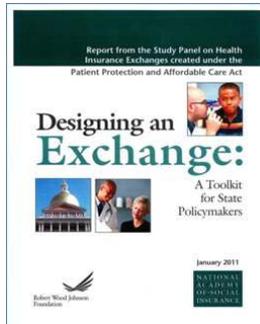


NATIONAL
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Designing an Exchange: A Toolkit for State Policymakers

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Before the Exchanges (B) Subgroup of the
National Association of Insurance Commissioners

Austin, Texas
March 25, 2011

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Members of the Exchange subgroup, thank you very much for the opportunity to testify today. My name is Lee Goldberg and I am the director of health policy at the National Academy of Social Insurance (NASI), a small think tank in Washington DC focused on programs like Medicare and Social Security that are designed around ideas of shared financing, shared benefits and pooled risk.

Our project, funded by the Robert Wood Johnson Foundation, was intended to provide states with legislative options for use in establishing Exchanges. The goal of our project was not to offer singular policy recommendations on issues. Our goal instead was to develop policy options and accompanying legislative language for state policymakers to use in establishing their Exchanges. Our options are intended to be just that: options that still give states maximum flexibility in developing their own procedures and methodologies.

Our starting point was the NAIC model act that spells out clearly the requirements necessary for ACA compliance. With the NAIC model act as a foundation, our panel of 21 national experts considered permissible and workable alternatives that were not likely to trigger unintended consequences.

Let me take a moment to explain how the NASI toolkit works. With most issues, our legislative language is in italics woven into the NAIC model act at the appropriate place. Where we had more than one alternative, we numbered them alternative 1, alternative 2, alternative 3, although the numbering was not intended to indicate any kind of hierarchy and in all cases, the text of the NAIC model act should be considered an equally viable alternative.

I would like to use the bulk of my time to discuss two issue areas that the NAIC model act does not fully address. These are issues where the NASI toolkit offers significant added value.

The first is coordination with state insurance regulators. Since Exchanges will operate within a broader health insurance market, effective coordination between the Exchange and state insurance regulators is essential to help manage the potential for adverse selection and ensure the stability of the Exchange.

NASI offers legislative language for three alternative ways to coordinate the roles of the Exchange and the health insurance regulator, varying the responsibilities and resource cost allocation to each. Alternative 1 would rely on regulators to ensure that a plan seeking certification meets all licensure and solvency requirements, as well as all requirements for a qualified health plan. Placing all responsibilities for oversight of qualified health plans with insurance regulators would provide an even regulatory playing field and minimize the additional resources needed to operate the Exchange.

Alternative 2 would allow the state to divide responsibilities between the Exchange and the insurance regulators, based on resources, experience and efficiency. For example, insurance regulators could review rates of plans inside and outside the Exchange and determine whether a plan seeking to be a qualified health plan meets the essential benefits requirement of the ACA;

the Exchange would determine whether a carrier meets the cost-sharing requirements, marketing practices, rules with regard to quality improvement, network adequacy and essential community providers in underserved areas.

Alternative 3 would have insurance regulators ensure that plans meet state licensure and solvency requirements (as they do now), but the Exchange would determine whether a plan meets all the ACA specific and Exchange created requirements. Alternative 3 would require the Exchange to employ the most resources and directly finance the greatest cost. Conversely, it might require insurance regulators to take on fewer new responsibilities associated with the operation of an Exchange.

The second issue area involves Medicaid and the Exchange. The ACA relies not only on the creation of Exchanges but also the expansion of state Medicaid programs to ensure near universal coverage. However, the statutory language is not clear about which entity (state or federal) will be responsible for eligibility determination, periodic redetermination of eligibility or eligibility for tax credits; nor is it clear how individuals will be counseled regarding potential recoupment processes or assisted in reporting income changes. At the same time, the law specifies no minimum enrollment period and, as the recent article by Rosenbaum and Sommers in *Health Affairs* demonstrated, we can expect significant movement in and out of Medicaid as income changes for families just above or below 200% of federal poverty. This churn of beneficiaries gives rise to concerns about continuity of coverage.

To address these issues, NASI offers legislative language authorizing or requiring Exchanges to collaborate with the state Medicaid and CHIP agencies on strategies aimed at promoting continuity of coverage and care, particularly for children and adults with special health care needs, chronic illnesses, conditions, and disabilities, as well as individuals who are also enrolled in Medicare.

In addition to coordination of eligibility determination and enrollment activities as required under section 1413 of the ACA, state Exchanges will want to consider working with state Medicaid programs and Departments of Insurance where applicable to include use of common health plan certification standards on matters such as provider networks, coverage terms, and quality performance standards in order to promote health plan participation in both the Medicaid and Exchange markets. This could result in the development of cross-market health plans, so that individuals and families who experience a change in family income may have continuous coverage and care in the same provider network, regardless of changes in their source of subsidy.

In addition, section 6(R4) of the NASI model act offers language that would authorize the Exchange and the Medicaid agency (and where applicable the state CHIP agency) to coordinate health plan payment procedures in order to better align enrollment and health plan payments. That would include a single application form developed by the Secretary of Health and Human Services or developed by the applicable state agencies; it also includes consistent methods and standards for prompt calculation of income based on modified adjusted gross income to guard against lapses in coverage and inconsistent eligibility determinations and rapid resolution when there is inconsistent eligibility determinations.

Finally, because recoupment of advance premium tax credits is anticipated in cases in which families undergo a change in income that affects the size of the credit to which they are entitled, the NASI alternatives include provisions for the Exchange to assist consumers in reporting income changes that might affect the amount of subsidy, as well as in qualifying for any “safe harbor” against federal recoupment that might ultimately be recognized in federal rules.

Before I conclude, let me note that there were other important topics where NASI suggested alternative language. Other areas include:

- Governance, where we offered strong conflict of interest language for the Exchange’s governing board and noted the need to clarify the applicability of state administrative, procurement and personnel laws; and
- Role of navigators where we offered language on the need not just to engage in public education but to counsel uninsured individuals, particularly those in isolated ethnic and linguistic communities.

At the same time, there were issue areas we were very concerned about but at the end of the day could not reach consensus around a set of alternatives. This included concerns about adverse selection, which we felt would be best addressed by state risk adjustment programs as federal reinsurance and risk corridor policies sunset.

Let me conclude by noting several cross-cutting issues where we felt there were lessons to be learned:

- It may be important to allow Exchanges to evolve over time, particularly with regard to active purchasing strategies that standardize benefits or limit the number of plans in each actuarial tier.
- There may need to be broader legislation in some states to manage adverse selection inside and outside the Exchange
- Added functionality from the Exchange is attractive but it creates additional costs for the Exchange.

Thank you again for the opportunity to appear before this subcommittee. I would be glad to answer questions.