

**In Brief: Key Decisions for States
Establishing a Health Insurance Exchange**

Basic Functions of an Exchange

The Patient Protection and Affordable Care Act (PPACA) requires that each of the 50 States establish at least one American Health Benefit Exchange (Exchange) and a Small Business Health Options Program (SHOP) Exchange by January 1, 2014.

An Exchange performs five basic services:

1. Certifying that health plans meet minimum benefits standards
2. Facilitating the purchase of certified plans by qualified individuals and employers
3. Assisting consumers in evaluating and enrolling in plans
4. Helping eligible individuals and small businesses access premium and cost sharing subsidies
5. Streamlining access to subsidized health insurance programs, including Medicaid, Medicare, CHIP, or a plan subsidized through the Exchange

Key Decisions for States

While the law gives the Secretary of Health and Human Services significant influence over the establishment and operation of state Exchanges, PPACA specifically designates to States the following major implementation decisions:

Who will establish the Exchange? The first key decision for a State is whether to “elect” to establish an Exchange through State law or regulation, or whether to abdicate the responsibility to operate an Exchange to the Secretary of HHS. If a State has elected to establish an Exchange, then in January of 2013, the Secretary will review the State’s progress to determine if a State Exchange will be operational by January 2014. If she determines the State will not be ready, then the Secretary will step in and establish an Exchange in the State by the January 2014 deadline.

How will the Exchange be structured and governed? This decision can impact the focus and culture of the Exchange significantly. The Massachusetts Exchange is governed by an independent, quasi-governmental body that exists as separate legal entity from the State, while the Utah Exchange is housed within the Governor’s Office of Economic Development. Other key structural and governance decisions include: how much contracting authority to grant the Exchange and whether to have a multi-state Exchange and/or a consolidated Exchange for the individual and small group markets.

What functions (if any) beyond federal law will the Exchange perform? PPACA details a minimum list of functions an Exchange must perform.

PPACA says an Exchange shall, at minimum:

- Certify, recertify and decertify health plans as “qualified,” using criteria developed by the Secretary
- Assign a quality rating to each plan using criteria developed by the Secretary
- Make available a toll-free telephone hotline to respond to requests for assistance
- Maintain an Internet website with standardized information on plans
- Utilize a standardized format for presenting health benefits plan options in the Exchange
- Notify employers when an employee ceases coverage under a qualified health plan

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- Streamline and coordinate enrollment procedures for all state and federal health subsidy programs and enroll eligible individuals in such programs
- Pass income-related information from applicants to the IRS for purposes of verifying/determining:
 - Eligibility to use Exchange
 - Amount of tax credit and cost sharing subsidies
 - Whether individual is exempt from personal responsibility requirements of PPACA
- Pass citizenship/immigration status information from applicants to Social Security Administration/ Department of Homeland Security to verify eligibility to use Exchange
- Verify/resolve information provided to Exchange by applicants and flagged as inconsistent
- Create an online calculator to allow individuals to determine the actual cost of coverage after the application of any premium and costsharing subsidies
- Establish the Navigator program

However, the law also allows the Secretary and/or state to broaden its functions. While States will want to take into account both the budgetary and regulatory impacts of expanding the Exchange's functions, there are potential benefits to such a decision. For example, both the Massachusetts and Utah Exchanges currently perform an "aggregator" function, allowing a single payment to an insurer that includes both payroll deductions and individuals' premium contributions.

Will the Exchange be implemented prior to 2014? The Secretary is authorized under PPACA to provide grants to States starting in 2010 for planning and establishing Exchanges. This provision could allow States to implement Exchanges by phasing in populations sequentially, rather than opening an Exchange to hundreds of thousands of new purchasers on the required first day of operations--January 1, 2014. Both the Massachusetts and Utah Exchanges phased-in their operations, and each have modified their practices based on lessons learned from early experiences.

Will the State make changes beyond federal law that impact the cost of insurance for individuals and businesses purchasing through the Exchange? Specifically, states may utilize flexibility in the law regarding benefits, rating areas and employer eligibility rules. For example, while all plans purchased through an Exchange must offer a minimum benefit package set by the Secretary of HHS, PPACA allows states to require more generous benefits, provided the state is willing to assume the additional subsidy costs that result from these requirements. States are also given responsibility for establishing geographic rating regions for health plans and deciding whether to allow businesses with 51-100 employees to access the Exchange prior to 2016.

When and how will premium increases be monitored? PPACA requires all States to monitor insurance premium increases, both inside and outside the Exchange, beginning in 2014. From 2010 to 2014, the Secretary of HHS can award \$250 million in grant funding to states to aid in reviewing and, if appropriate under State law, approving health insurance premium increases. States considering establishing an approval process for premium increases should monitor recent developments in Massachusetts, where Governor Deval Patrick invoked emergency regulations earlier this year to grant the State Insurance Commissioner the right to deny "unreasonable" premium increases sought by insurers.

Health Insurance Exchanges, as created under PPACA, are regulated heavily by and operationally tied to the federal government. However, States are given a limited set of responsibilities and opportunities in the early years of implementation to affect the character of Exchanges established within their borders. States should consider carefully these choices as they can impact the focus and success of the exchange as well as the cost of insurance.

This brief summarizes Health Insurance Exchanges: Opportunities, Pitfalls and a Fork in the Road by Cindy Gillespie and Frank Micciche. For more information on health insurance exchanges contact Cindy Gillespie at cdgillespie@mckennalong.com or Frank Micciche at fmicciche@mckennalong.com.

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