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Update on Ohio's options for health insurance exchanges

Introduction

Under the Patient Protection and Affordable Care Act (ACA), states have the opportunity to establish Affordable Insurance Exchanges (exchanges) to assist qualified individuals and small employers with selecting and/or purchasing health insurance coverage.[1] As provided for in final regulations issued by the U.S. Department of Health and Human Services (HHS), a state may choose to establish its own exchange, work with HHS to operate a hybrid exchange (often called a "partnership" exchange by the federal government), or defer to HHS to establish a federal exchange.[2]

HHS has indicated that states have until November 16, 2012 to declare their intent to establish a state-based or hybrid exchange, or to defer to a federal exchange.[3] At this point in time, it is likely that Ohio will choose between a hybrid exchange and a federal exchange for 2014 because full implementation of a state-based exchange by 2014 may not be possible. In making this decision, state policymakers will consider carefully the available options and the implications of the alternatives. This policy brief is intended to explore the various facets of the decision.

The Health Policy Institute of Ohio convened a committee of diverse stakeholders in spring and summer of 2012 to assist the organization in understanding the implications of the federal rules, guidance, bulletins and law related to exchanges. This brief includes information gathered from the meetings of this committee.

Exchange implementation

An exchange is an organization that operates a marketplace where consumers and small businesses can shop for, select, and enroll in qualified health plans offered by private health insurance companies. In the context of the ACA, exchanges also help people with lower incomes obtain federal subsidies to pay for coverage, screen for or conduct eligibility determinations for public programs such as Medicaid, and enroll individuals in private coverage and, in some cases, public programs. Individuals and small businesses will begin to enroll in exchange plans in October of 2013, with coverage first becoming effective January 1, 2014.

The ACA provides that if a state decides not to establish an exchange, or has not taken action necessary to implement an exchange as of January 1, 2013, the Secretary of HHS shall establish and operate an exchange within that state.[4] According to more detailed guidance issued by HHS, a state may choose to establish its own exchange, work with HHS to operate a hybrid exchange, or defer to HHS to establish a federal exchange.[5] If a state establishes its own exchange, it will perform all exchange functions subject to federal standards and HHS oversight. If a state defers to a federal exchange, HHS will perform all exchange functions. With a hybrid exchange, the federal government governs the exchange, with a state performing certain discrete functions and HHS performing the remaining functions.[6]

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It was not until HHS issued its "Draft Blueprint for Approval of Affordable State-based and State Partnership Insurance Exchanges" in May of 2012 that it became clearer what a hybrid exchange might look like.[7] The Final Blueprint, issued on August 13, 2012, established the guidelines and framework for states to implement a hybrid exchange.[8] As explained in the Final Blueprint, a hybrid exchange is a variation of a federal exchange, with HHS having ultimate responsibility for operating the exchange, but giving states the opportunity to (1) control plan management functions, (2) manage certain consumer assistance functions, (3) establish a state operated reinsurance program, and/or (4) undertake Medicaid eligibility determinations.[9] States electing a hybrid exchange can apply for and receive federal exchange grant funding to pay for activities to implement a hybrid exchange.[10] It should be stressed, however, that with a hybrid exchange, HHS is ultimately responsible for exchange implementation, and HHS has authority to ratify state decisions related to state functions.[11]

HHS has established a timetable for states to proceed with establishment of exchanges. On or before November 16, 2012, states must notify HHS of their intent to implement a state-based exchange or hybrid exchange, or allow the federal government to operate all exchange functions. By that date, a state must complete and submit an exchange blueprint to HHS that documents that the state's exchange will meet legal and operational requirements beginning in 2014.[12] If a state does not submit an exchange blueprint to HHS by November 16, 2012, HHS will establish a federal exchange in that state.

The next important deadline is January 1, 2013. On this date, states that have elected to operate state-based or hybrid exchanges must demonstrate to HHS that they have taken the steps required to perform all required functions by January 1, 2014. States must have developed a work plan and be far enough along with implementation to ensure that the exchange will be fully operational when consumers begin to enroll in October of 2013.

States that elect not to go forward with a state-based or hybrid exchange in 2014 may elect to implement state-based or hybrid exchanges in future years. In order to do so, the state must submit an exchange blueprint and demonstrate readiness to HHS approximately one year prior to the date in which coverage offered through the exchange becomes effective. For example, if a state elects to establish a state-based exchange in 2015, the state is required to submit an exchange blueprint to HHS by November 18, 2013 and must show HHS its readiness by January 1, 2014.[13]

The work Ohio has done thus far, and the available options

In terms of exchange planning and implementation in Ohio, the Ohio Department of Insurance (ODI) received an exchange planning grant from HHS in 2010 which was used to evaluate the impact of the ACA on Ohio's insurance markets,[14] to assess Ohio's technological capabilities to support an exchange[15] and to develop a roadmap and budget for establishing a state-based exchange.[16] ODI commissioned Milliman and KPMG to perform this work.

The report issued by Milliman predicted the potential annual operating costs of a state-based exchange. Milliman estimates an annual operating cost (excluding IT costs) ranging from $19.1 million to $33.8 million in 2015-2016.[17]

The roadmap for establishing a state-based exchange, performed by KPMG, indicated that an exchange could take four years to implement and may require 2,500 person-months to build the necessary infrastructure.[18] The roadmap also indicated that efforts needed to be mobilized quickly to meet the 2014 deadline.[19] Furthermore, the KPMG report predicted IT costs for an exchange.

Key exchange dates

March 27, 2012	Final regulations applicable to state-based exchanges issued
May 16, 2012	Guidance on federal exchanges released
June 28, 2012	Supreme Court rules ACA constitutional
Aug.13, 2012	Final Exchange Blueprint published (hybrid model explained)
Nov.16, 2012	Deadline for states to declare their intent to establish a state-based or hybrid exchange, or to defer to a federal exchange
Jan. 1, 2013	Deadline for states to take action necessary to implement an exchange. If no action taken, HHS will establish and operate an exchange
Oct. 1, 2013	Open enrollment begins for exchanges
Jan. 1, 2014	All exchanges must be fully certified and operational

Notwithstanding the considerable task of implementing an exchange, there has been uncertainty as to both the implementation of the ACA and the specific requirements that apply to exchanges. In this regard, on June 28, 2012, the United States Supreme Court ruled the ACA was constitutional, removing a potential barrier to the implementation of exchanges. In addition, in the Spring and Summer of 2012 HHS issued guidance with more details regarding state and federal responsibilities under state-based, hybrid and federal exchanges. Final regulations applicable to state-based exchanges were issued on March 27, 2012,[20] while guidance on federal exchanges was released on May 16, 2012.[21] The final Exchange Blueprint explaining the hybrid model was published on August 13, 2012.[22] These regulations provide some additional clarity to states regarding their role and obligations with respect to exchange implementation options.

Given the estimated time needed to implement a state-based exchange, it appears unlikely the state of Ohio will attempt to establish a state-based exchange to begin operations in 2014. That leaves the state with two options for 2014: (1) a federal exchange or (2) a hybrid exchange. For 2015 and beyond, the state would retain the option to establish a state-based exchange.

Comparison of the available exchange options

With a state and federal exchange, the analysis is simple – HHS performs all exchange functions in a federal exchange and the state performs all exchange functions in a state-based exchange, subject to federal oversight.

With a hybrid exchange, although HHS operates most exchange functions, the state may choose to perform any or all of the following:

1. Plan management, such as certifying plans to participate in the exchange
2. Consumer assistance, including in-person assistance, outreach and education
3. State navigator programs
4. Eligibility determination for Medicaid coverage
5. Reinsurance program[23]

In order to take on these functions, a state is required to:

1. Enter into appropriate agreements to perform exchange functions
2. Interface and coordinate with the exchange to ensure seamless operations and consumer experience
3. Share data to support the eligibility and enrollment processes
4. Submit data on a timely basis in required formats
5. Adhere to the terms and conditions of all agreements and comply with federal guidance, policies and procedures[24]

To understand the choices facing Ohio, it is important to understand the operational functions of an exchange and who is responsible for performing those functions under a hybrid model. In this regard, the charts on pages 4 and 5 provide a summary of the functions that all exchanges are expected to perform, along with a checklist of functions a state may choose to perform in a hybrid exchange.

Exchange functions[25]

Consumer assistance functions

Required exchange function[26]	Functions a state may choose in a hybrid exchange
Conduct outreach and education to consumers about available coverage and subsidies	✔
Establish an internet website where consumers can shop for, compare and enroll in coverage	
Operate a call center to answer consumer questions and to assist with enrollment	
Oversee a navigator program to assist consumers to navigate the exchange system	✔
Provide in-person assistance to consumers shopping for coverage	✔
Coordinate with insurance agents to assist consumers	

Eligibility and enrollment

Required exchange function	Functions a state may choose in a hybrid exchange
Develop a streamlined application for coverage	
Match and verify application data against other data sources	
Process and approve applications for coverage	
Determine eligibility for Medicaid and CHIP	✔
Determine eligibility for subsidies	
Determine individual responsibility requirements and conduct exemption determinations	
Notify individual and employers of determinations and coverage	

Plan management

Required exchange function	Functions a state may choose in a hybrid exchange
Certify qualified health plans to participate in exchanges	✔
Collect data from plans as required by federal law	✔
Ensure ongoing qualified health plan compliance with standards related to plan benefits, cost sharing, enrollment periods, network adequacy, marketing standards, premium rate increases, and consumer complaints	✔
Oversee qualified health plan reporting	✔

Risk adjustment and reinsurance

Required exchange function	Functions a state may choose in a hybrid exchange
Operate the risk adjustment program	
Operate the reinsurance program	✔

SHOP exchanges

Required exchange function	Functions a state may choose in a hybrid exchange
Enroll small employers in coverage	
Collect employer and employee contributions and aggregate premiums	
Outreach and assistance to small employers	✔

Organization, oversight and operations

The following functions are performed by the state in a state exchange and by the federal government in a federally facilitated exchange or hybrid model:

- Organize and staff the exchange
- Oversee and monitor exchange activities
- Comply with all accounting and reporting requirements
- Develop organization structure, staffing plans and budget
- Develop adequate IT infrastructure (Implement privacy and security requirements)
- Contract and outsource functions

In terms of paying for exchange-related costs incurred by a state, HHS has the authority to issue grants to states which may be used to cover the costs of establishing a state-based exchange, participating in a hybrid exchange, or interfacing with a federal exchange.[27] In this regard, HHS has approved establishment grants for 34 states and the District of Columbia that have chosen to implement state-based or hybrid exchanges.[28] As of October 2012, Ohio has not applied for an exchange establishment grant. HHS has indicated that states can apply for grants through the end of 2014.[29]

Exchange establishment grants may pay for exchange-related expenses only until the end of the first year that coverage is provided through an exchange or the date the exchange becomes self-sufficient, whichever occurs first.[30] By the time federal funding for state-based exchanges ends, states are expected to create alternative funding mechanisms to allow the exchange to become self-sufficient.

Implications of a hybrid exchange versus a federal exchange

The choice between a federal exchange and a hybrid exchange has important implications for the state of Ohio's involvement in overseeing health insurance coverage sold to Ohioans. Under current Ohio law, the Ohio Department of Insurance (ODI) licenses insurance companies to sell health insurance in Ohio, monitors and evaluates the financial solvency of companies, reviews health insurance policies to make sure they comply with state and federal requirements, and reviews premium rates to make sure they are actuarially justified and meet state and federal standards. In comparison, under the ACA, exchanges oversee health plans and the products they offer through the exchange, which include certifying that insurance companies meet exchange standards, reviewing qualified health plans for compliance with benefit and cost sharing requirements, and reviewing premium rates to make sure rate increases are justified. Thus, the oversight responsibilities of an exchange overlap with the current regulatory responsibilities of ODI. As a consequence, a hybrid exchange may be an attractive option for Ohio because the plan management functions of an exchange are similar to the regulatory functions already performed by ODI. The following chart compares some of the regulatory functions that the state of Ohio currently performs in comparison to the oversight functions performed by an exchange.

State regulatory functions (current and with exchange)

Function	ODI	Exchange
Company licensure	ODI licenses insurance companies as being in compliance with state law	Companies offering coverage on an exchange must meet certification standards which include state licensure requirements
Company solvency	ODI monitors the financial solvency of insurance companies and may suspend a company from selling insurance if the company is in hazardous financial condition	Companies offering coverage through the exchange must continue to meet certification requirements including solvency requirements
Benefit plans	ODI reviews health insurance policies for compliance with state and federal law	The exchange reviews qualified health plans for compliance with federal standards such as essential benefits, cost sharing and actuarial value
Premium rates	ODI reviews premium rates for actuarial justification and compliance with small group rating laws	The exchange reviews premium rates to make sure they comply with federal rating requirements; rate increases must be justified.
Consumer assistance	ODI conducts outreach to educate consumers and assists consumers with questions and complaints against insurance companies; ODI does not recommend insurance companies or products to consumers	The exchange will provide tools such as a website and phone number to assist consumers in shopping for and enrolling in coverage; the exchange may help consumers to select companies or products that are appropriate for the consumer.

The choice between a federal exchange and a hybrid exchange has other implications related to regulatory control over the insurance companies operating within Ohio. Under the ACA, insurance companies are required to offer the same coverage inside an exchange as coverage offered outside an exchange, at the same rates.[31] As such, exchange oversight of plan benefits and rates will directly impact coverage sold outside of the exchange in the standard insurance market. The regulation of coverage offered inside and outside of an exchange may be better coordinated if the state of Ohio conducts both plan management functions inside the exchange and product reviews for coverage sold outside of the exchange.

In addition to considering state and federal regulatory functions to assess whether state involvement in a hybrid exchange makes sense, it is also helpful to consider the role of the state in implementing and operating a hybrid exchange as opposed to a federal exchange. With a federal exchange, the state will have only limited involvement in implementing the exchange. In contrast, with a hybrid exchange, the state may conduct plan management, oversee consumer assistance functions, and make Medicaid eligibility determinations. It should be noted, however, that a hybrid exchange will be operated by HHS, which means HHS must ratify state decisions regarding state functions.[32] Nonetheless, a state can implement and influence the operations of a hybrid exchange in the areas where the state is involved. The chart on page 7 compares state involvement with a federal exchange to state involvement in a hybrid exchange in key areas.

State involvement in federal and hybrid exchanges

Function or attribute	Federally Facilitated	Hybrid
Governance	A federal exchange is governed by HHS	Governed by HHS, with state option for oversight of plan management, consumer assistance, Medicaid eligibility determination, and reinsurance functions.
Stakeholder involvement	A federal exchange requires consumer involvement at the federal level.	With a Hybrid exchange, consumer involvement can be at the federal level as to federal functions and at the state level as to state functions.
Cost	HHS will incur costs of operating the federal exchange; states will incur traditional costs of regulating the insurance industry; duplicative costs are not eliminated.	HHS will incur the cost of federal functions and states will incur the cost of state functions. There could be an overall cost savings because some duplicative costs, particularly with plan management, could be eliminated.
Funding	During the first year, federal exchange expenses are funded with federal dollars; in subsequent years, exchange will become self-supporting, although funding mechanism is unclear.	Both state and federal expenses are funded with federal dollars for the first year; states may also obtain funds needed to coordinate state programs with exchange functions, such as coordination of Medicaid enrollment; after the first year, the exchange will become self-supporting, although funding mechanism is unclear.
Consumer Assistance	The federal exchange performs all exchange related consumer assistance functions including outreach and education.	A state can undertake consumer assistance functions, providing local assistance to consumers.
Criteria of Qualified Health Plan Selection	The federal exchange determines what health plans may be sold on the exchange; HHS has committed that during the first year all plans meeting minimum federal standards will be permitted to sell on the exchange.	The state determines what health plans may be sold on the exchange; states may choose to implement minimum standards or elect more stringent standards in the first year and future years.
Subsidies	The federal exchange determines eligible for subsidies.	Same
Navigator programs	The federal exchange implements and operates all navigator programs.	The state may operate navigator programs.
Medicaid eligibility determinations	The federal exchange conducts Medicaid eligibility determinations.	The state may continue to conduct Medicaid eligibility determinations.

Conclusion

By November 16, 2012, the state of Ohio has an important decision to make as to whether or how Ohio will be involved in the operation of the Affordable Health Exchange that will serve Ohio consumers. On the one hand, Ohio is concerned about entering into a venture where some details have not yet been disclosed and/or determined, particularly with regard to ongoing funding of state or hybrid exchange responsibilities. On the other hand, the state may lose authority over a large segment of its health insurance market, and may be subject to federal exchange operational requirements that conflict with state priorities and regulatory objectives. In the end, the state's decision to operate a state-based exchange, to participate in a hybrid exchange or to defer to the federal government must be based on available information and what is best for Ohio's consumers and health insurance markets. Ohio has until November 16 to make this decision.

Notes

1. The Patient Protection and Affordable Care Act, Pub. L. No. 111-148, §1311 (2010), as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 11-152 (2010), is referred to herein as the "ACA."
2. See 76 Fed Reg. 41870 and 41872; Blueprint for Approval of Affordable State-based and State Partnership Insurance Exchanges ("State Exchange Blueprint Document")(August 13, 2012), found at http://www.cciio.cms.gov/resources/files/hie-blueprint-081312.pdf.
3. State Exchange Blueprint Document, supra, at 4.
4. 42 U.S.C. 18041(b).
5. See 76 Fed Reg. 41870 and 41872; State Exchange Blueprint Document, supra.
6. State Exchange Blueprint Document, supra, at 2.
7. Draft Blueprint for Approval of Affordable State-based and State Partnership Insurance Exchanges (May 26, 2012), found at http://cciio.cms.gov/resources/files/Exchangeblueprint05162012.pdf.
8. State Exchange Blueprint Document, supra.
9. State Exchange Blueprint Document, supra, at 2.
10. See Exchange Establishment Cooperative Agreement Funding FAQs, found at http://cciio.cms.gov/resources/factsheets/hie-est-grant-faq-06292012.html
11. State Exchange Blueprint Document, supra, at 2.
12. Id. at 4.
13. Id.
14. See Milliman Client Report: Assist with the first year of planning for design and implementation of a federally mandated American Health Benefit Exchange (August 31, 2011), found at http://www.ohioexchange.ohio.gov/Pages/Resourc¬es.aspx.
15. See KPMG Report: State of Ohio Health Insurance Exchange Planning: Strategic Architecture Roadmap and Budget Report (September 14, 2011), found at http://www.ohioexchange.ohio.gov/Pages/Resources.aspx.
16. Id.
17. Milliman Client Report: Planning Ohio's Health Benefit Exchange, FInancing Options to Sustain Ohio's Exchange, August, 2011. Page 11. See page 11-13 of this report for a discussion of possible revenue sources.
18. Id. at 6.
19. Id. at 6.
20. 77 Fed. Reg. 18310 et seq.
21. General Guidance on Federally-facilitated Exchanges (May 16, 2012), found at http://cciio.cms.gov/resources/files/FFE_Guidance_FINAL_VERSION_051612.pdf
22. State Exchange Blueprint Document, supra.
23. Id. Section II: Application for Approval of Affordable State-based and State Partnership Insurance Exchanges at 43-44.
24. Id.
25. Id., Section II: Application for Approval of Affordable State-based and State Partnership Insurance Exchanges, Table I - Roadmap for Completing Exchange Application; and State Exchange Application.
26. See Exchange Establishment Cooperative Agreement Funding FAQs, found at http://cciio.cms.gov/resources/factsheets/hie-est-grant-faq-06292012.html.
27. In a state exchange, the state performs all functions and in a federal exchange, CMS performs all functions. In a hybrid exchange, there is a mix between the state-performed functions and federal-performed functions.
28. "Creating a New Competitive Marketplace: Affordable Insurance Exchanges," HHS Fact Sheet, posted May 23, 2011 and updated Sept. 26, 2012. accessed Oct. 18, 2012 at http://www.healthcare.gov/news/factsheets/2011/05/exchanges05232011a.html.
29. "HHS continues to support state efforts to build Affordable Insurance Exchanges," HHS press release. Sept. 27, 2012. accessed Oct. 17 at: http://www.hhs.gov/news/press/2012pres/09/20120927a.html.
30. Id.
31. 42 U.S.C. §18021.
32. State Exchange Blueprint Document, supra, at 2.

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