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Submitted electronically via http://www.regulations.gov

Ms. Martique Jones
Deputy Director, Regulations Development Group
Office of Strategic Operations and Regulatory Affairs
Center for Medicare and Medicaid Services
Attention: CMS-10320
Room C4–26–05
7500 Security Boulevard
Baltimore, MD 21244–1850

RE: Health Care Reform Insurance Web Portal Requirements for the Collection of Off-Exchange Individual and Small Group Data (CMS–10320)

Dear Ms. Jones:

I am writing on behalf of America's Health Insurance Plans (AHIP) to offer comments in response to the Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) Information Request related to Health Care Reform Insurance Web Portal Requirements for the Collection of Off-Exchange Individual and Small Group Data, published in the *Federal Register* (79 FR 6197) on February 3, 2014, and the subsequent detailed information posted on the CMS Paperwork Reduction Act (PRA) website. AHIP is the national association representing health insurance plans that provide coverage to more than 200 million Americans.

AHIP and its members have been engaged with CMS's efforts to operationalize the Web Portal (or "Plan Finder") since the interim final regulation was first proposed.[1] Over the past several years, we have appreciated the steps that HHS has taken to continue to respond to health plan questions and concerns such as providing more advance notice of template changes, combining the data submission processes for the individual and small group markets and thus eliminating constant update cycles, the movement to consistent data collection templates across the on-Exchange market and the off-Exchange market and improving how data collected from health plans are displayed to consumers.

While we have supported the Department's efforts, we are now writing to raise significant concerns about the proposed information collection and the timeframe for that data collection,

[1] AHIP's comment letter on the interim final regulation is available at www.regulations.gov under document identification number "HHS_OS-2010-0010-0042."

and we ask that CMS consider making significant changes to the proposed approach before proceeding with the data collection, which is currently planned to begin in June of 2014.

We understand that a primary goal in proceeding with a collection of off-Exchange plan information using the Qualified Health Plan (QHP) templates beginning in June 2014 is to support the Affordable Care Act's premium stabilization programs – the permanent risk adjustment program, the transitional reinsurance program, and the temporary federal risk corridor program (3Rs) – which are designed to mitigate the potential for adverse selection and help stabilize premiums in the individual and small-group markets, both inside and outside the Exchange. Based on recent conversations with CMS staff, it seems that the proposed changes to the Plan Finder data collection may be timed to ensure that CMS has information to (1) provide issuers with detailed interim risk adjustment reports (and, potentially, relative risk scores), and (2) identify off-Exchange QHPs that are "substantially the same" as their on-Exchange counterparts in support of the risk corridors program. If this is the case, such data collection would be unnecessary as the data needed to support interim risk adjustment reporting will be submitted via the Edge Server.[2] Data needed for Risk Corridors could be collected much later and limited to impacted issuers as discussed in further detail later in our letter. At this time, collecting information for these programs under the umbrella of a collection for Plan Finder is not appropriate.

We also have concerns regarding CMS' authority to collect this information; confidential treatment of new elements, particularly with regard to small group data; improvements to the website to ensure consumers continue to have reliable access to the Plan Finder consistent with information on Federally-facilitated Marketplace (FFM) plans displayed on Healthcare.gov. We further expand on all these issues below.

Recommendations Regarding the Plan Finder

Accessibility and Use of Plan Finder on Healthcare.gov

CMS currently has a process in place for collecting information on individual and small group plans offered off-Exchange for display to consumers on the Plan Finder on Healthcare.gov. The purpose of the Plan Finder was to provide an educational tool for consumers to help guide their decision-making process. However, since the debut of the new Healthcare.gov and the beginning of open enrollment for coverage through the Exchange, consumer information about health insurance coverage on Healthcare.gov has focused on Exchange coverage and the Plan Finder has been moved to a much less prominent location on Healthcare.gov. Currently, it is not clear

[2] The Edge Server is designed for purposes of reinsurance and risk adjustment data submission and collection. Issuers will establish dedicated secure data environments (the Edge Server) for HHS to access information related to eligibility and enrollment (e.g., demographic information such as date of birth, gender, and cost-sharing reduction level; enrollee and subscriber IDs; plan ID and enrollment periods) and claims (i.e., medical and pharmacy claim information) and run HHS-developed software.

where on the website a consumer would find information about obtaining insurance coverage outside of the Exchange or where the Plan Finder is located.

We are concerned about the accessibility of the Plan Finder on Healthcare.gov and the ability of consumers to use this tool to find and compare off-Exchange plan offerings. The lack of visibility of the Plan Finder on Healthcare.gov makes it nearly impossible for a consumer visiting the site to learn about or compare off-Exchange coverage options. As a result, consumers do not have a source for information about all of their insurance options and issuers have spent countless hours regularly updating plan data that is not accessible to consumers. While we understand CMS' emphasis on Exchange coverage, it is important that Healthcare.gov make comprehensive information about on- and off-Exchange coverage options readily available to consumers.

We recommend several critical improvements to the Plan Finder. First, the Plan Finder has not been updated to reflect market-wide rules that took effect beginning in 2014 (e.g., removing references to pre-existing conditions) and CMS has indicated that these updates likely will not be made until mid-2014 at the earliest. Submitting individual and small group plan data for display on Healthcare.gov cannot meaningfully support consumer decision-making if the Plan Finder tool is not accurate. Second, we recommend that Healthcare.gov make it clear to consumers that there are non-Exchange coverage options available and explain the differences between on- and off-Exchange coverage. This information should be easily accessible from the Healthcare.gov homepage (e.g., on the *Individual and Families* and *Small Businesses* pages). Finally, CMS should provide additional information on how the pricing engine will be updated to incorporate small group plan level pricing information as it now only provides average premiums. We would like additional information on how CMS will use this information to provide specific information to employers. Any changes would require a considerable amount of development and testing before being available to consumers.

Confidentiality

The data collected from health plans include several data elements that are considered proprietary and confidential. These data are used to inform information on the Plan Finder but are not currently made available to users of the website. These elements include (1) information on the base rating factors used by health plans to generate premiums; (2) product and plan level enrollment information; and (3) numbers of health insurance applications received, application denials and number of instances where a higher rate was offered. We note that several of these data elements are irrelevant for ACA 2014 compliant plans (i.e., uprates). The existing data collection process involves Excel templates that are unable to be modified resulting in health plans being unable to designate certain information as confidential information.

Given that CMS doesn't currently display small group rates on the Plan Finder and now proposes to display detailed premium rates, there are new concerns about the proprietary and confidential

information with regard to this change. To resolve this concern, we recommend that CMS collect health plan designations on a confidentiality template that was used in past data submissions (October 2011 and subsequent), so that health plans can clearly designate certain information as confidential and thus protected from release under FOIA. In such a template, health plans would designate information as confidential at the data field level, as well as provide a rationale for the proposed designation. Certain categories of information, such as premium base rates and rating business rules are so competitively sensitive, and their public disclosure so likely to lead to competitive harm that we recommend that all such information be designated as confidential by CMS and thus protected from release under FOIA. Such information includes: premium base rates, rating business rules, and enrollment and application receipts, among other data.

Alternative Ways to Collect 3Rs Information

We understand CMS is proposing a significant overhaul to the collection of information for off-Exchange individual and small group offerings, in large part to support the 3Rs programs. However, the data needs to support these programs have not yet been fully defined, which makes it difficult to fully understand the purpose for the data CMS intends to collect under the proposed data collection. We strongly recommend that CMS not move forward with an onerous data collection without a full understanding of what the data requirements for the 3Rs programs will be. Once those data needs are finalized, issuers will be in a better position to make comprehensive recommendations for how to best provide that information and how any off-Exchange product data submitted for purposes of the Plan Finder data could supplement that collection. In the meantime, there are alternative ways that CMS can collect information to support the 3Rs while ensuring minimal burden on health plans. This should be accomplished under a separate PRA notice.

Interim Risk Adjustment Reporting

CMS has indicated the proposed timeline for quarterly data submissions of individual and small group plan data using the QHP templates beginning in June 2014 is necessary to support interim risk adjustment reporting and calculating relative risk scores. However, the Edge Server will have sufficient data to support interim reporting. CMS has communicated that it needs to collect off-Exchange information using the QHP templates in order to obtain critical information such as rating area, metal level, and HIOS IDs, yet these elements are all included in the Edge Server requirements. These plan-level data elements, as well as information on enrollee premiums, medical claims, prescription drug claims, and enrollment files for every enrollment period will all be loaded onto the Edge Server. Further, the QHP templates alone are not sufficient to calculate risk scores or support interim reporting. For example, calculating a risk score relies on collecting claims data with specific diagnosis codes; this information will be collected via the Edge Server but due to the volume and confidential nature of the data could not be submitted via templates. As another example, rating tables would provide the indexed rate for a QHP in a given market, but that does not necessarily correspond with the actual premiums charged to enrollees.

Because the Edge Server will collect all of the needed data to support the risk adjustment program, collecting additional information on off-Exchange plans using the QHP templates would be unnecessary.

If CMS determines that it needs additional data to support interim reporting, we recommend that those data elements be collected via the Edge Server and not through a separate template submission. QHP templates are not the appropriate format for collecting off-Exchange plan information for a number of reasons. First, as stated above, the QHP templates alone would not be sufficient to support interim reporting. In addition, much of the data submitted through the QHP templates would be duplicative of data submitted via the Edge Server. Finally, some of the template data (e.g., Business Rules information) do not appear to have any purpose in supporting interim risk adjustment reporting. Therefore, in order to collect the minimally necessary data and ensure a streamlined submission process, we propose that CMS focus on collecting data to support the 3Rs programs solely via the Edge Server rather than attempting to repurpose the QHP templates to support 3Rs data needs. The process of adding data elements to the Edge Server would be less complex than requiring health plans to re-enter all of their 2014 plan information into the QHP templates. We recommend that such an onerous data collection, as part of the Plan Finder, is postponed or reconsidered until the Edge Server requirements are finalized.

Risk Corridors

The temporary federal risk corridor program seeks to protect against uncertainty in rates for QHPs by limiting insurer losses and gains. To be eligible for participation in the risk corridor program, a QHP sold outside of the Exchange would have to be the same or substantially the same to its on-Exchange counterpart. Because the Edge Server will likely not play a role in risk corridor data submissions, issuers would need an alternate way to demonstrate off-Exchange QHPs are the same or substantially the same as on-Exchange QHPs. In the proposed QHP templates for the 2015 Plan Year submissions (or "2015 QHP templates"), CMS included data elements to collect information on whether an off-Exchange QHP is "the Same or Substantially the Same as a Certified Exchange QHP." However, the QHP templates used for 2014 Plan Year submissions (or "2014 QHP templates") did not collect information on substantially the same QHPs. As noted above, adding additional data elements to the existing 2014 QHP templates would be complex and potentially problematic for issuers who used the QHP templates to submit of their 2014 Plan Year off-Exchange individual and small group products in some states and onerous for those issuers in states that did not use the QHP templates for submitting off-Exchange plans for the 2014 Plan Year.

The deadline for risk corridor data submissions for the 2014 benefit year is not until summer 2015, with many of the details of this process still not finalized. Therefore we recommend that CMS refrain from collecting off-Exchange individual and small group plan data to support risk corridors until the finalization of the formal process for submitting risk corridor data. Unlike interim risk adjustment reports, which would help issuers understand and predict payments and

transfers from the risk adjustment program, past guidance on risk corridors has largely resolved any ambiguity over which plans may participate in the program. Any differences other than those resulting from Federal or State requirements or prohibitions on the coverage of benefits would exclude an off-Exchange QHP from participation in risk corridors. At a minimum, any data submission used to identify differences in QHPs that are the result of differing regulatory environments should be incorporated into the larger risk corridor data submission process – particularly given the operational constraints issuers are under now and in the summer of 2014.

Finally, because participation in the risk corridor program is contingent upon offering substantially the same QHPs, any data needs related to risk corridors would not be applicable if an issuer does not offer both on- and off-Exchange QHPs. Therefore, issuers who do not offer off-Exchange QHPs should be excluded from any data collection to support the risk corridors program because they would not be eligible receive payments.

Regulatory Authority for Proposed Data Collection
Any data collection is required to have an appropriate PRA notice accompanying the collection. Data collected under an authorized collection may be reused for other purposes, as stated in the Supporting Statement accompanying the current submission. That does not, however, authorize the collection of data that is unnecessary to support the stated purpose in order to have data available to support another provision of law. CMS should limit the data collected under this PRA notice to the minimum necessary to support the Plan Finder and engage in an additional collection if necessary for purposes of collecting data in support of the 3Rs. Such a collection should recognize the availability of information through the Edge Server and the need for a comprehensive collection plan based on the necessary timing of the information.

Alternate Recommendations for Collecting Off-Exchange Data Using QHP Templates

We strongly recommend that CMS not adopt an onerous data collection for off-Exchange products until the data needs to support the 3Rs programs have been finalized. However, if CMS finalizes the proposed requirement for issuers to submit off-Exchange individual and small group plan-level data using QHP templates after a new PRA Notice specific to collecting information for purposes of the 3Rs program or decides to use a modified version of these templates tailored to the Plan Finder data needs, it will be critical for CMS to adopt policies that reduce the burden of submission for issuers. Below are three recommendations for a smoother implementation of this data collection.

Using Existing Sources for 2014 Data
CMS has communicated to issuers that it plans to use the 2014 QHP Plans and Benefits, Rate Tables, Business Rules, and Service Area templates for this data collection. While some states required issuers to submit their 2014 off-Exchange individual and small group plan data using these QHP templates, many states did not. As a result, most issuers would have to adapt their

previously filed 2014 off-Exchange plan data to the QHP template format. This would be an extremely resource-intensive exercise given the volume of individual and, especially, small group plan data that would have to be reported in this format.

For issuers that used the 2014 QHP templates to submit their off-Exchange products in certain states, we are particularly concerned that any modifications to the 2014 QHP templates for the purpose of this submission could impact the ability of issuers to re-submit their existing templates. CMS has indicated that it does not plan to make changes to the 2014 QHP templates at this time for the purpose of this data collection. We support using unmodified 2014 QHP templates as it will minimize the burden of submission on issuers who already completed the 2014 QHP templates for off-Exchange plans should not be required to re-enter that data into new templates. We strongly recommend that CMS allow issuers who used the 2014 QHP templates to file off-Exchange individual and small group plans with their states to re-submit those templates for the purpose of this data collection. Using unmodified 2014 QHP templates will also be helpful for those issuers who did not use these templates to submit off-Exchange plans for 2014 but did so for their on-Exchange plans, as they would already be familiar with the data element requirements and template validations. If CMS delays this data collection until much later in 2014, as we recommend below, it may be more appropriate to use the 2015 QHP templates because plans will have made updates to their systems to map plan data to the most recent versions of the templates.

Issuers who filed individual or small group products in states that did not require the QHP templates for off-Exchange offerings would face an even greater submission burden to now adopt the QHP templates. CMS will need to conduct training and publish instructions specific to completing the QHP templates for off-Exchange plans so that issuers can understand how to map their existing off-Exchange plan data to the template specifications, populate templates, and conduct quality assurance testing. For small group alone, issuers expect this process would take thousands of man hours. Issuers completing these templates for off-Exchange plans for the first time would need two months to complete the templates using the 2014 QHP templates and support materials.

Timing of Data Collection

CMS proposes adopting QHP templates for the June 2014 off-Exchange data collection and collecting updated templates on a quarterly basis moving forward. However, a June submission window would conflict with the timeline for submitting QHP templates for on-Exchange individual and small group plans from May 26 to June 27, 2014. Because most health plan staff will work on both submissions, concurrent data collections would be an overwhelming burden. Issuers would need to spend upwards of thousands of hours to complete templates and conduct quality assurance testing prior to submitting templates.

Concurrent data submissions would also place a significant strain on CMS resources. It is critical that CMS be able to provide adequate support to issuers throughout the data submission window for both on- and off-Exchange data collections. During the 2014 submission of on-Exchange plan data using these QHP templates for the FFM, issuers needed CMS support to resolve questions related to specific template data elements, functionality, validations, and uploading. In many instances it took CMS days or weeks to resolve these issues, which jeopardized meeting the submission deadline. The CMS Help Desk could not effectively support the volume of issuer questions during the 2014 QHP submission and its responsiveness continues to be significantly delayed, though CMS is considering how it could improve those processes. Based on issuers' ongoing experiences with the CMS Help Desk, we do not anticipate that CMS would have the capacity to support issuer questions, manage template uploads, and address backend issues related to data corrections and accurate display during two simultaneous submissions. To ensure that CMS and issuers can provide sufficient resources to support both data submissions, if CMS proceeds with collecting off-Exchange data using the QHP templates, we recommend that the data collection occur after the close of the QHP submission window (i.e., after July 27), preferably during July or August.

Phased Collection for Individual and Small Group Data

Adopting QHP templates for off-Exchange products would require both individual and small group data to be reported at the plan level. While issuers currently report off-Exchange individual market data at the plan level, small group market data is submitted at the product level. From a small group perspective, this would require issuers to now report plan and rate data for thousands of small group plans. Because this would represent such a significant change in the way small group information is reported, we recommend a phased timeline for submitting off-Exchange small group data. Specifically, we propose that, if CMS collects off-Exchange individual plan data in the summer of 2014, collection of small group data be collected separately later in 2014. This will provide plans with additional time to map data to the templates and conduct quality assurance testing for their significant volume of small group plans.

I look forward to continuing to work with you on the implementation of the Plan Finder. Please do not hesitate to contact me if you have any questions at 202-861-1491 or jthornton@ahip.org.

Sincerely,

Jeanette Thornton
Vice President, Health IT Strategies