

May 21, 2010

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

*Re: Consumer Assistance Programs -- Section 1002 of PPACA*

Dear Secretary Sebelius:

We are consumer health advocates dedicated to ensuring the successful implementation of the health care reforms put forth in the *Patient Protection and Affordable Care Act* (PPACA). We know firsthand from our work on health care issues at the state and national level that successful implementation hinges on ensuring individuals and their families have information about new programs, as well as help to enroll in and navigate the health care system as reforms are implemented. Consumer assistance programs help by providing one-on-one assistance to educate individuals about their health care options, to facilitate enrollment, maintain coverage, and troubleshoot problems that may arise.

Because of our deep commitment to this work, we are writing to make recommendations to you, based on our experiences, about how to implement the requirement in Section 1002 of the PPACA that your agency help states establish independent offices of health insurance consumer assistance or ombudsman in 2010.

### **Non-Profit Organizations Have an Important Role in Consumer Assistance**

We believe non-profit organizations have a critical role to play in both the immediate and the long term for consumer assistance programs. These organizations are trusted resources in their communities and often serve as the “go-to” source for individuals and families who might not otherwise seek assistance with health care questions. They understand how to reach and assist low-income and vulnerable populations, the people who will be most dramatically impacted by the new law. Effective consumer assistance programs work in conjunction with a strong network of community partners to ensure efficient and direct help to people in their own communities.

Non-profit and community-based health advocacy organizations have a proven track record of working with regulators to achieve genuine consumer protections as well as helping individuals gain access to their best health care options. Successful programs not only assist consumers in obtaining health care coverage, but also address public program eligibility and re-enrollment issues and answer general health insurance questions – from co-payments to grievance processes.

Our combined experiences with consumer assistance programs that exist across the country – from California, Oregon, and Illinois to Mississippi, New York, Massachusetts, and Vermont, to name a few – have helped millions of people access coverage.

### **Suggestions for Consumer Assistance Regulatory Language**

The PPACA specifies that a State must designate “an independent office of health insurance consumer assistance, or an ombudsman,” that works “directly or in coordination with State health insurance

regulators and consumer assistance organizations.” Regulations and/or guidance for Section 1002, and its \$30 million allocation for the first year (2010), must be issued soon. We suggest the following.

1. ***Specify that states should either contract with or partner with independent community-based groups to perform consumer assistance or ombuds functions.*** HHS should specify that states must designate a truly independent entity to carry out this function that is separate from a state regulator to prevent possible conflicts of interest. For example, many state Attorneys General represent Medicaid managed care organizations and Departments of Insurance regulate insurance companies.
  - a. States may find that a non-profit, community-based organization is the best independent option for housing their consumer assistance program. For example, the Vermont statute creating a state ombudsman office directs that office to contract with a non-profit organization (Section (a) <http://www.leg.state.vt.us/statutes/fullsection.cfm?Title=08&Chapter=107&Section=04089w>). While federal language may not direct state programs to contract with non-profits, it should provide this option. This can foster partnerships between state-run ombudsman programs and trusted community-based health care advocacy non-profits.
  - b. The consumer assistance program must be independent of any agency that regulates or represents the health insurance industry. A good example is Vermont’s conflict of interest language (VT Section (f) <http://www.leg.state.vt.us/statutes/fullsection.cfm?Title=08&Chapter=107&Section=04089w>).
2. ***Establish a “maintenance of effort” provision.*** HHS should include a maintenance of effort (MOE) provision to prevent the resources from being absorbed into existing state budgets without creating new or enhanced services for consumers. A MOE will be particularly important given the current fiscal climate in states and the increased pressure state budgets are facing in the upcoming year. PPACA’s \$30 million funding for this provision is limited once it is spread across many states, and we have heard that a number of states simply plan on directing this funding to their existing systems which have varying levels of success.
3. ***Define “independent” strictly.*** HHS should include language to define “independent” to ensure these programs provide support to consumers regardless of the political positions of state officials. Consumer assistance programs must be insulated from politically-motivated attempts by state officials to weaken the agencies, including reductions in funding or removal of key personnel.
4. ***Establish minimum standards.*** HHS should specify minimum standards for consumer assistance programs including: cultural and linguistic competency to meet the needs of the community; documented experience working with vulnerable populations; and adequate capacity and training to respond to consumer concerns. In addition, to ensure that the appropriate assistance is available to consumers at different income levels and with varying health coverage needs, it is critical that programs provide assistance with private insurance, subsidized coverage, and Medicaid. Many community-based consumer assistance programs serve consumers from all payers and Vermont is an example that explicitly requires it through statute (Section (h) <http://www.leg.state.vt.us/statutes/fullsection.cfm?Title=08&Chapter=107&Section=04089w>).

5. ***Encourage the adoption of nationalized standards in reporting.*** HHS should specify a standard reporting format and common definitions of terms so that federal officials, states, and consumer advocates can use the data collected to detect trends and issues that arise in states, regions, and nationally. This data should include demographic information including health status, gender, race, ethnicity, and language to allow identification of problems specific to one particular group.
6. ***Encourage the collection and dissemination of important data to consumers and advocacy groups.*** HHS should specify that consumer assistance programs be given access to relevant data collected at state agencies, including, but not limited to: quality assurance data; benefits and pricing information; internal and external appeals (including Medicaid fair hearings); additional data concerning complaints filed with state offices of insurance, health and attorneys general; actuarial data about medical loss ratios, annual rates of premium increases, where available.
7. ***Reporting.*** HHS should require states to report to the federal government on how they spend the grant dollars.
8. ***Establish a federal default for direct contracting between HHS and community based groups in high risk states.*** HHS should specify that if the state fails to create such a program, the federal government can contract directly with an organization in the state to ensure a consumer assistance program exists in each state. (We are concerned that state administrations that are actively fighting against the implementation of reform may not successfully execute these programs.)

We thank you for your leadership in striving to improve the public's understanding of the benefits of PPACA and how it will improve consumers' access to health care. We look forward to working with you in any way we can throughout the next stages of implementing this historic health care reform package.

Yours sincerely on behalf of:

Community Catalyst

Western Center on Law & Poverty (California)

Legal Aid Society of San Mateo County (California)

Connecticut Voices for Children

Campaign for Better Health Care (Illinois)

Child and Family Policy Center (Iowa)

Consumers for Affordable Health Care (Maine)

Health Care for All (Massachusetts)

Mississippi Health Advocacy Program

New Jersey Citizen Action

New Jersey Policy Perspective

Community Service Society (New York)

UHCAN Ohio

Cerebral Palsy Association of Ohio

ProgressOhio

Toledo Area Jobs with Justice Coalition (Ohio)

We Are the Uninsured (WATU) (Ohio)

Neighborhood Family Practice (Ohio)

Col Owens, Legal Aid Society of Southwest Ohio

Oregon Health Action Campaign

Health Advocacy Solutions (Oregon)

Consumer Health Coalition (Pennsylvania)

Pennsylvania Health Law Project

Philadelphia Unemployment Project (Pennsylvania)

Utah Health Policy Project

Vermont Campaign for Health Care Security Education Fund

Vermont Legal Aid, Inc.

cc: Jay Angoff, Director, Office of Consumer Information and Insurance Oversight  
Karen Pollitz, Deputy Director for Consumer Services, Office of Consumer Information  
and Insurance Oversight