

Health Benefit Exchange Implementation Review Committee

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Senator Betty Boyd, Chair
Representative Bob Gardner, Vice-chair

Senator Irene Aguilar
Senator Kevin Lundberg
Senator Jeanne Nicholson
Senator Ellen Roberts

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Representative Jim Kerr
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January 2012

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This report is also available on line at:

<http://www.Colorado.gov/LCS/ExchangeReviewComm>

Committee Charge

In March 2010, federal health care legislation, also known as the Patient Protection and Affordable Care Act (PPACA), was adopted by the U.S. Congress and signed by the President. PPACA is intended to expand health care coverage by increasing access to private health insurance and public health programs through state-based health insurance exchanges. Health insurance exchanges are regulated marketplaces in which individuals and small businesses can shop for health insurance. Under PPACA, state health insurance exchanges must be operational by January 1, 2014, or, if a state has not taken action to establish an exchange by January 1, 2013, the federal government will set up the exchange. In 2011, Colorado passed Senate Bill 11-200, which creates a process for the implementation of the Colorado Health Benefit Exchange (exchange) by establishing the exchange's governance structure. The bill establishes the exchange as a nonprofit public entity with a board of directors responsible for its operation.

Senate Bill 11-200 also established the Legislative Health Benefit Exchange Implementation Review Committee (committee) to guide the implementation of the exchange. The committee was required to hold its first meeting on or before August 1, 2011. State law authorizes the committee to:

- meet up to five times per calendar year;
- approve the appointment of the executive director of the exchange by the Health Exchange Board of Directors (board);
- review and approve the board's initial financial and operational plans;
- review and approve any grants for which the board wishes to apply; and
- recommend up to five bills for consideration by the General Assembly each year.

Committee Activities

The committee held four full meetings and one subcommittee meeting during the 2011 interim. Briefings and presentations on a number of topics were made by members of the board and representatives from the Department of Health Care Policy and Financing, Colorado Health Institute, and National Conference of State Legislatures. Topics discussed included:

- the purpose and scope of the exchange as required under Senate Bill 11-200;
- the role of the committee in relationship to the board;
- key provisions of the federal Patient Protection and Affordable Care Act;
- anticipated state costs arising from the federal Patient Protection and Affordable Care Act and implementation of the exchange;
- federal rules proposed by the U.S. Department of Health and Human Services pertaining to the implementation of state-based health benefit exchanges; and
- various activities of the board, including the development of a working board, appointment of the executive director, and grant proposals.

Legislative Council Staff prepared documents regarding Colorado's exchange, anticipated costs arising from the implementation of federal health care law, and fiscal information relating to the implementation of a state-based health exchange. Staff also summarized and presented to the committee the rules proposed by the U.S. Department of Health and Human Services.



The committee did not discuss or recommend any legislation for consideration by the General Assembly during the 2012 legislative session. The following sections discuss the committee's activities during the 2011 legislative interim.

Federal Health Care Law

Committee discussions at its August 1 and August 31, 2011, meetings focused on two specific areas: potential state costs arising from the Patient Protection and Affordable Care Act (PPACA) and federal rules proposed by the U.S. Department of Health and Human Services pertaining to the implementation of a state-based health benefit exchange.

Potential state costs for implementation of federal health care law. At its meeting on August 1, committee members asked for information about potential state costs resulting from the implementation of Colorado's exchange. Legislative Council Staff prepared various documents discussing potential costs and impacts to the state Medicaid program, detail on potential computer system costs, and information about administrative costs for the board, which were discussed on August 31.

Rules for the development of a state-based health exchange. During the initial meeting, committee members asked for information about any known conflicts between Senate Bill 11-200 and federal rules promulgated by the U.S. Department of Health and Human Services regarding the establishment of state-based health insurance exchanges. Staff of the Legislative Council was asked to prepare an analysis of federal rules, which was presented during the committee's August 31 meeting.

At the August 31 meeting, Legislative Council Staff presented information regarding specific areas in which Colorado has flexibility in establishing its exchange and summarized the proposed federal rules. Staff also discussed how states can decide a number of other factors relating to qualified health plans (QHPs), client enrollment, and Small Business Health Options Programs (SHOPs). The committee also heard from the Colorado Department of Health Care Policy and Financing and the Colorado Health Institute concerning the proposed federal rules.

As a result of committee discussion, the committee decided to create a subcommittee to work with the board to submit comments on the proposed rules to the U.S. Department of Health and Human Services. The subcommittee, comprised of four members (two from each party), formulated legislative comments on the proposed rules on behalf of the committee and submitted the comments to the U.S. Department of Health and Human Services. The comments are appended to this report as Appendix A.

Other states. The committee heard from the National Conference of State Legislatures about how other states intend to comply with PPACA, and received specific detail on Massachusetts and Utah, two states with existing exchanges. The committee asked for information on states that intend to ask the federal government to operate their exchanges and how Massachusetts finances the administrative costs of its exchange.



Exchange Board Activities

At the committee's initial meeting on August 1, 2011, the committee reviewed its role in guiding the implementation of the exchange, making recommendations to the General Assembly, protecting the interests of Colorado citizens, and providing oversight to the board. The Colorado Health Institute, which will act as third-party administrator to the exchange once it is operational, presented the committee with an overview of the exchange's "road map," including planning objectives, roles and responsibilities of various state agencies, federal funding cycles, and implementation activities. Representatives from the board discussed activities and time frames for completing the board bylaws, hiring an executive director, and completing the initial implementation and financial plans. Committee members asked whether the board's activities were contingent upon federal funding. It was explained that under Senate Bill 11-200, no General Fund moneys may be used to operate the exchange.

Following its initial meeting, other activities of the committee in relationship to the board included: approving the appointment of an executive director, reviewing and approving the initial operational and financial plans of the board, and reviewing and approving grant proposals.

Appointment of an executive director. Senate Bill 11-200 requires the Health Exchange Board to appoint an executive director to administer the exchange, with the approval of the committee. During the interim, the board formed an executive search committee headed by Richard Betts, vice-chair of the board, to select a nominee. Mr. Betts discussed the hiring process and the 30 applicants who applied for the position at the committee's meeting on December 7. He explained that the executive search committee recommended Patty Fontneau as its nominee to the board. The board voted on November 28, 2011, to select Ms. Fontneau as its candidate for executive director of the exchange.

Ms. Fontneau addressed the committee and responded to member's questions at its December 7 meeting. Ms. Fontneau served as chief operating officer at Holme Roberts & Owen LLP, an international law firm and as chief administrative officer for The IMA Financial Group Inc. She talked about her business experience as vice president and general manager of the Western Service Center of TIAA-CREF and how she believes this experience will help her implement the exchange. At TIAA-CREF, she managed the operation of a 1,300-employee office in Denver. The committee also discussed her service on the boards of CollegenInvest, the Auraria Foundation, the Downtown Denver Partnership and other organizations.

Following her presentation, the committee approved Ms. Fontneau as executive director of the exchange.

Level One Establishment Grant proposal. Senate Bill 11-200 also requires the Health Exchange Board to apply for planning and establishment grants made available to the exchange pursuant to the PPACA and apply for, receive, and expend other gifts, grants, and donations. Each grant application is subject to the review and unanimous approval of the board chair and the chair and vice-chair of the committee prior to the submission of the application. The chair and vice-chair of the committee decided to have the entire committee be involved in approving the grant application.



Gretchen Hammer, health exchange board chair, presented a Level One Establishment Grant proposal to the committee at its meeting on December 15. She explained that the board's objectives for the grant are to:

- refine the vision and goals for the exchange consistent with Senate Bill 11-200;
- secure staff, consultant, and expert resources, and actively engage stakeholders;
- develop a three-year business and operational plan outlining the key activities, time lines, and benchmarks necessary to fully operate the exchange in 2014;
- prepare and submit additional exchange grant applications in 2012 to support full implementation and operation of the exchange by January 2014; and
- evaluate alternative mechanisms to be self-sustaining by 2015.

The Legislative Health Benefit Exchange Implementation Review Committee voted to approve the submission of the Level One Establishment Grant application. The board submitted the application to the U.S. Department of Health and Human Services. If approved, the nearly \$18 million grant will fund the next phase of establishing the exchange.



Resource Materials

Meeting summaries are prepared for each meeting of the committee and contain all handouts provided to the committee. The summaries of meetings and attachments are available at the Division of Archives, 1313 Sherman Street, Denver (303-866-4900). The listing below contains the dates of committee meetings and the topics discussed at those meetings. Meeting summaries are also available on our website at:

<http://www.Colorado.gov/LCS/ExchangeReviewComm>

Meeting Date and Topics Discussed

August 1, 2011

- ◆ Committee discussion of the purpose and intended outcomes of the Legislative Health Benefit Exchange Implementation Review Committee
- ◆ Presentation by the Colorado Health Institute
- ◆ Committee discussion with members of board of directors of the Colorado Health Benefit Exchange
- ◆ Presentation by the National Conference of State Legislatures

August 31, 2011

- ◆ Committee discussion with members of the board of directors of the Colorado Health Benefit Exchange
- ◆ Committee discussion on the proposed rules by the U.S. Department of Health and Human Services regarding the implementation of Colorado's Health Benefit Exchange

December 7, 2011

- ◆ Confirmation of executive director of the Colorado Health Benefit Exchange
- ◆ Committee discussion on the Colorado Health Exchange board of directors' application for federal planning and establishment grants

December 15, 2011

- ◆ Committee discussion and action on the Colorado Health Exchange board of directors' application for federal planning and establishment grants

COLORADO GENERAL ASSEMBLY

Senate Members
 Sen. Betty Boyd, Chairman
 Sen. Irene Aguilar
 Sen. Kevin Lundberg
 Sen. Jeanne Nicholson
 Sen. Ellen Roberts



House Members
 Rep. Bob Gardner, Vice-chair
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 Rep. Jim Kerr
 Rep. Beth McCann
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Legislative Health Benefit Exchange Implementation Review Committee

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September 21, 2011

Centers for Medicare and Medicaid Services
 Attention: CMS-9989-P
 P.O. Box 8010
 Baltimore, MD 21244-8010

Attention: Response to request for comments on the Notice of Proposed Rule Making (NPRM) Patient Protection and Affordable Care Act: Establishment of Exchanges and Qualified Health Plans; 45 CFR Parts 155 and 156; CMS-9989-P

Dear Staff of the Department of Health and Human Services:

We are writing to you on behalf of the Colorado Health Benefit Exchange Implementation Review Committee in response to the request for comments on the NPRM released July 15, 2011.

As you may know, Colorado enacted legislation during the 2011 legislative session (Senate Bill 11-200) to start implementing a Colorado Health Benefit Exchange (Colorado Exchange). The legislation establishes the Colorado Exchange as a nonprofit public entity, governed by a Board of Directors (Board) that was appointed earlier this summer. Our Board has been meeting and getting organized as quickly as possible in order to take over the task of applying for planning grants and developing the Colorado Exchange. The legislation also called for the creation of the Legislative Health Benefit Exchange Implementation Review Committee (Committee) to oversee the Board's process and guide implementation of a Colorado-specific exchange.

The Committee is submitting comments on the rules as a whole and also regarding specific rules. With regard to the rules as a whole, the Committee urges the Department of Health and Human Services (HHS) to allow states as much flexibility as possible when promulgating the rules regarding health exchanges. We also ask that it deter from including any unfunded mandates.

The Committee also is providing specific comments on the following rules.

- **§ 155.20 Definitions.** With regard to the term *plain language*, we ask that states be allowed to use existing plain language standards if they already exist, as is the case in Colorado. We feel that defining plain language standards should be left to the state insurance commissioner.
- **§ 155.105 Approval of a State Exchange.** With regard to the review process for the Exchange Plan, we ask that the department be flexible and responsive to state legislative time lines. We suggest a shorter review period, such as 7 days, rather than the proposed 90-day period.
- **§ 155.110 Entities eligible to carry out Exchange functions.** HHS should construct a partnership model that maintains maximum state flexibility. In addition, states should be given the authority to define the meaning of *relevant experience* relating to the experience required of the members of the Exchange's governing body. Lastly, we feel that the governing body of the Exchange should conduct the periodic review of the accountability structure and governance principals of the Exchange, rather than HHS.
- **§ 155.140 Establishment of a regional Exchange or subsidiary Exchange.** The Committee supports allowing states the flexibility in deciding whether to join a regional Exchange or to form subsidiary Exchanges and hope that this flexibility remains unchanged. We also ask that states be given flexibility to join an Exchange or form a subsidiary Exchange later in the process.
- **§ 155.160 Financial support for continued operations.** We ask that the governing body of the Exchange be allowed to make decisions related to the ongoing funding of the Exchange.
- **§ 155.205 Required consumer assistance tools and programs of an Exchange.** The Committee is concerned about the potential costs associated with the specific consumer assistance tools outlined in the federal law and rules. We are also concerned about the requirement that the website provide meaningful access for persons with limited English proficiency and ask that the state be allowed to determine the definition of *meaningful access*.
- **§ 155.210 Navigator program standards.** The Committee requests that states be given maximum flexibility related to who can serve as a Navigator as well as the training, certification, compensation, functions, and appropriate conflicts of interest policies that should govern the role of Navigators. We believe these decisions should be made by the governing body of the Exchange.

- **§ 155.240 Payment of premiums.** The state would like more flexibility in determining the payment of premiums.
- **§ 155.400 Enrollment of qualified individuals into QHPs.** The Colorado insurance commissioner should have full flexibility with regard to enrollment functions.
- **§ 155.420 Special enrollment periods.** We ask that the expansion of the special enrollment period be determined by the state legislature and/or the insurance commissioner.
- **§ 155.705 Functions of a SHOP.** The Committee asks that the states be given maximum flexibility in this area until one or two years of experience has accrued. At that time, regulations may be established if necessary.
- **§ 155.710 Eligibility standards for SHOP.** Colorado currently permits sole proprietors, known as business groups of one, to participate in the small group market. The Committee requests flexibility regarding the participation of *business groups of one* to participate in the SHOP.
- **§ 155.1045 Accreditation timeline.** We ask that the Exchange be allowed to set its own accreditation timeline.
- **§ 155.1050 Establishment of Exchange network adequacy.** The Committee asks that HHS establish minimum guidelines, rather than requirements, for network adequacy that states can use as a guide when developing their own standards. We also ask for additional guidance on the meaning of the term *sufficient* where the rules require that plans offer a sufficient provider network.
- **§ 156.200 QHP issuer participation standards.** HHS notes that it plans on future rulemaking with regard to essential health benefits offered through QHPs. In doing so, Colorado requests that HHS establish a minimum package of essential health benefits that states can afford and allow states to offer additional benefits if they choose. We also ask that HHS keep in mind that each state has different fiscal requirements when determining essential health benefits.
- **§ 156.210 QHP rate and benefit information.** We ask that the states be given the authority to develop a standard for QHP issuers to *prominently post* a rate justification so they can be viewed by consumers, enrollees, and prospective enrollees.
- **§ 156.225 Marketing of QHPs.** The Committee asks that HHS establish a minimum standard for defining deceptive practices by QHPs that states can use as a guide. We also ask that states be allowed to apply existing deceptive trade practice laws. Lastly, we ask that these deceptive practices be broadly prohibited.

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September 21, 2011
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- **§ 156.285 Additional standards specific to the SHOP.** The Committee agrees that QHPs in the SHOP should be required to allow employers to offer dependent coverage.

Thank you for the opportunity to submit comments on the above-referenced rules, and we look forward to working with you.

Sincerely,

The image shows two handwritten signatures in black ink. The signature on the left is for Senator Betty Boyd, and the signature on the right is for Representative Bob Gardner. Both signatures are written in a cursive, flowing style.

Senator Betty Boyd, Chair
Representative Bob Gardner, Vice-chair
Legislative Health Benefit Exchange Implementation Review Committee

cc: Senator Irene Aguilar Representative Deb Gardner
 Senator Kevin Lundberg Representative Jim Kerr
 Senator Jeanne Nicholson Representative Beth McCann
 Senator Ellen Roberts Representative Ken Summers
 Colorado Health Benefit Exchange Board of Directors

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September 21, 2011

Centers for Medicare and Medicaid Services
Attention: CMS-9974-P
P.O. Box 8010
Baltimore, MD 21244-8010

Attention: Response to request for comments on the Notice of Proposed Rule Making (NPRM) Patient Protection and Affordable Care Act: Establishment of Exchanges and Qualified Health Plans; 45 CFR Parts 155 and 157; CMS-9974-P

Dear Staff of the Department of Health and Human Services:

We are writing to you on behalf of the Colorado Health Benefit Exchange Implementation Review Committee in response to the request for comments on the NPRM released August 17, 2011.

As you may know, Colorado enacted legislation during the 2011 legislative session (Senate Bill 11-200) to start implementing a Colorado Health Benefit Exchange (Colorado Exchange). The legislation establishes the Colorado Exchange as a nonprofit public entity, governed by a Board of Directors (Board) that was appointed earlier this summer. Our Board has been meeting and getting organized as quickly as possible in order to take over the task of applying for planning grants and developing the Colorado Exchange. The legislation also called for the creation of the Legislative Health Benefit Exchange Implementation Review Committee (Committee) to oversee the Board's process and guide implementation of a Colorado-specific exchange.

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The Committee also is providing specific comments on the following rules.

- **§ 155.305 Eligibility standards.** The Committee requests that states be given maximum flexibility related to eligibility standards. Additionally, it would be useful for HHS to centralize and maintain the computer system for determining eligibility for Medicaid and income-based subsidies.
- **§ 155.310 Eligibility determination process.** We believe eligibility applications should remain in effect for at least a 6-month period.
- **§ 155.330 Eligibility redetermination during a benefit year.** The Committee supports a 12-month eligibility period for participants in the Exchange.

Thank you for the opportunity to submit comments on the above-referenced rules, and we look forward to working with you.

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