



Washington State Health Benefit Exchange Program

Issue Brief #2: Exchange Governance and Organizational Structure

As Submitted to the Federal Department of Health and Human Services

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Summary

This issue brief describes key governance and organizational structure questions facing Washington State as it begins the planning phase of an Exchange. Specifically, this brief presents issues related to the following decisions that must be made: 1) should Washington State pursue the establishment of a multi-state Exchange, and/or collaborate with neighboring states to achieve efficiencies, 2) should more than one Exchange be considered, either regional or separate Exchanges for individuals and small businesses, 3) should the Exchange be housed in a state government entity or a nonprofit organization, and 4) how much and whom should be assigned the decision-making authority of the Exchange.

This brief addresses the possibility of an “Exchange Development Board” as the responsible party for planning Washington State’s Health Benefit Exchange and establishing a framework for implementation.

Background

Section 1311 of the Patient Protection and Affordable Care Act (ACA) requires states to establish Exchanges for individual and small group purchasers. The federal law establishes some parameters and the general functions an Exchange will carry out.

In the area of governance, the federal law provides significant flexibility to states. If a state chooses not to establish its own Exchange or shows little progress towards that goal by January 1, 2013, the federal government will establish the state’s Exchange. The federal law provides that an Exchange can be operated by a state organization or by a private, nonprofit entity. A state may also contract with an “eligible entity” (a private organization that has relevant experience but is not an insurer, is unrelated to an insurer, or is a state Medicaid agency) to carry out some Exchange responsibilities.

Washington State has experience with governmental agencies and nonprofit entities as a form of governance. The Basic Health plan is administered by a state agency, the Washington State Health Care Authority (HCA). The Health Insurance Partnership (HIP) is

also administered by the HCA, but has an independent seven-member governing board with significant policy authority – such as plan designation. The Washington State Health Insurance Pool (the state’s high-risk pool) is governed by an eleven-member board, is established in legislation, and is administered by an executive director.

States can work with other states to establish multi-state Exchanges with the approval of the federal Department of Health and Human Services (HHS). In addition, states can operate one or more subsidiary Exchanges, in distinct geographic regions of a state.

Key Considerations

In contemplating these governance questions, the Exchange Development Board will consider, in the context of the goals and priorities established for the Exchange, the following key issues:

- Coordination with other state and federal programs and agencies
- Level of desired flexibility
- Resource requirements
- Implementation timeline
- Level of desired accountability and transparency
- Degree of state authority preferred
- Headcount estimates for the Exchange market

Coordination with other state programs and agencies

The ACA requires coordination of eligibility determination for Medicaid, the Children’s Health Insurance Program (CHIP), and premium tax credits. In addition, a state may desire enhanced coordination with other public programs, with benefits and health insurance plans, and for transitions from public-to-private and individual-to-employer coverage. Overall coordination may be less complex if there is a single Exchange operating within a single state, and if it is located within a state or quasi-state entity.

If Washington State is interested in establishing a multi-state Exchange, numerous insurance market coordination issues need to be resolved. Oversight of the insurance products offered through the Exchange would be different according to each state’s regulatory environment. Furthermore, to avoid selection issues, it would be advantageous to align the state rating rules, mandated benefits and other regulatory provisions. This could be very challenging, if not impossible.

Individuals move between employer coverage and individual coverage as their employment status changes. Having one Exchange that serves both individuals and employers may make it easier to provide outreach and education, to both individuals and

businesses, about where to go to purchase insurance. In addition, with one Exchange, decision-making could be better coordinated between markets. This can help mitigate unintended consequences that may arise due to differing policies within each market.

Whether a nonprofit administers the Exchange, or the responsibilities are located in a state or quasi-state authority, the Exchange will require some interface with other state operations, including the Medicaid agency and Departments of Insurance and Revenue. Data sharing between the Exchange and the federal government, and between the Exchange and other state agencies, may be easier to facilitate if the Exchange is within the state's infrastructure. If an Exchange is outside the state, such as a quasi-state authority, a non-profit agency, or even across state lines, then these arrangements, although not impossible, become much more complex. Complexities include technology issues, such as differing computing standards and significant privacy and security concerns.

Desired flexibility

Although federal standards for state-based Exchanges have yet to be determined, it may be desirable to customize Washington State's Exchange to best meet the needs of its residents. A multi-state Exchange would certainly reduce some of the flexibility for the state to establish an Exchange that can achieve its own goals and priorities. However, if Washington State establishes only one Exchange, for both individuals and businesses, it may also be limited in its ability to accommodate the particular needs of either individuals or businesses.

If the Exchange is housed in a state agency, state procurement rules, staffing levels and hiring procedures may not have the necessary flexibility for an entity that will oversee functions that contain both public and private aspects. In Massachusetts, the quasi-state agency structure provides the right balance of flexibility from state agency rules, while maintaining the level of accountability important to oversee the public aspects of the Exchange.

The Exchange Development Board should consider the amount of flexibility needed when considering governance and organizational structure issues.

Resource requirements

The resource requirements for an Exchange are not insignificant. The Exchange needs the capacity to accomplish an extensive list of tasks—including processing applications, confirming eligibility for tax credits, billing premiums, monitoring employer contributions, reconciling payments, developing and maintaining a website, payment of commissions, ongoing marketing and outreach, and developing and maintaining an electronic interface and customer call center. Capital requirements and staffing needs will likely be greater if more than one Exchange is established within a state.

There are some economies of scale that could be realized in establishing a multi-state Exchange, as some of the resources could be shared across state lines. However, many of these opportunities are possible even if Washington State pursues its own Exchange. Joint procurement of certain back-office administrative functions such as processing enrollment, providing customer service, and developing a website, may be possible to coordinate with other states. In addition, regional quality and/or payment reform demonstration projects, or grants, are also worth considering.

Washington State has some experience operating Exchange-like duties. Washington State is ahead of many other states in that it has a small Exchange (the HIP) that has selected small group plans and will offer subsidized coverage to eligible low-wage participants in the small employer's enrolled group. The state will need to assess its capacity to host an Exchange by either the HCA or a new state or quasi-state agency. It may also want to consider capabilities within its private infrastructure to determine whether contracting with private entities for some Exchange functions is advisable.

Implementation timeline

The ACA requires states to have their Exchange operational by January 1, 2014 with states demonstrating significant progress toward that goal by January 1, 2013. With this ambitious timeline, it seems unlikely that states would be able to coordinate a regional Exchange that necessitates working with other state legislatures, administrations and decision-making processes. It also seems unlikely that Washington State (or any other state) would want to establish two separate Exchanges within this limited timeframe. It will be important for the Exchange Development Board to be mindful of this implementation timeline when making recommendations for governance and organizational structure, and to ensure that these decisions can be responsive to the adjustments that will be needed once the implementation process begins.

Desired accountability and transparency

The ACA contains a host of requirements for insurance plans participating in Exchanges that should significantly improve the transparency of insurance products. Such provisions include: 1) information on claims-payment policies and practices, 2) financial information, 3) data on enrollment and disenrollment, 4) claims denials and rating practices, 5) cost-sharing and out-of-network coverage, and 6) data on enrollees' rights. There is an expectation that a governmental organization is subject to the greatest level of accountability and transparency, although enabling legislation could include provisions to ensure greater transparency should Washington State prefer the Exchange to be housed in a quasi-state agency or nonprofit entity. Ensuring accountability in a multi-state Exchange would be challenging, as the Exchange would most likely need to be housed in a non-profit entity and oversight by multiple states may be difficult to manage.

Degree of state authority preferred

The ACA provides significant flexibility in this area. The ACA requires the Exchange to be housed either within a state organization or a nonprofit, but provides no guidance on how the governing boards are established. There is also no guidance on how state Exchanges are expected to relate to, and interact with, other state entities.

Washington State could operate its Exchange within the HCA or designate another executive agency. Under this model, an advisory board may be established to provide guidance on Exchange policies and procedures, but the ultimate decision-making authority would rest within an executive branch agency. A government agency model would provide the greatest degree of state authority, but would be significantly influenced by changes in administration.

Alternatively, housing the Exchange in a nonprofit organization may be perceived by some to be more agile and business-friendly, particularly for the SHOP¹ Exchange, and it would be less dependent upon state politics. This model would distance the state from necessary and time-sensitive decision-making. In addition, since states are ultimately responsible for implementing many of the provisions in the ACA, it seems the benefits gained from placing the Exchange in the hands of a nonprofit might not be worth this significant trade-off in oversight and authority.

A quasi public-private structure, similar to what is in place for the HIP, could provide Washington State the desirable balance between decision-making and responsibility. The board governance structure of a quasi-state entity could allow the state to have some say in how policy decisions are made. Under this model, there would need to be a balance between policy-setting responsibilities of the board and the administrative responsibilities of Exchange staff. In general, boards can provide oversight for broad policies, such as approving major contracts with vendors, setting carrier selection criteria and standards for transparency.

It will be important for the Exchange Development Board to carefully consider where primary responsibilities for governance should reside. The Development Board will need to discuss how an Exchange should be governed. Questions such as who can serve on the boards, how many members will comprise the board and for what length of term? Similar to the composition of the HIP Board, it may be important that members be chosen for their professional and community leadership and experience. Strong backgrounds in business, consumer advocacy, health care, and community service or other skills may be considered. Whether or not to include ex-officio members is another important consideration.

¹ States are required to establish a small business health options program (or "SHOP exchange") for eligible small employers.

There are many different models for quasi-state structures. The Exchange Development Board should consider which model provides the level of authority the State desires, while being mindful of the other values it finds important.

Headcount estimates for the Exchange market

It is important to consider how many individuals will purchase through the Exchange when considering governance and organizational structure issues such as whether more than one Exchange is warranted. A preliminary estimate of the number of subsidized individuals who will be purchasing through the Exchange is 597,100². It is difficult to estimate how many non-subsidized individuals or businesses will purchase through the Exchange.

In Massachusetts, most insured individuals and businesses remained with their current distribution channel (the private-sector market - outside of the Connector) while approximately half of the newly insured individuals purchased through the Massachusetts Connector. HIP's experience over the next year may provide some additional information to guide these estimates.

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² "Lower Taxes, Lower Premiums: The New Health Insurance Tax Credit in Washington." The Lewin Group for Families USA, September 2010. At this point in the project, the Health Care Authority has decided to use figures from national sources to begin discussing the magnitude of potential Exchange enrollment. It is our plan to coordinate with Washington State efforts to estimate the impact of an Exchange and readers can expect these figures to be refined in later issue briefs.