

Health Insurance Exchanges

Background

Starting in 2014, Medicaid will begin covering all adults with incomes of up to 133 percent of the federal poverty level in compliance with the Patient Protection and Affordable Coverage Act (PPACA).

For the states, the costs associated with coverage for the millions of individuals who could take advantage of this new program are expected to be between \$21.1 billion and \$43.2 billion from 2014–2019, with the difference depending on how many currently uninsured or underinsured adults participate.ⁱ In Alabama, as many as 247,000 new enrollees could be added to the state's Medicaid rolls, according to data from The Heritage Foundation.ⁱⁱ

To help offset the increased cost of insuring these new enrollees, states could move some current Medicaid beneficiaries into health insurance exchanges, where they would be eligible for federal tax credits with no matching payments by the state.

What are health insurance exchanges?

Exchanges are state-based competitive health insurance marketplaces. They are neither a private insurance company nor a government-run health plan.ⁱⁱⁱ Rather, they are a place where individuals and small businesses can shop for affordable private health insurance in a way that encourages easy comparisons of available plans based on price, benefits, services, and quality. Beginning in 2013, exchanges will be able to help eligible individuals receive tax credits or coverage through other federal or state health care programs. By pooling people together, reducing transaction costs, and increasing transparency, exchanges aim to create more

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States setting up exchanges will be required to provide funding for ongoing operations after 2014.

efficient and competitive markets for individuals and small employers.^{iv}

The PPACA gives states the resources to develop and operate their own exchanges. As long as the health insurance plans offered exchange meet minimum federal standards, states are free to tailor their exchanges to meet local needs. The federal government will provide the grant money to implement and run the exchanges until January 1, 2015. If, however, a state chooses not to develop its own exchange, the federal government will build one for them in 2014, with seemingly no penalty to the state for non-compliance.^v Several states have already opted for this choice, including Florida and Louisiana.^{vi}

At present, four states—California, Massachusetts, Utah, and Washington—have already implemented healthcare exchanges.^{vii} While Alabama has not implemented its own exchange, the state has received a \$1 million grant from the U.S. Department of Health

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and Human Services to assess the extent of adequate health insurance coverage in the state, and determine the best structure with which to govern an exchange.^{viii}

Policy Consideration

The Constitutional Question

The greatest problem with the exchanges described in the PPACA is that 26 states consider the entire PPACA to be unconstitutional because of its mandated requirement for all Americans to have health insurance and have asked the courts to strike it in its entirety. If a state's officials truly believe that they are supposed to defend their own constitution as well as the Constitution of the United States, carrying out any part of it on their own would be a violation of their oath of office. Implementation of a state-operated exchange could also be seen as legitimizing the greater PPACA, making it harder for a state with an existing exchange to sue to overturn it. And, if it is decided by the courts that the PPACA is indeed unconstitutional, any money spent by a state to implement exchanges would have been wasted.^{ix}

Who pays for the exchanges after 2014?

According to a proposed rule by the Department of Health and Human Services (HHS), federal funds will not be provided to support the continued operations of any state exchange as of January 1, 2015. Rather, states will be required to have sufficient funding in order to support their ongoing operations. This funding could come from a variety of sources, including user fees for participating insurance issuers, from the state itself, or both. Any fees, though, must be announced prior to 2015.^x

What is less clear is what happens in a state with a federally-administered exchange when federal funding ends in 2015. In theory, the HHS Secretary will establish an exchange plan for the state with the assumption that insurance company issuer fees would cover the cost of the exchange. However, a problem arises if the issuers' fees are not enough to pay for the exchange. Because HHS cannot constitutionally

demand that the state make up the balance, it is likely that the federal government would be ultimately responsible for paying any shortfalls required to operate the exchange.

ⁱ John Holahan and Stan Dorn, "What is the Impact of the Patient Protection and Affordable Care Act (PPACA) on the States?" Urban Institute, June 2010. Available at <http://tinyurl.com/3ld2blz>. Access verified July 20, 2011.

ⁱⁱ Edmund Haislmaier and Brian Blase, "Obamacare: Impact on the States." The Heritage Foundation, *Backgrounder* #2433, July 1, 2010. Available at <http://tinyurl.com/2462gaa>. Access verified July 20, 2011.

ⁱⁱⁱ U.S. Department of Health and Human Services, "Affordable Insurance Exchanges: Questions and Answers." *HealthCare.gov* (web), July 11, 2011. Available at <http://tinyurl.com/4yfd2sq>. Access verified July 20, 2011.

^{iv} U.S. Department of Health and Human Services, Office of Consumer Information and Insurance Oversight, "Initial Guidance to States on Exchanges." Available at <http://tinyurl.com/3a2qe75>. Access verified July 20, 2011.

^v *Ibid.*

^{vi} Michael F. Cannon, "Should Michigan Create a Health Insurance Exchange?" Testimony before the Virginia Legislature's Joint Commission on Health Care, June 14, 2011. June 17, 2011. Available at <http://tinyurl.com/3pvmyn>. Access verified July 20, 2011.

^{vii} "State Actions to Implement the Americans Health Benefit Exchange." National Conference of State Legislatures, February 16, 2011. Available at <http://tinyurl.com/3bkcjss>. Access verified July 20, 2011.

^{viii} *Ibid.*

^{ix} Cannon, "Should Michigan Create a Health Insurance Exchange?"

^x U.S. Department of Health and Human Services, "Patient Protection and Affordable Care Act: Establishment of Exchanges and Qualified Health Plans." 45 CFR Parts 155 and 156, [CMS-9989-P], RIN 0938-AQ67, July 11, 2011, p. 188. Available at <http://tinyurl.com/6zlopsf>. Access verified July 20, 2011.