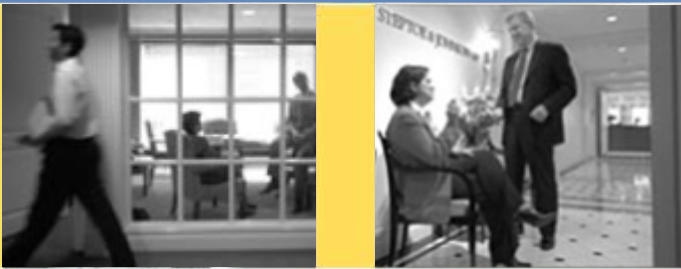


Creation of Health Insurance Exchanges in the States

Issues for Consideration by State Legislators



STEPHENS & JOHNSON LLP

Health Care Reform – *Overview - Role of the States*

- The Patient Protection and Affordable Care Act (P.L.111-148) and the Health Care and Education Reconciliation Act (P.L. 111-152) (ACA) enacted March 2010
- Expands Federal role in health insurance BUT States remain major player
- States to “consult and coordinate” with HHS and other Federal agencies
- Federal funds available to States for implementation
- State laws preempted if they do not meet or exceed the Federal standards

Role of the States

- ACA tasks States with a number of responsibilities including:
 - Minimum loss ratios
 - Standard definitions/disclosures/uniform summary of benefits
 - Data collection
 - Interim reinsurance program and risk adjustment mechanism
 - Uniform fraud reporting form
 - Interstate compact standards
 - Definitions of age bands and rating areas

Role of the States

- Enacting/Amending State Laws:
 - Health Care Grievance Procedure Model Act
 - Utilization Review & Benefits Determination Model Act
 - Model Language for:
 - Prohibition on Pre-existing Condition Exclusions for Individuals Under the Age of 19
 - Lifetime and Annual Limits
 - Preventative Standards
 - Prohibition on Rescissions of Coverage
 - Dependent Coverage for Individuals to Age 26
 - Choice of Health Care Professional
 - Rate Filing Disclosure Form and Project Summary

Funding Opportunities for the States

- Temporary Reinsurance Program (2014-2016)
- High Risk Pools
- Grants to States for:
 - Health Information Technology
 - Office of Health Insurance Consumer Assistance/Health Insurance Ombudsman
 - Annual Rate Reviews
 - Models to Improve Services for Families in At-Risk Communities
 - Personal Responsibility Education Program
 - Healthy Aging Program
 - Immunization Coverage Improvement Program
 - State Workforce Development
 - State / Regional Centers for Health Workforce Analysis
 - Community Health Workforce
 - State Demonstration Programs – Alternatives to Current Tort Litigation

Health Care Controversy – Challenging the Constitutionality of the ACA

- 3 Courts have issued opinions
 - 2 found law constitutional
 - 1 found law unconstitutional
- Another opinion due anytime
- Several other cases pending/threatened
- No injunctions issued delaying implementation – but AZ decision expected soon
- Key Legal Issue: Does Congress have the power under the Commerce Clause to compel individuals to participate in interstate commerce?

Health Care Controversy – Challenging the Constitutionality of the ACA

- **Michigan, Eastern District**
- Suit brought by Thomas More Law Center and several individuals
- **Result: constitutionality of ACA upheld;** Defendant's motion to dismiss granted
- Judge: George Steeh (Clinton appointee)
- Status: Opinion issued and Plaintiffs' suit dismissed on October 7, 2010; appeal pending before 6th Circuit

Health Care Controversy – Challenging the Constitutionality of the ACA

- **Virginia, Western District**
- Suit brought by Liberty University and several individuals
- **Result: constitutionality of ACA upheld;** Defendant's motion to dismiss granted
- Judge: Norman Moon (Clinton appointee)
- Status: Opinion issued and Plaintiffs' suit dismissed on November 30, 2010; appeal pending before 4th Circuit

Health Care Controversy – Challenging the Constitutionality of the ACA

- **Virginia, Eastern District (brought by the Attorney General of Virginia)**
- **Result: individual mandate provision** (Section 1501) was found **unconstitutional**; summary judgment awarded to State of Virginia
- Judge: Henry Hudson (George W. Bush appointee)
- Status: Summary judgment opinion issued on December 13, 2010; awaiting appeal

Health Care Controversy – Challenging the Constitutionality of the ACA

- **Florida, Northern District (20-state suit)**
- Result: TBD
- Judge: Roger Vinson (Reagan appointee)
- Participating States: Alabama, Alaska, Arizona, Colorado, Florida, Georgia, Indiana, Idaho, Louisiana, Michigan, Mississippi, Nebraska, Nevada, North Dakota, Pennsylvania, South Carolina, South Dakota, Texas, Utah and Washington
- Status: Defendants' motion to dismiss denied on October 14, 2010; hearing held in December; opinion on the merits expected soon

Health Insurance Exchanges

- ACA Requirements
- Exchanges Activity in the States
 - California
 - Massachusetts
 - Utah
 - Other States
 - NAIC
- Decision Points for State Legislators

Health Insurance Exchanges – *ACA Requirements*

Establishing an Exchange:

- Each State is required to establish an American Health Benefit Exchange by 1/1/14, for individual and small group markets
 - An Exchange must be operated as a governmental agency or nonprofit entity
- If HHS determines that a State has not made “adequate progress” in creating an Exchange by 1/1/13, HHS assumes responsibility
- Funding:
 - HHS is required to make grants available to states to assist in planning and establishing Exchanges
 - HHS will fund Exchange costs until 1/1/15, after which Exchanges must be self funded

Health Insurance Exchanges – *ACA Requirements*

- Small Group (SHOP) Exchange
 - State may elect to combine non-group and small group markets in a single Exchange
 - Small Group Defined as 1 –100 Employees
 - State may elect to define as 1 –50 until 1/1/16
 - After 1/1/17, a State may open Exchange to employers with 100+ employees
 - Employees Given Choice of Carrier
 - Employer chooses coverage level and provide contribution
 - Employees choose from plans offered at that level

Health Insurance Exchanges – *ACA Requirements*

- Only Qualified Health Plans may be available on an Exchange
- A “qualified health plan” is a health plan that:
 - Is certified by each Exchange through which it is offered
 - Provides the essential benefits package
 - Is offered by an issuer that is
 - Licensed and in good standing in each state in which it is offered
 - Agrees to offer at least one silver plan and one gold plan
 - Agrees to charge the same premium whether the plan is sold through the Exchange or outside the Exchange
 - Complies with other requirements of the Secretary and the Exchange
- A qualified health plan may vary premiums by rating area.

Health Insurance Exchanges – *ACA Requirements*

- Certification of QHPs: HHS Secretary is required to establish criteria for the certification of qualified health plans that includes that a plan:
 - Meet marketing requirements and not discourage enrollment in plan by those with significant health needs
 - Ensure sufficient choice of providers (no requirement to contract if provider does not accept payment rates)
 - Include in network essential community providers
 - Be accredited by entity recognized by the Secretary
 - Implement quality improvement strategy in PPACA
 - Utilize uniform enrollment form in PPACA
 - Utilize the standard format for presenting plan options
 - Provide information on quality measures
 - Publicly disclose specified information
 - Contract with health care providers that implement quality improvement mechanisms

Health Insurance Exchanges – *ACA Requirements*

- Essential health benefits package must cover the following general categories of services in order to qualify for a QHP:
 - Ambulatory patient services
 - Emergency services
 - Hospitalization
 - Maternity and newborn care
 - Mental health and substance abuse disorder services, including behavioral health treatment
 - Prescription drugs
 - Rehabilitative and habilitative services and devices
 - Laboratory services
 - Preventive and wellness services and chronic disease management
 - Pediatric services, including oral and vision care

- An Exchange may offer plans with additional benefits but states must assume costs of such mandates

Health Insurance Exchanges – *ACA Requirements*

Levels of Coverage:

- ❑ Bronze (covers 60% of actuarial value of benefits)
- ❑ Silver (covers 70% of actuarial value of benefits)
- ❑ Gold (covers 80% of actuarial value of benefits)
- ❑ Platinum (covers 90% of actuarial value of benefits)
- ❑ Catastrophic (high deductible plan for young)

Health Insurance Exchanges – *ACA Requirements*

Exchange Functions

- At a minimum, an Exchange must:
 - Provide for an initial open enrollment period, an annual open enrollment period, and specified special enrollment periods
 - Implement procedures for certification, recertification and decertification of health plans, consistent with HHS guidelines
 - Operate a toll-free hotline
 - Maintain an Internet website with standardized information
 - Assign a rating to each plan
 - Utilize a standardized format for presenting options
 - Inform of eligibility for Medicaid, CHIP or other applicable state or local public programs and enroll those eligible

Health Insurance Exchanges – *ACA Requirements*

Exchange Functions (cont.)

- Make available a calculator to determine the actual cost of coverage after subsidies
- Grant a certification attesting that the individual is not subject to the coverage mandate because:
 - There is no affordable option available; or
 - The individual is exempt from the mandate
- Transfer a list of exempt individuals and employees eligible for tax credits to the Treasury
- Provide to each employer the name of employees eligible for tax credits
- Establish a Navigator program

Health Insurance Exchanges – *ACA Requirements*

Exchange Transparency:

- An Exchange must consult with stakeholders in carrying out its responsibilities
- An Exchange must publish the average costs of licensing, regulatory fees and other payments (including the administrative costs of the Exchange and monies lost to waste, fraud and abuse)
- An Exchange must submit an annual report to the HHS Secretary on activities, receipts and expenditures (annual audit)
- The GAO is required to study Exchange activities within five years after 2014.

Health Insurance Exchanges – *ACA Requirements*

Inside vs. Outside the Exchange:

- Nothing in the law precludes the sale or purchase of insurance products outside the Exchange
- Individuals may only receive subsidies in the Exchange and grandfathered plans may not be sold (within the Exchange)
- Carriers must consider all enrollees in all non-grandfathered plans to be members of the same risk pool (one for non-group, one for small group)
- Members of Congress/staff must purchase coverage through Exchange in order to receive coverage through the Federal government

Exchange Activity in the States

- Utah and Massachusetts are the only states actively operating exchanges
- California is the only state that has enacted legislation creating an exchange in compliance with ACA requirements
- A majority of the states have taken action to form a committee, board or task force concerning implementation of exchanges
- Forty-eight states received grants from HHS in 2010 to begin work on establishing exchanges; the grants were available to assist with the early research and planning stages
 - Alaska and Minnesota did not request the federal grants
- Legislation:
 - Montana
 - Oregon
 - Minnesota
 - Rhode Island
 - Pennsylvania

Exchange Activity in the States

- NAIC American Health Benefit Exchange Model Act (Adopted 12/16/10)
 - Closely tracks ACA requirements
 - Takes no policy position on key decision points
- Utah and Massachusetts – polar opposites
 - Utah – open marketplace model
 - Massachusetts – active purchaser model
 - Both models permissible under ACA requirements according to HHS

Key Decision Points for State Legislators

- Governance
- Operating Model - Active Purchaser v. Open Marketplace
- Roles of Various State Agencies
- Additional Functions of the Exchange
- Additional Information for Consumers
- Regulation of the Outside Market
- Mandated Benefits
- Funding of Operations

Health Insurance Exchanges

Questions??

Resources:

- ❑ NAIC - <http://www.naic.org>
- ❑ NGA - <http://www.nga.org>
- ❑ NCOIL - <http://www.ncoil.org/>
- ❑ HHS - <http://www.hhs.gov/ociio/>
<http://www.healthcare.gov/>

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