affordability of quality health care and health insurance for Delaware individuals and our business community.

I am writing to request you to consider the inclusion of a provision in a forthcoming regulation. This provision adds flexibility to state exchange governing authorities as they work to develop a viable health benefit exchange, promote ease of access to coverage, and take advantage, when appropriate, of existing market infrastructure. This provision gives states the option of utilizing "Alternative Internet Entities" ("AIE's") for enrollment in qualified health plans. Through such a provision, individuals who qualify for premium tax credits and cost reductions would also qualify for the same tax benefits if they enroll in qualified health plans through an AIE.

The Department of Health and Human Services (HHS), through regulation, could give states an option to use "Alternative Internet Entities" ("AIE's") to supplement the capacity of state exchanges to enroll tax benefits-qualified individuals. Such a regulation should also require HHS to certify AIE's as having "functional equivalent enrollment capabilities," offering qualified health plans with the same premiums and benefits and part of the same risk pool as on the state exchanges. In addition, the regulation should require that the AIE be licensed by the state to sell health insurance, and might set additional rules and standards for AIE operations, including the payment of fees to the state exchange.

Not every state may opt to use AIE's, but some may find them a useful partner in the public exchange, provided that the presence of AIE's does not negatively affect the viability of the state exchange. States which choose to include this option should consider including requirements and potential cost-sharing with the AIE's to address: potential reduction of volume of enrollments through the state exchange; the risk of increasing fees or state funding to support Exchange operations; the additional cost of reporting the activities of the AIE's to the federal government; and the cost to the state of the integration with the AIE to share eligibility determinations for premium tax credits, cost sharing reductions and health plan selections.

Thank you for your consideration of this option as states work to create new efficiencies and achieve the goals of the Affordable Care Act.

Sincerely,

Jack A. Markell  
Governor



STATE OF MISSISSIPPI  
OFFICE OF THE GOVERNOR

HALEY BARBOUR  
GOVERNOR

July 28, 2011

The Honorable Kathleen Sebelius  
U.S. Department of Health & Human Services  
200 Independence Avenue, S.W.  
Washington, D.C. 20201

Dear Secretary Sebelius:

You have stated the Affordable Care Act provides states with significant flexibility in providing access to health care for residents. I am writing to support inclusion of a provision in forthcoming regulations to provide additional flexibility.

Under the ACA, individuals and businesses are allowed to continue to purchase health insurance outside an Exchange. In addition, the recent proposed rule announced by your Department, HHS expressly contemplates an enrollment role for private web-based entities. In the proposed rule, HHS states that "[w]e recognize that there are web-based entities ... that are seeking to assist in ... enrollment in several ways, including ... by acting independently of an Exchange to perform similar outreach and enrollment functions to the Exchange."

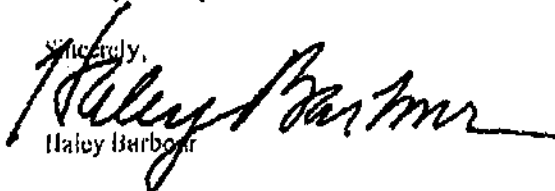
However, the proposed rule goes on to state that, "We understand that such entities may provide an additional avenue for the public to become aware of and access QHPs, but we also note that advance payments of the premium tax credit and cost-sharing reductions may only be accessed through an Exchange."

Individuals will be effectively barred from utilizing this option unless they qualify for premium tax credits and cost-sharing subsidies to access these benefits when enrolling in a qualified health plan through a web-based entity. Therefore, we urge HHS to clarify in the final regulation allowing individuals, who qualify for premium tax credits and cost-sharing reductions, to also access these same benefits if they enroll in qualified health plans through a web-based entity. Such an interpretation would be well within your discretion under well-established principles of administrative law.

This allowance would ensure a more equitable and fair implementation of the Exchanges.

Thank you for your consideration.

Sincerely,

  
Haley Barbour



STATE OF GEORGIA  
OFFICE OF THE GOVERNOR  
ATLANTA 30334-0900

Nathan Deal  
GOVERNOR

September 23, 2011

Secretary Kathleen Sebelius  
U.S. Department of Health and Human Services  
200 Independence Avenue, S.W.  
Washington, D.C. 20201

Dear Secretary Sebelius:

You have often stated the Department's goal of providing states with significant flexibility in the implementation of the *Patient Protection and Affordable Care Act*, and I am writing to support inclusion of a provision in forthcoming regulations to provide for additional flexibility.

Under PPACA, individuals and businesses are allowed to continue to purchase health insurance outside of a state-based American Health Benefit Exchange (AHBE). In the recent proposed rule announced by your Department, HHS expressly contemplates an enrollment role for private web-based entities. In the proposed rule, HHS states that "[w]e recognize that there are web-based entities ... that are seeking to assist in ... enrollment in several ways, including...by acting independently of an exchange to perform similar outreach and enrollment functions to the Exchange." However, the proposed rule goes on to state that, "We understand that such entities may provide an additional avenue for the public to become aware of and access QHPs, but we also note that advance payments of the premium tax credit and cost-sharing reductions may only be accessed through an Exchange."

Unless individuals who qualify for premium tax credits and cost sharing subsidies may access these benefits when enrolling in a qualified health plan through a web-based entity, they will be effectively barred from utilizing this option. Therefore, we urge you to clarify in the final regulation that individuals who qualify for premium tax credits and cost reductions would also be able to access these same benefits if they enroll in qualified health plans through a web-based entity. Such an interpretation would be well within your discretion under well-established principles of administrative law and would help states minimize the number of uninsured individuals.

In addition, I would urge you to ensure that small businesses which elect to enroll in coverage through a private web-based entity is not in any way disadvantaged by doing so, as well as individuals who are employees of small businesses which do not offer a group plan, but who might receive a contribution from their employers to help pay for the cost of insurance.

As always, I appreciate your consideration of this request and thank you for your continued service to the people of Georgia.

Respectfully,



Nathan Deal

ND:bf

G. K. BUTTERFIELD  
1ST DISTRICT, NORTH CAROLINA

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**Congress of the United States**  
**House of Representatives**  
February 14, 2012

COMMITTEE ON  
ENERGY AND COMMERCE

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MANUFACTURING & TRADE  
ENVIRONMENT & THE ENERGY

CHIEF DEPUTY WHIP

Honorable Kathleen Sebelius  
Secretary  
U.S. Department of Health and Human Services  
200 Independence Avenue, S.W.  
Washington, D.C. 20201

Dear Secretary Sebelius:

I respectfully request that you permit qualified online- or web-based entities ("WBEs") to operate concurrently with state health exchanges for the purpose of enrolling tax-benefit-qualified individuals into health care plans under the Affordable Care Act (ACA). This provision would provide parity for people qualifying for premium tax credits and wealthier Americans who are already allowed access to these WBEs under the ACA.

The ACA requires that "American Health Benefit Exchanges" be created in every state or by Health and Human Services (HHS). Due to ambiguity in the ACA on whether individuals who qualify for federal tax credits (those with incomes between 100 percent and 400 percent of the federal poverty level) may receive subsidies if they enroll in qualified health plans outside of the state exchange, permission must be granted in the rule for WBEs to operate in addition to state-run exchanges. Absent this change, low- and moderate-income people may be prevented from enrolling in a qualified plan through a private marketplace; a barrier that does not exist for wealthier Americans.

By permitting WBEs to operate under the rule, you would clarify the ambiguity and offer equal opportunity for all Americans to select a plan of their choice at their convenience. WBEs would be required to meet all relevant rules established by the ACA, would serve only to enroll individuals into health plans, and would avoid adverse selection by providing access to the same plans with the same benefits as part of the same risk pool as are on the corresponding state exchanges.

The WBE proposal has broad and bipartisan support in Congress and helps achieve our shared goal by assisting states in enrolling a maximum number of tax-benefit-qualified individuals and families. I look forward to a response before a final decision is made. Thank you very much.

Very truly yours,

G. K. Butterfield  
Member of Congress

cc: Jack Lew, White House Chief of Staff  
David Plouffe, Senior Advisor to the President  
Nancy-Ann DeParle, White House Deputy Chief of Staff for Policy

# United States Senate

WASHINGTON DC 20510 0803

October 18, 2011

Secretary Kathleen Sebelius  
U.S. Department of Health and Human Services  
200 Independence Avenue SW  
Washington, DC 20201

Dear Secretary Sebelius:

Thank you for your continued efforts to improve health outcomes and expand access to care to millions of Americans through the Patient Protection and Affordable Care Act. We appreciate the hard work you have done to guide states in the set up of insurance exchanges in preparation for expanding health insurance enrollment in 2014.

As states begin to implement health insurance exchanges, I wanted to bring your attention to a letter from Governor Jack Markell of Delaware that invites you to consider ways to give states more flexibility in enrolling citizens in qualified health care plans. Governor Markell proposes consideration of a federal regulation that would give states the option of using "Alternative Internet Entities" to help sign up individuals who qualify for premium tax credits in the exchanges. Working with Alternative Internet Entities might allow for increasing registration of as many people as possible in cooperation with the state exchanges, provided, however, that the use of Alternative Internet Entities does not have a negative effect on the financial sustainability of the state's health insurance exchange.

Each state must individually assess their market needs and the value in permitting the use of Alternative Internet Entities in their market. If permitted, the entity would have to prove that it was working in conjunction with the exchange and was not an economic burden to the state. The Alternate Internet Entity must prove to have equal enrollment capabilities compared to the state exchange and submit to additional requirements as required by the Department of Health and Human Services.

Under the leadership and oversight of individual states, Alternative Internet Entities may assist states in complying with the federal mandate of enrolling millions of Americans in qualified healthcare plans in 2014. In partnering with the state exchange, Alternative Internet Entities could be a helpful tool in connecting citizens to a marketplace of health care plans where they can find affordable care options for themselves and their families.

I thank you for your consideration of Governor Markell's recommendations, and I look forward to continuing to work with you and your staff in the implementation of the Affordable Care Act.

Sincerely,



U.S. Senator Tom Carper



## United States Senate

WASHINGTON, DC 20510-0005

BILL NELSON  
FLORIDA

November 16, 2011

The Honorable Kathleen Sebelius  
Secretary  
U.S. Department of Health and Human Services  
200 Independence Avenue, S.W.  
Washington DC 20201

Dear Secretary Sebelius:

Thank you for your continued efforts to improve health outcomes and expand access to care to Americans through the Patient Protection and Affordable Care Act. I appreciate your leadership in guiding states in the establishment of insurance exchanges.

There is a proposal before you to allow states the option of using private web-based entities (WBEs) to help enroll individuals who qualify for premium tax credits and cost sharing subsidies without losing access to these important benefits. Under this proposal, with approval by their governor and appropriate state health care agencies, states would have the option of using WBEs to help sign up individuals who qualify for premium tax credits in the exchanges.

These WBEs would be required to meet specific standards to prevent adverse selection or "cherry picking," such as ensuring that they will provide access to only the same qualified health plans available on the state exchanges with the same benefits, at the same price, and within the same risk pool.

Each state's governor and appropriate state agencies must individually assess their needs and the value in permitting the use of WBEs. Working with WBEs might allow states to meet the goal of covering the uninsured, provided, however, that the use of WBEs does not have a negative effect on the sustainability and effectiveness of a state's health exchange, or cause unnecessary confusion among consumers.

I look forward to continuing to work with you in the implementation of the Affordable Care Act.

Sincerely,

Bill Nelson



JOHN D. DINGELL  
FRONTIER MEMBER  
CHAIRMAN, EMERITUS  
COMMITTEE ON  
ENERGY AND COMMERCE  
CO-CHAIR  
HOUSE GREAT LAKES  
TASK FORCE  
MEMBER  
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301 WEST MICHIGAN AVENUE  
SUITE 305  
YPSILANTI, MI 48197  
(734) 481-1100

September 27, 2011

The Honorable Kathleen Sebelius  
Secretary, U.S. Department of Health and Human Services  
200 Independence Avenue SW  
Washington, DC 20201

Dear Secretary Sebelius:

I write to you today with regard to the Department of Health and Human Services (HHS) proposed rule regarding the establishment of health insurance Exchanges and the use of web based entities (WBEs). I ask that the forthcoming regulations allow lower income individuals to still qualify for premium tax credits and cost sharing reductions when they choose WBEs to enroll in qualified health plans.

The availability of WBEs would help the states in enrolling lower income individuals that are eligible for premium tax credits and cost sharing reductions in the health insurance Exchanges, while minimizing costs to the states. By allowing people to enroll in health coverage using WBEs, consumers are given the choice of how to enroll in the health exchange. More importantly, the use of online technology at a time and place that is convenient for them, ensuring that more Americans have health plans, which is the main goal of the Affordable Care Act. WBEs would make it easier for many people to enroll who would otherwise balk at the process. Further, the use of WBEs could assist states in enrolling individuals in rural or underserved areas, ensuring maximum enrollment of individuals who would otherwise remain uninsured.

HHS would certify WBEs as having "functional equivalent enrollment capabilities" as defined in the regulation - offering the same qualified health plans with the same premiums and benefits and part of the same risk pool as on the state Exchanges. WBEs would also be subject to state regulations. This would ensure that there could be no "adverse selection" or other negative impact on the state exchange.

I firmly believe that every single American deserves health coverage, and the Affordable Care Act is working to make health coverage more accessible to more Americans. Allowing for the use of WBEs in enrolling individuals in the Exchanges in the forthcoming regulations would be offering people a choice of how they enroll in

health coverage, while also facilitating our goal to provide all Americans with health coverage.

If you have any questions or need any further information, please do not hesitate to contact Kimberlee Trzeciak of my staff at (202) 225-4071.

With every good wish,

Sincerely,

A handwritten signature in black ink, appearing to read "John D. Dingell". The signature is stylized and cursive, with a large initial "J" and "D".

John D. Dingell  
Member of Congress

COMMITTEES

NATURAL RESOURCES  
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ENERGY AND COMMERCE

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(508) 875-2800

<http://markey.house.gov>

Congress of the United States  
House of Representatives  
Washington, DC 20515-2107

July 8, 2011

Kathleen Sebelius  
Secretary  
US Department of Health and Human Services  
200 Independence Avenue SW  
Washington, DC 20201

Dear Secretary Sebelius:

As the Department of Health and Human Services finalizes the next round of regulations related to state-based health insurance exchanges, I ask that you consider a States face a number of challenges as they begin the task of establishing health insurance exchanges. To aid this process, I ask you to support inclusion of a provision in forthcoming regulations to be issued by the Department of Health and Human Services (HHS) that would permit lower income individuals who are eligible under the ACA to receive premium tax credits and cost sharing reductions to utilize these benefits when enrolling through "Alternative Internet Entities" or "AIEs". I believe the availability of AIEs to assist the states in enrolling the maximum number of lower-income individuals entitled to premium tax credits and cost sharing reductions would help hold the line on state costs relating to insurance exchanges while maximizing both federal tax benefits and health insurance coverage for our citizens. As you know, state exchanges must be self-sufficient by 2015 so I respectfully seek your prompt attention.

The proposed regulatory provision by eHealth, included here, is quite simple. It allows such AIEs to supplement the capacity of state exchanges to enroll these tax-benefits-qualified individuals so long as the AIE is certified by HHS as having "functional equivalent enrollment capabilities" as strictly defined in the regulation - i.e., offering qualified health plans listed on the state exchange, with the same premiums and benefits and which are part of the same risk pool as on the state exchanges. Thus, there could be no "adverse selection" or any other negative impact on state exchanges. Such AIEs would also have to be licensed by every state and the District of Columbia.

As of now, the Act is ambiguous as to whether individuals who qualify for premium tax credits and cost sharing reductions will be allowed to access these benefits when they enroll in qualified health plans outside of state exchanges. The proposed regulation clarifies the issue by deeming" any person eligible for premium tax credits and cost sharing reductions who enrolls in a "qualified health plan" through a certified AIE as enrolling "through an Exchange" under the Act. Thus, the individuals would be able to receive these important benefits.

This clarification is entirely consistent with the intent of the Act to encourage choice. For example, Section 1312(c)(1) titled, "Consumer Choice," states: "Nothing in this title shall be construed to prohibit...a qualified individual from enrolling in, or a qualified employer from selecting for its employee, a health plan offered *outside an Exchange*." (emphasis added). But without an appropriate clarification, this "consumer choice" provision would effectively apply only to those whose incomes are too high to qualify for premium tax credits and cost sharing subsidies. The proposed regulation would give a similar option to lower income people who qualify for tax benefits.

There are three obvious advantages this proposal has for every state and the District of Columbia. First, it saves states money by serving the overflow of purchasers (without asking states to forego any revenues or cause any reductions in workforce). Second, it allows state exchanges to benefit from online technology advances and innovation from these HHS-certified and state licensed AIEs. Third, and perhaps most importantly, it furthers the goals of the ACA by maximizing enrollment of those who otherwise would remain uninsured.

Thank you for your consideration of the eHealth proposal, a copy of which is attached. Should you have any questions, please contact Sara Schaumburg on my staff at [sara.schaumburg@mail.house.gov](mailto:sara.schaumburg@mail.house.gov) or (202) 335-2836.

Sincerely,

  
Edward J. Markey  
MEMBER OF CONGRESS



*Congress of the United States  
House of Representatives  
Washington, D.C. 20515*

*Anna G. Eskoo  
Fourth District  
California*

May 25, 2011

The Honorable Kathleen Sebelius, Secretary  
Department of Health and Human Services  
100 Independence Avenue, SW  
Washington, D.C. 20201

Dear Secretary Sebelius,

I understand that the Department of Health and Human Services will soon be announcing regulations relating to state exchanges. I write to encourage you to include Alternative Interest Entities (AIEs) as eligible pathways for Americans using affordability credits to purchase qualified health plans.

AIEs will not replace state exchanges, but will operate simultaneously as an alternative approach to enroll people in health plans. Since the primary goal of the *Affordable Care Act* is to ensure that all Americans have health coverage, AIEs can contribute to this goal by assisting states in enrolling the maximum number of lower-income individuals using affordability credits.

eHealth is a wonderfully innovative company headquartered in my Congressional District. In operation for more than ten years, eHealth has helped hundreds of thousands of Americans enroll in health insurance plans with clear, easy-to-understand descriptions of benefits and side-by-side cost comparisons. eHealth has been a leader in the healthcare industry and was a pioneer in the industry before anyone had ever uttered the word "exchange."

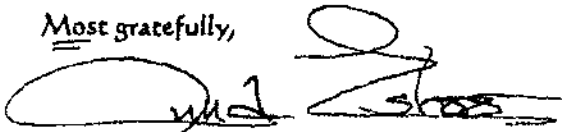
eHealth has proposed a regulatory provision (enclosed) to allow AIEs to help those using affordability credits navigate the insurance enrollment process. The proposal would allow AIEs to supplement the capacity of state exchanges to enroll these individuals so long as the AIE is certified by HHS as having "functional equivalent enrollment capabilities" as strictly defined in the regulation - i.e., offering qualified health plans listed on the state exchange, with the same premiums and benefits and part of the same risk pool as in the state exchanges. There would be no "adverse selection" or any other negative impact on state exchanges. AIEs would also have to be licensed by every state and the District of Columbia.

Currently, the Affordable Care Act is ambiguous as to whether individuals who qualify for affordability credits will be allowed to access these benefits when they enroll in qualified health plans outside of state exchanges. The eHealth proposal would clarify this by "deeming" any person eligible for affordability credits who enrolls in a "qualified health plan" through a certified AIE as enrolling "through an Exchange" under the Act - and, thus, able to receive these important benefits.

I think this proposal will help more Americans secure health insurance while relieving some of the burdens that states face under the new requirements in the Affordable Care Act.

Thank you for your consideration of this proposal. Should you or your staff have any questions, you can contact Erin Katzeinick-Wise in my Washington, D.C. office at (202) 225-8104.

Most gratefully,



Anna C. Eshoo  
Member of Congress

Enclosure

### The Proposed Regulation

Qualified health plans enrolled in through Alternative Internet Entities (AIEs) that have the "enrollment functional equivalence" (as defined below) of a State Exchange under the ACA, shall be deemed "enrolled in through an Exchange" under the ACA. Enrollees of policies from certified AIEs would be eligible for the same premium tax credit and cost-sharing reductions as they would otherwise be if such purchases were made through a State Exchange under the ACA.

To obtain HHS certification, AIEs must demonstrate that they will offer the same qualified health plans (when they are able) to potential enrollees within the same risk pools with the same benefits at the same premiums, as State Exchanges (all of which are required of the insurance carriers under the ACA). These AIEs will demonstrate that they meet or exceed all other quality and transparency standards of State Exchanges under the ACA and HHS regulations.

Should there be an instance where every qualified plan is not presented on the AIE website, the AIE will be required, under this regulation, to inform the individual or small business purchaser of the full offering of plans available on the appropriate State Exchange. AIEs would commit to listing all plans listed on State Exchanges that are available to lower income purchasers eligible for premium tax credits and cost-sharing reductions. If a carrier refuses to list their plan on the AIE but lists their plan on the State Exchange, however, the AIE, under this proposed regulation, will inform the potential purchaser of all qualified plans that are listed on the State Exchange but not the AIE.

### Proposed Definition of "Enrollment Functional Equivalence" for Alternative Internet Entities (AIEs)

For purposes of this regulation, an Alternative Internet Entity (AIE) must satisfy all of the following criteria in order to be certified by HHS as an "enrollment functional equivalent" of State Exchanges under the ACA.

Qualifying AIEs must:

- offer qualified health plans for the same premium with the same benefits for the same risk pool as State Exchanges;
- present health plans in an unbiased manner with no implied or explicit effort to influence the consumer's decision based on premium prices or compensation to the AIE.
- commit to listing all plans listed on State Exchanges that are available to lower income purchasers eligible for premium tax credits but also note that if a carrier refuses to list their plan on the AIE but lists their plan on the State Exchange, be willing to inform the potential purchaser of all qualified plans that are listed on the State Exchange but not the AIE;
- offer the potential enrollees the option to purchase all qualified plans available on their website on the State Exchange;
- supply the technology, at no cost to the state, to communicate with the relevant government authority in order to receive the appropriate determination of eligibility for premium tax credits and cost sharing reductions, as well as to subsequently inform such authority of the individual's qualified health plan selection;

- have demonstrated experience selling health insurance on a state or regional basis in the individual and small business group health insurance markets;
- have demonstrated the technical capability to display standardized comparative information on approved qualified plans that are available on the State Exchange;
- have demonstrated the technical ability to provide easy-to-use tools that allow consumers to access and filter all options by personal preferences and needs, in a manner that consumers expect in today's e-commerce-driven marketplace;
- have demonstrated the technical ability to provide a secure, private, and safe online experience;
- demonstrate existing relationships and technical capability to enroll individuals in qualified plans in real-time and have strong security measures to protect personal health information (PHI), income information, etc.;
- demonstrate the ability to securely transmit information electronically to a State Exchange or federal government systems;
- appropriately inform individuals who wish to find out if they are eligible for other government programs, including SCHIP, Medicaid, and Medicare;
- provide a toll-free telephone hotline staffed by licensed insurance professionals who can provide unbiased advice to support consumers in making a more informed decision;
- present information on health plans offered that is culturally and linguistically appropriate to the needs of the population of the state(s);
- be licensed and in good standing to sell health insurance in the appropriate state(s);
- demonstrate that the presentation of plans meets state standards and federal guidelines;
- not be a health insurance carrier or have any financial ownership of a health insurance carrier;
- have a demonstrated history of regulatory compliance.



LOIS CAPPS  
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COMMITTEE ON  
ENERGY AND COMMERCE



Congress of the United States  
House of Representatives

June 23, 2011

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SANTA BARBARA, CA 93101  
(805) 739-1710
- 2075 NORTH VENTURA ROAD, SUITE 108  
PORT MUIRHEAD, CA 93041  
(805) 986-8907

The Honorable Kathleen Sebelius, Secretary  
Department of Health and Human Services  
200 Independence Avenue, SW  
Washington, DC 20201

Dear Secretary Sebelius,

I understand that the Department of Health and Human Services will soon announce regulations relating to state exchanges. I write to encourage you to include Alternative Internet Entities (AIEs) as eligible pathways for Americans using affordability credits to purchase qualified health plans, (QHPs) provided that these QHP's price, benefits, and risk pools are comparable to those found in the exchanges, and there is no adverse selection.

AIEs would not replace state exchanges, but could operate simultaneously as an alternative approach to enroll people in health plans. Since the primary goal of the Affordable Care Act is to ensure that all Americans have health coverage, AIEs can contribute to this goal by assisting states in enrolling the maximum number of lower-income individuals using affordability credits.

Currently, the Affordable Care Act is ambiguous as to whether individuals who qualify for affordability credits will be allowed to access these benefits when they enroll in qualified health plans outside of state exchanges. One proposal is to clarify this by "deeming" any person eligible for affordability credits who enrolls in a "qualified health plan" through a certified AIE as enrolling "through an Exchange" under the Act -- and, thus, able to receive these important benefits.

This clarification is entirely consistent with the intent of the Act to encourage choice. For example, Section 1312(c)(1) titled, "Consumer Choice," states: "Nothing in this title shall be construed to prohibit... a qualified individual from enrolling in, or a qualified employer from selecting for its employee, a health plan *outside an Exchange*," (emphasis added). But without an appropriate clarification, this "consumer choice" provision would effectively apply only to those whose incomes are too high to qualify for premium tax credits and cost sharing subsidies. The proposed regulation would give a similar option to lower income people who qualify for tax benefits.

Thank you for your consideration of this proposal. Should you or your staff have any questions, you can contact Adriane Casalotti in my Washington, DC office at (202) 225-3601.

Sincerely,

  
LOIS CAPPS  
Member of Congress

5TH DISTRICT, MISSOURI  
FINANCIAL SERVICES COMMITTEE  
TWITTER.COM/REPCLEAVER  
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CHAIR  
CONGRESSIONAL BLACK CAUCUS

**Congress of the United States**  
**House of Representatives**  
Emanuel Cleaver, II

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<http://www.house.gov/Cleaver>

October 31, 2011

The Honorable Kathleen Sebelius  
Secretary  
U.S. Department of Health and Human Services  
200 Independence Avenue, SW  
Washington, DC 20201

Dear Secretary Sebelius:


It is my understanding that the Department of Health and Human Services will soon announce regulations relating to state health exchanges. I write to encourage you to include Qualified Web-Based Entities (WBE) as eligible pathways for Americans using affordability credits to purchase qualified health plans.

WBEs will not replace state health exchanges, but will function as an alternative approach to enrolling people in qualified health plans. The goal behind enactment of the Affordable Care Act was to expand access to care for all Americans. WBEs will aid in this goal by assisting states in enrolling the maximum number of lower income individuals using affordability credits.

Currently, the law is vague as to whether individuals who enroll through a WBE will be eligible for tax credits and cost sharing reductions. By deeming a WBE as an enrollment through an exchange under Section 1311 of the Affordable Care Act, it will clarify eligibility for individuals who choose to enroll in this manner. This clarification would also give states the option of determining whether WBEs may supplement their enrollment capabilities, rather than precluding them from having a choice to exercise this option.

Thank you for your consideration of this proposal. Should you or your staff have any questions, please contact Jennifer Shapiro in my Washington, DC office at (202) 225-4535.

Warm Regards,

  
Emanuel Cleaver, II  
Member of Congress

CHAKA FATTAH  
2ND DISTRICT, PENNSYLVANIA

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Congress of the United States  
House of Representatives

COMMITTEE  
COMMITTEE ON APPROPRIATIONS  
COMMERCE, JUSTICE, SCIENCE AND  
RELATED AGENCIES SUBCOMMITTEE  
RANKING MEMBER  
ENERGY AND WATER DEVELOPMENT  
SUBCOMMITTEE

October 28, 2011

The Honorable Kathleen Sebelius  
Secretary  
U. S. Department of Health and Human Services  
200 Independence Ave., SW  
Washington, DC 20201

Dear Secretary Sebelius:

As the Department of Health and Human Services finalizes the next round of regulations related to state-based health insurance exchanges, I ask that you ensure the broadest possible options for plan enrollment. In order to ensure the success of the Affordable Care Act, it is critical that every American enroll. To maximize participation, I ask that you support inclusion of a provision in forthcoming departmental regulations to permit premium tax credit eligible individuals to enroll in exchanges that are "Alternative Internet Entities."

To meet the goals of convenient enrollment and consumer protection, these entities must supplement the capacity of credit-eligible individuals to enroll and have functionally equivalent enrollment capabilities (i.e. offer the same plans with the same premiums, benefits and risk pools) as state exchanges. The regulation should allow that an individual enrolled through such an AIE (which is licensed by the state) is deemed to have enrolled "through an Exchange" for the purpose of tax credit eligibility.

Please do not hesitate to contact Liz King in my office at [Elizabeth.King@mail.house.gov](mailto:Elizabeth.King@mail.house.gov) or 202-225-4001 if we can answer any questions or provide additional information. I appreciate your attention to and consideration for this matter.

Very truly yours,

Chaka Fattah  
Member of Congress

JOHN CONYERS, JR.  
14TH DISTRICT, MICHIGAN

COMMITTEE  
RANKING MEMBER  
JUDICIARY

SUBCOMMITTEE ON COURTS AND  
INTELLECTUAL PROPERTY

SUBCOMMITTEE ON THE  
CONSTITUTION

**Congress of the United States**  
**House of Representatives**  
Washington, DC 20515-2214

December 2, 2011

The Honorable Kathleen Sebelius  
Secretary  
U.S. Department of Health and Human Services  
200 Independence Avenue, SW  
Washington, DC 20201

Dear Secretary Sebelius:

I write to you today with regard to the Department of Health and Human Service's (HHS) proposed rule regarding the establishment of health insurance Exchanges and the use of web based entities (WBEs). I am hopeful that forthcoming regulations from HHS will allow lower income individuals to still qualify for premium subsidy and cost sharing affordability tax credits when they choose WBEs to enroll in qualified health plans.

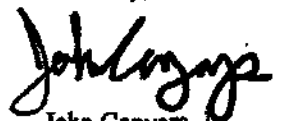
The availability of WBEs could help the states in enrolling lower income individuals that are eligible for premium tax credits and cost sharing reductions in the health insurance Exchanges, while minimizing costs to the states. Further, use of WBEs could promote innovation and competition that could ultimately provide consumers with better customer service and greater choice in how to purchase health insurance.

HHS would certify WBEs as having "functional equivalent enrollment capabilities" as defined in the regulation - offering the same qualified health plans with the same premiums and benefits and part of the same risk pool as on the state Exchanges. WBEs would also be subject to state regulations. This would ensure that there could be no "adverse selection" or other negative impact on the state Exchanges.

I believe that health care is a human right and that the Affordable Care Act is working to make health insurance coverage more accessible for more Americans. Allowing the use of WBEs in enrolling individuals in the Exchanges in the forthcoming regulations could play an important role in facilitating our goal to ultimately provide all Americans with guaranteed affordable health coverage.

If you have any questions or need any further information, please do not hesitate to contact Joel Segal on my staff at 202-225-5126.

Sincerely,



John Conyers, Jr.  
Member of Congress

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HTTP://WWW.HOUSE.GOV/CONYERS

**Legislative History: Did Congress Intend Under Affordable Care Act to Allow Independent Web-Based Entities to Enroll Tax-Benefit-Qualified Individuals in QHPs**

**The answer: Yes:**

Summary of Carper Amendment Filed by Senate Finance Committee Members and Approved by Chairman Max Baucus in the Chairman's Mark (Saturday, September 19, 2009) [ultimately the basis of Section 1312(e) of the ACA]:

**"Short title:** To allow agents and brokers, including existing health exchanges, to play an immediate complementary role to any state or regional based exchange:

"This amendment allows [independent web-based entities that are licensed by states as] agents and brokers the immediate right to enroll individuals and employers in any health insurance option available in the state exchanges. Individuals or employers obtaining a health plan through a [web-based entity licensed by a state as] an agent or broker would not be discriminated against for tax purposes. State regulators would maintain their authority over agents and brokers [such as state-licensed WBEs] and the amendment would not change the process established by the Chairman's Mark for verifying a person or employer's eligibility for the subsidies and distributing those to the proper health insurance companies.

Note: The distinction is clearly made between enrollment vs. "eligibility for [tax] subsidies" and "distributing" such subsidies to carriers. Note also the flat prohibition on any "discrimination for tax purposes" against any person who enrolls in a qualified health plan through an independent WBE that is licensed by the state as an agent or broker for purposes of enrolling tax-benefit qualified individuals.

"The HHS Secretary would be able to regulate the ability of [web-based entities that are state-licensed] agents or brokers to assist individuals eligible for tax credits or other subsidies in enrolling in qualified health plans utilizing such subsidies." (Emph. added.)

**The Report of the House Committee on Energy and Commerce on H.R. 3200 (October 14, 2009), p. 409:**

Section 205 (*Outreach and enrollment of Exchange-eligible individuals and employers in Exchange-participating health benefits plan*):

" 'Enrollment agents or brokers' include ... private health exchanges [such as Web-Based Entities] licensed as agents or brokers under state law to sell health insurance. Persons or employers enrolling in qualified health benefits plans through [state-licensed WBEs that are] agents and brokers should not be discriminated against by HHS, the Health Choices Administration, and the Internal Revenue Service; including individuals accessing affordability credits or fulfilling their obligations under section 401 or employers fulfilling their obligations under Section 312 of this Act."

**Legislative History: Did Congress Intend Under Affordable Care Act to Allow Independent Web-Based Entities to Enroll Tax-Benefit-Qualified Individuals in QHPs**

**The answer: Yes:**

Summary of Carper Amendment Filed by Senate Finance Committee Members and Approved by Chairman Max Baucus in the Chairman's Mark (Saturday, September 19, 2009) [ultimately the basis of Section 1312(e) of the ACA]:

**“Short title:** To allow agents and brokers, including existing health exchanges, to play an immediate complementary role to any state or regional based exchange:

“This amendment allows [independent web-based entities that are licensed by states as] agents and brokers the immediate right to enroll individuals and employers in any health insurance option available in the state exchanges. Individuals or employers obtaining a health plan through a [web-based entity licensed by a state as] an agent or broker would not be discriminated against for tax purposes. State regulators would maintain their authority over agents and brokers [such as state-licensed WBEs] and the amendment would not change the process established by the Chairman's Mark for verifying a person or employer's eligibility for the subsidies and distributing those to the proper health insurance companies.

Note: The distinction is clearly made between enrollment vs. “eligibility for [tax] subsidies” and “distributing” such subsidies to carriers. Note also the flat prohibition on any “discrimination for tax purposes” against any person who enrolls in a qualified health plan through an independent WBE that is licensed by the state as an agent or broker for purposes of enrolling tax-benefit qualified individuals.

“The HHS Secretary would be able to regulate the ability of [web-based entities that are state-licensed] agents or brokers to assist individuals eligible for tax credits or other subsidies in enrolling in qualified health plans utilizing such subsidies.” (Emph. added.)

**The Report of the House Committee on Energy and Commerce on H.R. 3200 (October 14, 2009), p. 409:**

*Section 205 (Outreach and enrollment of Exchange-eligible individuals and employers in Exchange-participating health benefits plan):*

“ ‘Enrollment agents or brokers’ include ...private health exchanges [such as Web-Based Entities] licensed as agents or brokers under state law to sell health insurance. Persons or employers enrolling in qualified health benefits plans through [state-licensed WBEs that are] agents and brokers should not be discriminated against by HHS, the Health Choices Administration, and the Internal Revenue Service; including individuals accessing affordability credits or fulfilling their obligations under section 401 or employers fulfilling their obligations under Section 312 of this Act.”

## Frequently Asked Questions and Answers (FAQs)

### **Explaining the Proposed Clarification in Final Rule To Permit Qualified Web-Based-Entities To Enroll Tax-Benefit-Qualified Individuals**

**Q. What exactly is the clarification you're asking for?**

- A. This proposed clarification would allow individuals and groups who purchase Qualified Health Plans through a “web-based entity” or “WBE” to receive the same federal tax benefits and cost reductions they would receive if they enrolled in such plans through an Exchange.

The July 15, 2011 NPRM governing state exchanges specifically recognized that WBEs are seeking to assist enrollment by “acting independently of a [state] Exchange to perform similar outreach and enrollment functions to the Exchange.” WBEs offer states an option for supplementing their exchanges in enrolling individuals and groups in Qualified Health Plans, but only if they can enroll individuals or groups who qualify for federal tax benefits and cost reductions under the ACA. We are asking for a clarification to make sure that's the case.

**Q: Why not simply allow WBEs to contract with the state exchange to assist it in enrolling tax-benefit-qualified people – i.e., why have a separate Internet entity that might “compete” with state Exchanges?**

A: There will not be “competition” that will disadvantage state Exchanges if Web-Based Entities are permitted to serve tax-benefit-qualified individuals. To the contrary. The user-friendly technologies of WBES will inevitably find their way to be used by state Exchanges. For example, the Massachusetts Connector has very recently implemented eHealth's “physician finder” tools, which enable an individual to see only those plans that support his or her physician. Experience has shown that the WBE help people, through transparency and easy-to-understand information, manage their health insurance and associated costs. This benefit too will spill over to state Exchanges. Being a stand-alone entity requires a WBE to continually innovate to provide greater value individuals – which also will inevitably benefit state Exchanges.

Finally, it seems wrong to preclude poor people and middle class people who qualify for tax benefits to have less choices than wealthier people who under the ACA have the option to buy Qualified Health Plans outside of state Exchanges.

**Q: Would independent web-based entity (WBEs) enrolling tax-benefit-qualified individuals be regulated so that it must adhere to all standards and requirements of the ACA?**

A. Yes, in two ways. First, WBEs would be subject to all provisions of the ACA – i.e., first, they would be regulated by HHS to meet all standards and requirements of the Act, including enrolling tax-benefit-qualified individuals only in Qualified Health plans; and second, they would be regulated by states, who must decide whether to exercise their option under the proposed clarification to permit them to enroll tax-benefit-qualified individuals side-by-side of the state Exchange. Note under current law, WBEs are permitted to enroll non-tax-benefit-qualified individuals in QHPs outside of state exchanges without seeking permission of state Exchanges.

**Q: Would WBEs possibly be competitive with state Exchanges – diverting healthier people (“adverse selection”) from the state Exchange?**

A: *No – this would not be possible.* As stated, WBEs could enroll tax-benefit-qualified individuals only in QHPs and must adhere to all other standards and requirements of the ACA. Moreover, states retain the option, through their licensing power, whether or not to permit WBEs to operate independently. States could require WBEs to make accessible the same plans, with the same premiums, the same benefits, with neutral, unbiased presentation, and most important, part of the same risk pool as state Exchanges. This would preclude adverse selection.

**Q: But what if WBEs divert tax-benefit-qualified people away from the state exchanges – won't that possibly cost the state revenues if the state were to legislate or regulate fees for carriers on state exchanges to help pay for costs and overhead of the exchange?**

A: No – there would be no diversion of revenues from the state exchanges; since states can require by regulation or legislation fees to be paid by carriers on a per enrollee basis, whether the qualified health plans are purchased on the exchange or through an WBE.

*Indeed, since WBEs will expand the number of tax-qualified people who enroll in qualified health plans, the increased volume could increase total revenues to the state.*

**Q: Do WBEs perform any eligibility analysis or decision-making so that they would have to have access to individual data and personal information?**

A: No – WBEs are limited to the enrollment function only. They would receive minimal personal identification information, such as name, address, etc, and use a computer portal (paid for by the WBEs) to transmit the information to the state



Exchange, which would then exclusively make the eligibility determinations, qualifying individuals for Medicaid, Medicare, SCHIP or tax-subsidized qualified health plans.

**Q: If the NPRM were clarified in the final rule as is proposed, would the independent WBE enrolling tax-benefit-qualified individuals have access to advance payments of the premium tax credit or tax-sharing reductions?**

**A:** No. State Exchanges would have exclusive access to all such payments. WBEs are confined to just enrollment functions.

**Q: Suppose states decide they don't want any independent WBE enrolling tax-benefit qualified individuals in QHPs – can they prevent them from doing so?**

**A:** Yes – the proposed clarification is only a state option. States can decide to say no – or attempt to contract with WBEs to perform enrollment functions separately or for the state.

### The Proposed Regulation

Qualified health plans enrolled in through Alternative Internet Entities (AIEs) that have the "enrollment functional equivalence" (as defined below) of a State Exchange under the ACA, shall be deemed "enrolled in through an Exchange" under the ACA. Enrollees of policies from certified AIEs would be eligible for the same premium tax credit and cost-sharing reductions as they would otherwise be if such purchases were made through a State Exchange under the ACA.

To obtain HHS certification, AIEs must demonstrate that they will offer the same qualified health plans (when they are able) to potential enrollees within the same risk pools with the same benefits at the same premiums, as State Exchanges (all of which are required of the insurance carriers under the ACA). These AIEs will demonstrate that they meet or exceed all other quality and transparency standards of State Exchanges under the ACA and HHS regulations.

Should there be an instance where every qualified plan is not presented on the AIE website, the AIE will be required, under this regulation, to inform the individual or small business purchaser of the full offering of plans available on the appropriate State Exchange. AIEs would commit to listing all plans listed on State Exchanges that are available to lower income purchasers eligible for premium tax credits and cost-sharing reductions. If a carrier refuses to list their plan on the AIE but lists their plan on the State Exchange, however, the AIE, under this proposed regulation, will inform the potential purchaser of all qualified plans that are listed on the State Exchange but not the AIE.

### Proposed Definition of "Enrollment Functional Equivalence" for Alternative Internet Entities (AIEs)

For purposes of this regulation, an Alternative Internet Entity (AIE) must satisfy all of the following criteria in order to be certified by HHS as an "enrollment functional equivalent" of State Exchanges under the ACA.

Qualifying AIEs must:

- offer *qualified health plans for the same premium with the same benefits for the same risk pool* as State Exchanges;
- present health plans in an unbiased manner with no implied or explicit effort to influence the consumer's decision based on premium prices or compensation to the AIE.
- commit to listing all plans listed on State Exchanges that are available to lower income purchasers eligible for premium tax credits but also note that if a carrier refuses to list their plan on the AIE but lists their plan on the State Exchange, be willing to inform the potential purchaser of all qualified plans that are listed on the State Exchange but not the AIE;
- offer the potential enrollees the option to purchase all qualified plans available on their website on the State Exchange;
- supply the technology, at no cost to the state, to communicate with the relevant government authority in order to receive the appropriate determination of eligibility for premium tax credits and cost sharing reductions, as well as to subsequently inform such authority of the individual's qualified health plan selection;

- have demonstrated experience selling health insurance on a state or regional basis in the individual and small business group health insurance markets;
- have demonstrated the technical capability to display standardized comparative information on approved qualified plans that are available on the State Exchange;
- have demonstrated the technical ability to provide easy-to-use tools that allow consumers to access and filter all options by personal preferences and needs, in a manner that consumers expect in today's e-commerce-driven marketplace;
- have demonstrated the technical ability to provide a secure, private, and safe online experience;
- demonstrate existing relationships and technical capability to enroll individuals in qualified plans in real-time and have strong security measures to protect personal health information (PHI), income information, etc.;
- demonstrate the ability to securely transmit information electronically to a State Exchange or federal government systems;
- appropriately inform individuals who wish to find out if they are eligible for other government programs, including SCHIP, Medicaid, and Medicare;
- provide a toll-free telephone hotline staffed by licensed insurance professionals who can provide unbiased advice to support consumers in making a more informed decision;
- present information on health plans offered that is culturally and linguistically appropriate to the needs of the population of the state(s);
- be licensed and in good standing to sell health insurance in the appropriate state(s);
- demonstrate that the presentation of plans meets state standards and federal guidelines;
- not be a health insurance carrier or have any financial ownership of a health insurance carrier;
- have a demonstrated history of regulatory compliance.