

To: Virginia Health Reform Initiative Advisory Council and Task Force Members

From: The National Alliance on Mental Illness (NAMI) Virginia

RE: VHRI Third Memorandum on Health Benefit Exchange Issues—Topic: Preparing for Potential 2012 Health Benefit Exchange legislation

Date: August 26, 2011

Thank you for the opportunity to provide comments on the authorizing legislation required to implement the health benefit exchange in Virginia. We offer the following comments:

Section V – Distribution of Decision-making for the Exchange

Specifics regarding #1, 2 and 3b must be included in the legislation. In addition #3e, #3f, and parts of 3i should be dealt with in the 2012 legislation. Please find additional comments:

- **#2 a, b and c. Governance** – We agree with the Advisory Committee’s preference that the Exchange be created as a ‘quasi-governmental’ entity and the preliminary decisions to have a diverse Governance Board and/or advisory committee comprised of 11-15 members appointed to staggered terms. Regarding the 2012 legislation we believe it should create both a Governing Board and an Advisory Committee. As stated in earlier comments that we submitted, we also believe it should include specific types of experience and expertise required for members of the Governing Board who would be appointed by the Governor and General Assembly. For example two consumer representatives with expertise in public health insurance programs and the needs of low income, disabled, and uninsured populations; one small business representative; one member with expertise in health care financing and economics; one member with expertise as an insurance actuary; and two at-large members with expertise in an any of the above-described areas. The Advisory Committee could have broader representation and would be selected by the Board and Executive Director. Advisory committee should be established to include the expert advice and perspectives of critical stakeholders essential to the design and implementation of the Exchange, and to focus on specialty areas that need further study or guidance.
- **#2 c. Conflict of Interest.** – Legislation should contain strong conflict-of-interest rules to prevent those with direct financial interests from making decisions regarding the Exchange. Members of the Governance Board will have a fiduciary duty to make decisions that are in the best interest of the overall exchange. This includes seeking to provide the most affordable and quality health plans possible for Virginia consumers and small businesses. As we stated in our earlier comments Virginia’s legislation concerning governance should specify that no employees or affiliates of insurers or insurance brokers can serve as voting members of the governing board for the Virginia Exchange, to prevent conflicts-of-interest and even the appearance of a conflict.

- **#3bi. Exchange Executive Director should choose staff.** The VHRI memorandum states the legislation would establish the Board’s authority to choose the “Executive Director and staff”. While the Board should choose the Director, staff decisions should be left to the Executive Director, who will lead the day-to-day operations of the Exchange.
- **#3bii. Discretion regarding plan participation.** The 2012 legislation should give the Board discretion to strengthen requirements for plan participation. The Board must have the authority to evaluate the quality of health plans in the Exchange, in terms of quality of care provided, networks and costs. The Board must have the ability to ensure the best value for Virginia consumers and purchasers. This must include the ability to negotiate prices to ensure the affordability of plans offered.
- **#3biii. Active Recruiting.** Virginia’s Exchange board should be active in recruiting and selecting plans for participation. In other words, the exchange should not be required to accept all plans if they do not meet reasonable standards of quality and value. The legislation should give the Board clear authority and discretion to set standards above the minimum and to deny plans that do not meet the needs of consumers.
- **#3e. Funding Mechanism** – This should be determined in the legislation in order to meet the June 29, 2012 deadline for a Level Two Establishment grant.
- **#3f. Congruence with other state laws.** The 2012 Legislation should include specific provisions that require the Exchange and its Governing Board to adhere to open meeting, freedom of information (FOIA) and rulemaking laws.
- **#3h. Setting broad goals and accountability mechanisms’ can be left to Governance Board.** The Governance Board will be able to assess the realistic benchmarks for the Exchange and implement procedures to monitor the Exchange’s effectiveness in increasing coverage and providing affordable insurance options for the Virginia consumer.
- **#3i (ii & iii). Competition policies, transparency of information and comprehensive reporting requirements must be addressed by the General Assembly and the Governance Board.** The issues of competition and transparency both inside and outside of the Exchange are very important for the Virginia consumer. Health plans must be affordable and comprehensive, and Virginians need to have complete and easily understood information to make informed choices on coverage. The 2012 Legislation should require transparency and comprehensive reporting by health plans both in and outside the Exchange.
 - **Adverse Selection:** The legislation also must include rules to ensure competition and prevent adverse selection. NAMI Virginia provided extensive comments about ways to minimize adverse selection in response to VHRI’s Memorandum #2. Our complete comments can be found here: <http://namivirginia.org/assets/pdfs/NAMI%20VA%20VHRI%20Memo%202%20Comments.pdf> but as a basic concept the legislation must require companies to

offer the same plans inside and outside of the exchange and prohibit insurers outside the exchange from only offering less comprehensive and less expensive coverage that attracts a younger and healthier risk pool.

- **#3(i)(i). Brokers.** If the Legislation addresses the role of brokers, no certification requirements should be included that would prevent direct service providers, community based organizations and others working with low-income populations from operating as Navigators. In fact, if addressed in the legislation, statutory language should specifically authorize those entities to serve as navigators.
- **#4. The General Assembly should delineate Exchange duties, but Governance Board should implement**—The VHRI white paper correctly lists the minimum Exchange requirements under the Affordable Care Act. Thus, the General Assembly must include these duties in the authorizing legislation. However, the Governance Board and Exchange staff should be responsible for details and implementation.

VI. The Basic Health Plan

Virginia should fully evaluate a Basic Health Plan for individuals with income below 200 percent of the Federal Poverty Level. The Basic Health Plan is an alternative to health coverage through the Exchange. If a state adopts a Basic Health Plan, eligible individuals must get their health coverage from the Basic Health Plan instead of the Exchange. A Basic Health Plan could provide many significant advantages for low income people in Virginia, and it could also be in the state's interest to have such a program because more individuals will secure coverage with a Basic Health Plan in place. More research and analysis is needed to fully evaluate the cost and benefits of a Basic Health Plan and to determine if the federal payment for a Basic Health Plan will fully support such a program. Therefore we encourage the VHRI to recommend a complete analysis of this option.