

PROJECT HISTORY - 2010

AMERICAN HEALTH BENEFIT EXCHANGE MODEL ACT (#929)

1. Description of the Project, Issues Addressed, etc.

In March, following the NAIC Spring National Meeting, the NAIC established the Exchanges Subgroup under the Health Insurance and Managed Care Committee in light of the provisions of section 1321 of the Patient Protection and Affordable Care Act (PPACA). Section 1321 of PPACA provides that the Secretary of the U.S. Department of Health and Human Services, in consultation with the NAIC and its members and with health insurance issuers, consumer organizations, and such other individuals as the Secretary selects in a manner designed to ensure balanced representation among interested parties, issue regulations setting standards for: 1) the establishment and operation of Exchanges, including SHOP Exchanges; 2) the offering of qualified health plan through the Exchanges; 3) the establishment of the reinsurance and risk adjustment program; and 4) such other requirements as the Secretary determines appropriate.

As provided in section 1311(b) of PPACA, if a state elects to establish an exchange, the exchange must be established and operational no later than Jan. 1, 2014. Section 1321 of PPACA requires the Secretary of the U.S. Department of Health and Human Services to make a determination on or before Jan. 1, 2013, on whether any state that elects to establish an exchange has taken the actions the Secretary considers necessary to have the exchange operational by Jan. 1, 2014.

At the NAIC Summer National Meeting, in August, to assist those states electing to establish an exchange, the Exchanges Subgroup decided to develop a model act that would reflect the minimum essential provisions of PPACA for establishing an exchange. The model act was adopted by the Exchanges Subgroup and the Health Insurance and Managed Care Committee in mid-November. It outlines the essential duties and functions of an exchange as provided in section 1311 of PPACA. The model act does not include provisions where PPACA provides state flexibility, such as in the structure and operation of an exchange. The Exchanges Subgroup anticipates developing issue briefs for some of those possible provisions, including governance, funding, role of navigators/insurance producers, regional exchanges, and eligibility and enrollment. The issue briefs would highlight issues that states should consider, but not make any specific recommendations.

Major provisions in the model act include:

- Placeholder language for establishing the exchange as a governmental agency, nonprofit entity or a combination of both (Section 4).
- Language that reflects the minimum duties of an exchange as outlined in section 1311 of PPACA, such as implementing procedures for certifying, recertifying and decertifying health benefit plans as qualified health plans, establishing a SHOP exchange and selecting entities qualified to serve as Navigators (Section 6).
- Provisions for certifying a health benefit plan as a qualified health plan and provisions for qualified dental plans (Section 7).
- Provisions for funding the exchange after Jan. 1, 2015 (Section 8).
- Provisions providing rule-making authority for the exchange (Section 9)
- Provisions related to other laws, particularly as related to section 1311(d)(3) of PPACA related to the exchange making available qualified health plans notwithstanding any of provision of law that may require benefits other than essential health benefits unless the state elects to require additional benefits and to make payments to or on behalf of enrollees to defray the cost of the additional benefits (Section 10).

2. Name of Group Responsible for Drafting the Model and States Participating

The Exchanges Subgroup drafted the model act. The members of the Subgroup are: Kansas, Co-Lead Regulator and Illinois, Co-Lead Regulator, Alaska, California, District of Columbia, Florida, Indiana, Iowa, Kentucky, Maine, Maryland, Massachusetts, Minnesota, Montana, New Hampshire, New Mexico, North Dakota, Oklahoma, Pennsylvania, South Dakota, Utah, Washington and West Virginia.

3. Project Authorized by What Charge and Date First Given to the Group

The Exchanges Subgroup of the Health Insurance and Managed Care Committee was established by the NAIC and the Health Insurance and Managed Care Committee as a result of section 1321 of PPACA. Section 1321 of the PPACA provides that the Secretary of the U.S. Department of Health and Human Services, in consultation with the NAIC and its members and with health insurance issuers, consumer organizations, and such other individuals as the Secretary selects in a manner designed to ensure balanced representation among interested parties, issue regulations setting standards for: 1) the establishment and operation of Exchanges, including SHOP Exchanges; 2) the offering of qualified health plan through the Exchanges; 3) the establishment of the reinsurance and risk adjustment program; and 4) such other requirements as the Secretary determines appropriate. At the Summer National Meeting, the Exchanges Subgroup decided to develop a model act that would reflect the minimum essential provisions of PPACA for establishing an exchange.

4. A General Description of the Drafting Process (e.g., drafted by a subgroup, interested parties, the full group, etc). Include any parties outside the members that participated

The model act was drafted by the Exchanges Subgroup. The Subgroup held face to face meetings at the Summer National Meeting and the Fall National Meeting and conference calls Nov. 9 and 15 to discuss each draft and the comments received. All drafts and comments were posted on the Subgroup's page on the NAIC internet website.

5. A General Description of the Due Process (e.g., exposure periods, public hearings, or any other means by which widespread input from industry, consumers and legislators was solicited)

The Exchanges Subgroup held face to face meetings at the Summer National Meeting and the Fall National Meeting and conference calls Nov. 9 and 15 to discuss each draft and the comments received. All drafts and comments were posted on the Subgroup's page on the NAIC internet website.

6. A Discussion of the Significant Issues (items of some controversy raised during the due process and the group's response)

There were no significant issues or items of controversy. However, many of the interested parties, who commented on each draft, and some regulators wanted the Subgroup to go beyond having the model act reflect the basic essential requirements in PPACA for establishing an exchange. They wanted the Subgroup to develop for inclusion in the model act provisions for those areas where PPACA provides states with flexibility, such as governance. Given the varying state health insurance market conditions and policy concerns, the Subgroup decided that it would be more appropriate to develop issue briefs on these topics.

7. Any Other Important Information (e.g., amending an accreditation standard).

None