



## Health Care Exchange Overview and Update

On November 18, the Office for Consumer Information and Insurance and Oversight (OCIIO) of the U.S. Department of Health and Human Services (HHS) released a document entitled *Guidance for States Establishing Exchanges*<sup>i</sup>. The document is being published now to assist states with their initial planning and legislative activities in advance of the formal rulemaking process.

### The Exchange Concept

The concept of a state-based insurance exchange (“Exchange”) was envisioned by the authors of the Patient Protection and Affordable Care Act (PPACA) as the central vehicle through which certain individuals and small employers would be able to obtain health care coverage at rates similar to those enjoyed by large groups that have the ability to negotiate favorable discounts. By pooling the lives of individuals and small groups into large purchasing blocks, the hope is that the cost of future health care coverage could be better contained. By the time PPACA is fully implemented in 2014, these Exchanges will serve as a central health care marketplace for millions of people. The Exchanges primarily will provide assistance to those who qualify for enrollment in state Medicaid programs (incomes below 138% of the federal poverty level), and will be vehicles through which federal subsidies will be offered to persons who cannot qualify for Medicaid and can’t afford private health insurance.

The PPACA calls for implementation of an Exchange in each state. Individual states have the option of creating an Exchange, but may defer to the federal government to operate an Exchange in the state. If a state makes the decision to not establish an Exchange, PPACA requires that the OCIIO establish and operate an Exchange in that jurisdiction. The Exchange may be housed in a state agency, or it may be established as a not-for-profit. PPACA also allows states to enter into compacts with other states to provide regional Exchanges.

### Exchange Principles

OCIIO details the following “principles and priorities” as Exchanges are established in each state. The following section highlights information from the website where the OCIIO Guidance document was posted<sup>ii</sup>:

- **Establishing a State-Based Exchange.** Establishment of an Exchange is a critical step that states must take to be on track for achieving certification of an Exchange by January 1, 2013 under Section 1321. Establishment of an Exchange requires a planning process leading to state action, by legislation or other means, to create an Exchange entity with the authority necessary to meet all the Exchange requirements of the Affordable Care Act. In states that choose, now or at a later point in the process, not to establish an Exchange, HHS will work with the state to establish an Exchange.

*BenefitMall Comment:* BenefitMall encourages policymakers to carefully evaluate the successes and challenges associated with the already-existing Massachusetts and Utah Exchanges (See additional comments below). Policymakers need to address a number of operational and funding concerns. The not-for-profit option also should be seriously considered in addition to the government-run exchanges.

- **Promoting Efficiency.** Exchanges must be mindful of costs for consumers, employers and the federal government. Exchanges should have the flexibility to respond to local market conditions and take actions to facilitate competition among plans on price and quality. Successful Exchanges will adapt to changes in the market by redesigning and modifying business plans as opportunities develop, and will have the flexibility to deal with insurers, agents and other business partners in a manner that serves the Exchange's interest in maximizing value for consumers.

*BenefitMall Comment:* State flexibility and customization will be critical to address the unique environment in each state both for the individual and small group markets.

- **Avoiding Adverse Selection.** Successful Exchanges will avoid adverse selection by ensuring that those who buy through the Exchange are a broad mix of the healthy and the less healthy. The tax credits, which can only be accessed through the Exchanges, and insurance reforms required by the Affordable Care Act will reduce the potential for adverse selection against the Exchange, but will not eliminate it. States have flexibility to provide consistent regulation inside and outside the Exchange, and to take additional action to prevent adverse selection under Section 1311(e)(1)(B). The federal government will work with states to maximize state flexibility in this area.

*BenefitMall Comment:* National Association of Insurance Commissioners (NAIC) regulators and others have expressed serious concerns about the ability of an Exchange to maintain a level playing field once implemented. Adverse selection is a key concern and could undermine the entire Exchange program if sicker patients migrate to the Exchange insurance pool. The ability to reduce adverse selection through the size of tax credits has not been proven.

- **Streamlined Access and Continuity of Care.** Section 1311(d)(4)(F) requires Exchanges to evaluate and determine eligibility for applicants in Medicaid, the Children's Health Insurance Program (CHIP), and other health programs. Exchanges must also comply with all applicable federal statutes relating to nondiscrimination. The federal government will provide critical building blocks and financial support for achieving an efficient enrollment process including verification of eligibility for tax credits. Successful Exchanges will use those building blocks to streamline access for consumers, while also promoting seamless access for applicants eligible for other health programs beyond the Exchange coverage options.

*BenefitMall Comment:* Clearly this goal cannot be achieved without the continued participation of Brokers and General Agents in consulting with consumers about their options. Exchanges should not assume a technology driven solution will meet consumer needs for individual information.

- **Public Outreach and Stakeholder Involvement.** Section 1311(d)(6) requires Exchanges to consult with a broad range of stakeholders in carrying out their activities. Successful Exchanges will undertake aggressive and multi-faceted outreach to inform the public of its services and coverage options. Successful Exchanges will work closely with consumer advocates, national insurers and community-based insurers, including potential new market entrants, to create a competitive climate that will offer purchasers a range of product offerings.

*BenefitMall Comment:* It is critical that all Brokers and General Agents actively participate in the comment process in the states where they are licensed to do business. BenefitMall has concerns about using "Navigators" unless they are licensed and credentialed in the same manner as Brokers and General Agents (see additional discussion below).

- **Public Accountability and Transparency.** Accountability requires transparency. Section 1311(d)(7) requires public reports on Exchange activities, and PPACA Section 1311(e)(3) requires additional reporting, which should include standardized data reporting on price, quality, benefits, consumer choice and other factors that will help measure and evaluate performance. Successful Exchanges must ensure public accountability in the following areas:
  - objective information on the performance of plans;
  - availability of automated comparison functions to inform consumer choice;

- o fair and impartial treatment of consumers, plans and other partners; and
  - o prohibitions on conflict of interest.
- BenefitMall Comment:* BenefitMall agrees that these are worthwhile goals.

For the most part, the concept of state Exchanges has not generated much public discourse thus far. One reason could be due to the vagueness of the state Exchange concept in PPACA. Much is left to HHS and the states to determine how each state's Exchange will be created and operated. PPACA authorizes the Secretary of HHS to create rules for the creation and operation of state Exchanges. The Guidance document posted on the HHS website provides an initial understanding of the timetable for the rule making process.

### **Notice of Proposed Rulemaking**

The first Notice of Proposed Rulemaking, which will address many of the basic federal requirements, is scheduled for publication in the spring of 2011. Additional regulations are slated for publication later in 2011 and in 2012. These regulations will be subject to public comment. BenefitMall will closely track these developments and work diligently to ensure the proposed rules recognize and support the important role that Brokers and General Agents provide in the individual and small group health insurance markets.

### **NAIC's American Health Benefit Exchange Model Act**

Most of the Guidance document outlines the Exchange principles outlined in the NAIC Model Act<sup>iii</sup>. The Model Act outlines the use of Navigators but does not specifically reference Brokers and General Agents:

#### Section 6: Duties of the Exchange

The Exchange shall:

(N) Select entities qualified to serve as Navigators in accordance with section 1311(i) of the Federal Act, and standards developed by the Secretary, and award grants to enable Navigators to:

(1) Conduct public education activities to raise awareness of the availability of qualified health plans;

(2) Distribute fair and impartial information concerning enrollment in qualified health plans, and the availability of premium tax credits under section 36B of the Internal Revenue Code of 1986 and cost-sharing reductions under section 1402 of the Federal Act;

(3) Facilitate enrollment in qualified health plans;

(4) Provide referrals to any applicable office of health insurance consumer assistance or health insurance ombudsman established under section 2793 of the Public Health Service Act (PHSA), or any other appropriate State agency or agencies, for any enrollee with a grievance, complaint or question regarding their health benefit plan, coverage or a determination under that plan or coverage; and

(5) Provide information in a manner that is culturally and linguistically appropriate to the needs of the population being served by the Exchange....

The term "Navigator" is not defined in the Model Act. Clearly, Brokers and General Agents need to track this provision very carefully.

### **All Comers vs. Active Purchasers Models**

Currently, two different Exchange models are in operation today that pre-date PPACA. They are markedly different in concept and scope.

The Utah Exchange is housed in a state agency, has a staff of two persons, runs on a very small budget and is an "all comers" Exchange. It will accept any insurance carrier that is licensed in the state of Utah.

The Massachusetts Exchange is in many respects the direct opposite. It is an independent not-for-profit, has a staff of 38, operates on a much larger budget and may be characterized as an Active Purchaser model that attempts to demand a higher value for its members than the "all comer" model with limited carrier participation.

While the Guidance document may accept either model, it is important to note that it says that the Exchanges must have "discretion to determine whether health plans offered through the Exchange are 'in the best interests of qualified individuals and qualified employers' as PPACA Section 1311(e)(1) of the PPACA requires."

BenefitMall will keep you posted on the NAIC, and state and federal government activities related to the PPACA-authorized Exchanges.

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As more information becomes available, BenefitMall is committed to keeping you up-to-date in a timely manner. Visit [www.BenefitMall.com](http://www.BenefitMall.com) to view past Legislative Alerts in the "Newsroom" section. Or, you may visit [www.HealthcareExchange.com](http://www.HealthcareExchange.com) for blog posts, polls, surveys and numerous resources. If you have any questions, please contact your local BenefitMall Sales Team and they will be happy to assist you. Thank you for taking the time to read through this important notification.

Sincerely,



Michael Gomes  
Executive Vice President

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- i. See [HHS.gov](http://HHS.gov) or [Healthcare.gov](http://Healthcare.gov) for more information.
- ii. Language in the bullet point paragraphs are quotes taken directly from the OCIO Guidance document. Section references are from PPACA.
- iii. As a further update, the NAIC's Health Insurance and Managed Care (B) Committee adopted the American Health Benefit Exchange Model Act on November 22, 2010. [Click here](#) for more information.

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