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Center for State Health Policy

Summary of Proceedings

Stakeholder Forum to Discuss Governance Options for a New Jersey Health Insurance Exchange

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New Jersey health care stakeholders met on November 15, 2011 to consider key questions related to the governance of a state health insurance exchange. The forum included members of New Jersey's broker, consumer, employer, insurer and provider communities, as well as representatives of New Jersey's Interdepartmental Working Group on the Affordable Care Act (ACA). While stakeholders expressed differing views on the best option for coordinating the new exchange marketplace with the state's existing health insurance marketplace, as well as on the specific composition of its board, most were in agreement that the exchange should be created as an independent organization "in, but not of" a state department that would be governed by a small board, with active input from an advisory committee. Participants in the discussion also expressed a strong preference that the exchange be subject to transparency rules that apply to other state agencies, but that the exchange should perhaps be permitted to adopt more accelerated procurement rules in order to get up and running in time to meet the Affordable Care Act requirements.

Multi-stakeholder Forum Convened to Examine Governance Options for NJ's Health Insurance Exchange

On November 15, 2011, on behalf of the New Jersey Interagency Working Group on the Affordable Care Act (ACA), the Rutgers Center for State Health Policy convened a stakeholder forum to discuss options for the structure and governance of a New Jersey health insurance exchange.

The ACA establishes state-based health insurance exchanges as a vehicle for expanded access to affordable, quality coverage. A series of federal grants have been provided to states to help establish these exchanges. Among the criteria set by the U.S. Department of Health and Human Services (HHS) for a state to qualify for federal exchange implementation funding is a proposed governance structure for its exchange.[1] This forum focused on options related to that structure.

As part of its ACA planning and implementation activities to date, along with commissioning a series of analytic efforts, the state held more than a dozen stakeholder forums to capture views separately from providers, consumers, employers, insurers and brokers on key issues related to the establishment of a New Jersey exchange. This additional forum brought together members of each of those groups to discuss alternate options. Members from the state's Working Group on the Affordable Care Act also participated in this discussion.

Robert Schwaneberg, Policy Advisor to the Governor for Health Care, and leader of the Working Group, opened by describing New Jersey's stakeholder input process as a "blank sheet of paper" with a "long list of questions." Today, he noted, there are fewer, and more focused questions—all assuming a state-run health insurance exchange in place in New Jersey. The purpose of the meeting was to examine concrete details about the model for the exchange governance structure. Schwaneberg identified many factors that could affect the shape of the exchange, including congressional deficit reduction efforts and Supreme Court

[1] Health Insurance Exchange Establishment Grants Fact Sheet

decisions. While the state has not yet made a decision to run its exchange, in order to qualify for the next round of implementation funding and not be left by default with a federally-run exchange, the state needs to move forward with its exchange planning efforts.

Key Exchange Governance Issues for New Jersey

To frame the discussion, Professor John Jacobi, Dorothea Dix Law Professor at Seton Hall University Law School, presented an overview of a paper he had authored—*Health Insurance Exchanges: Governance Issues for New Jersey*. The paper, produced under a collaboration with the Center for State Health Policy and funded by the Robert Wood Johnson Foundation, reviews ACA requirements, governance options other states are pursuing in developing their exchanges and how both fit into the unique context of New Jersey. The paper concludes by outlining one option for the structure and governance of a New Jersey exchange that focuses on an "*in, but not of*" organizational model, with a small governing board of independent experts and agency ex-officio members. This board would have authority over the state's entire regulated small group and individual insurance markets and consult with a larger advisory committee of stakeholders. The exchange would be subject to typical transparency and public accountability rules (see box).

Jacobi pointed to the two most critical issues within that option for the group to consider: First, how governance of the exchange would be coordinated with governance of NJ's existing small employer group and individual markets. And, second, the basis for selection of its board--what he termed "the real divide" in existing governance models. Some states have allocated slots to representatives from different health care stakeholder groups, while others have pursued experts not affiliated with any particular group. Each approach has its merits.

Stakeholders had differing opinions on how to coordinate the exchange with the existing health insurance markets.

The stakeholders first addressed the issue of whether the exchange board should have authority over the entire regulated small group and individual health insurance marketplace to help coordinate its functioning and ensure balance in actuarial risk between markets inside and outside the exchange.

For nearly two decades, New Jersey's individual and small employer group health insurance "exchange-like" markets have been governed by the Individual Health Coverage (IHC) and Small Employer Health Benefits (SEH) boards.[2] In all likelihood, these markets will need to continue to operate outside the exchange, especially as they will be the only available source of coverage for the state's estimated 550,000 undocumented immigrants.[3] With that in mind, it is critical that each of the marketplaces—i.e., the non-exchange individual and small group markets, and the exchange individual and small group markets—coexist and remain healthy, without any one market attracting an undue share of risk.

While across the board, the group spoke of the importance of coordination across these markets, there were differing views on *how* that coordination should take place, with insurers and employers wary of the exchange board focusing on products outside the exchange and consumers arguing for the exchange board to have oversight over all markets.

Insurers opened by arguing that the exchange board should have purview over exchange products only. They pointed to the ACA as including a number of mechanisms to spread risk and believed that the NJ Department of Banking & Insurance (DOBI) could continue in its role to ensure balance in the marketplace. Adding "another layer" of governance, they noted, would be less efficient, more costly, create duplicative regulatory authority and create too much for the exchange to take on, especially as it was getting up and running. Insurer participants wanted the exchange, at least initially, to focus on facilitating access to the purchase of insurance, not on fixing the marketplace.

A Governance Model for New Jersey's Exchange

One form of governance that could appropriately accommodate the variety of demands on the exchange would be one in which:

- The exchange is a government agency in but not of a principal department;
- The governing board is relatively small, with two or three *ex officio* members and five or six public members selected for their familiarity and expertise in key substantive areas, and their independence from business ties to interested stakeholders;
- The governing board is required to consult with a larger advisory board, comprising representatives of the key stakeholders;
- The governing board has supervisory authority over all individual and small group insurance markets, including those remaining outside the formal exchange structure; and
- The exchange is generally subject to the transparency and public accountability provisions applicable to government agencies, with tailored exceptions necessary to permit it to respond quickly and efficiently to market changes.

Excerpted from Jacobi's *Health Insurance Exchanges: Governance Issues for New Jersey*

[2] Jacobi, J, *Health Insurance Exchanges: Governance Issues for New Jersey*, Rutgers Center for State Health Policy, September, 2011.

[3] Lloyd, K, *Health, Coverage and Access to Care of NJ Immigrants: Findings from the 2009 New Jersey Family Health Survey, June 2011*, and Passel JS, Cohn D. *Unauthorized Immigrant Population: National and State Trends, 2010.* Washington, DC: Pew Hispanic Center; 2011.

While employer representatives spoke of the importance of coordination, they also wondered how an umbrella board might affect purchasing and what they described as "fairly nimble oversight" of these markets by their existing boards.

Consumer representatives, on the other hand, believed that a single oversight board would enable the exchange to respond quickly to market conditions, help coordinate what they describe as an overly fragmented and complicated marketplace, as well as establish a single entity within the state with an eye toward addressing both access and cost. In response to the insurer concerns about "yet another layer," one representative from a consumer group offered the option to "scrap" the existing boards and have one unified board with coordination at the staff level.

Some consumers and insurers pointed to form following function, with the need to establish a goal, mandate or mission for the exchange board and allow the functions and purview of the board to emanate from that vision.

There were mixed views on whether the exchange board should be comprised of knowledgeable experts selected because of their stakeholder perspectives or whether board members should be independent experts.

Some existing exchange boards are structured to be governed by stakeholder representatives; others are comprised of independent experts without ties to a particular stakeholder group. The forum's stakeholders had mixed views with regard to which model New Jersey should pursue.

Consumer participants unanimously argued for independent experts, pushing for the "highest standards possible" on conflict of interest issues. They warned that the business of the exchange board would entail "tremendous room for conflicts," not only in terms of the regulatory issues discussed above, but, also related to decisions about the allocation of potentially billions of dollars in federal subsidies. They warned that such conflicts would "quickly undermine the public trust in the board." Others offered that the "first loyalty" of the board members should be to the interests of the public and small businesses buying through the exchange, not to a particular organization that they might represent. They argued to carefully define the type of expert that should be seated on the board: for example, someone with expertise in hospital administration, but not someone from the NJ Hospital Association; or similarly, a physician, but not a representative from the NJ Medical Society. In other words, in forming the exchange board, the state should aim to capture expertise, while ensuring members are not beholden to a particular constituency. Some participants argued that the goal of establishing a comparatively small, nimble board would be undermined in the stakeholder board model because of the large number of stakeholder groups that would pursue seats on the board.

Some insurer and business representatives argued for more of a stakeholder-based model to ensure that the board would be constituted with a wide range of expertise, particularly with regard to understanding the nuances of private insurance markets . They pushed for not excluding any groups, believing that as long as the stakeholders were balanced in an "appropriate mix," without any one group dominating, and that members disclosed any conflicts, the model could work. These participants cited the success of stakeholder representation on existing insurance regulatory boards in NJ.

Across the board, stakeholders argued for a very active advisory committee.

Some participants suggested that an advisory committee to the board was ultimately the best home for stakeholder input, with seats where "every stakeholder can have a place" and the legislature having authority to supplement the advisory board membership, as it would see fit.

Others worried that these type of advisory committees just become "window dressing," possibly without a real substantive role in the exchange's performance. To help mitigate this, several suggestions were offered:

- There could be regular meetings required between the board and its advisory committee to ensure appropriate communication and responsiveness
- The board could be mandated to consult with the advisory committee or working subcommittees of the advisory committee to help integrate stakeholder expertise into the exchange's activities
- The advisory committee could be charged with issuing a report to the legislature with recommendations for changes to the exchange legislation a year after its enactment

There was unanimous agreement on a small-sized board.

Despite differences on the composition of the board, participants agreed that it should be small, believing that, in order to meet the ACA-required deadlines, it needs to be nimble and efficient. More than one suggested that seven might be the optimal membership, with three ex-officio members representing those agencies with responsibilities most closely aligned to the work of the exchange—namely, the NJ Departments of Banking & Insurance, Human Services, and Health and Senior Services.

... And widespread push for an "in, but not of" model.

While one participant argued that either an "in, but not of" model or a nonprofit would work best, most leaned toward an "in, but not of" agency structure for the exchange, emphasizing the importance that it be accountable, but shielded from politics and from the budgetary constraints facing the state. Some offered if the exchange were established as an authority that it would possibly be able to issue bonds. They also wondered out loud about which was the appropriate "in, but not of" agency to house the exchange, questioning whether there needed to be some distance between the regulator and the exchange.

Stakeholders urged to keep standard (or perhaps adopt enhanced) transparency and public accountability rules, but possibly adopt more accelerated procurement rules.

Everyone agreed that the exchange should be subject to the standard transparency rules, such as the Open Public Records and Meetings Acts (OPRA). However, a number of participants spoke to the importance of moving quickly as the rationale for potentially expediting the procurement process. They worried that the current procurement processes would slow the exchange to the point of missing ACA deadlines. According to one, we're already "close to the point of no return" in being able to establish a fully functional exchange as envisioned under the ACA.

One consumer representative argued that, in some cases, the state should go beyond existing transparency requirements for the exchange—requiring measureable goals within the legislation, as well as requirements for Web-based reporting on efforts to meet those goals. Too often, they noted, people get lulled into complacency by enacting excellent policies in this state, without ensuring excellent outcomes. Formalizing accountability to publicly report back on how these policies are being implemented could help avoid this problem for the exchange.

While there are still many uncertainties regarding the implementation of the ACA, most stakeholders argued that the state should move forward regardless of what happens at the federal level or with the Supreme Court.

The meeting closed with a discussion of "contingency plans" the state should pursue given all the uncertainties that are surrounding implementation of the ACA, especially in light of possibilities that the entire Act or a significant component could be repealed or struck down by the Court.

Consumers noted that, even if the Act is repealed, "you can't repeal the problem"—which has worsened in New Jersey over time, they noted, citing decreasing enrollment in standard plans and record numbers of uninsured. Nearly across the board—consumers, providers and insurers—each spoke against the state's legislation including a "poison pill" clause. Several states have included such a provision, thereby making exchange legislation null-and-void were the ACA to be repealed. According to one insurer representative who spoke of capital investments already being made in preparation for ACA implementation, everyone's put their "skin in the game at this point."

Other Resources

Cantor JC, D Gaboda, J Nova, and K Lloyd. *Health Insurance Status in New Jersey After Implementation of the Affordable Care Act*. New Brunswick, NJ: Rutgers Center for State Health Policy, 2011.

Cantor JC, M Koller, S Brownlee, M Michael, D Belloff, and R Hughes. *Stakeholder Views about the Design of Health Insurance Exchanges for New Jersey: Volume I: Findings from Stakeholder Forum Discussions & Survey.* New Brunswick, NJ: Rutgers Center for State Health Policy.

Cantor JC, M Koller, S Brownlee, M Michael, D Belloff, and R Hughes. *Stakeholder Views about the Design of Health Insurance Exchanges for New Jersey: Volume III: Appendices.* New Brunswick, NJ: Rutgers Center for State Health Policy, 2011.

Michael M, R Hughes, D Belloff, M Koller, and JC Cantor. *Stakeholder Views about the Design of Health Insurance Exchanges for New Jersey: Volume II: Proceedings from Stakeholder Forum Discussions*. New Brunswick, NJ: Rutgers Center for State Health Policy, 2011.

RUTGERS
Center for State Health Policy

112 Paterson Street, 5th Floor
New Brunswick, NJ 08901
www.cshp.rutgers.edu
For more information email CSHP_Info@ifh.rutgers.edu

Contributing to this summary:
Maureen Michael, MGA, Consultant
Margaret Koller, MS, Executive Director
Joel C. Cantor, ScD, Professor & Director

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