MINUTES

HOUSE HEALTH & WELFARE COMMITTEE

DATE: Friday, February 22, 2013

TIME: 9:00 A.M.

PLACE: Room EW20

MEMBERS: Chairman Wood(27), Vice Chairman Perry (Smith), Representatives Hancey, Henderson, Hixon, Malek, Morse, Romrell, Vander Woude, Rusche, Chew

ABSENT/ EXCUSED: Representative(s) Hancey, Henderson, Malek

GUESTS: Steve Millard, Idaho Hospital Association; Elli Brown and Elizabeth Criner, Veritas Advisors; Marnie Packard, Pacific Source; Dave Goicoechea, Idaho Resident; Nicole Roberts, Rebecca Swanson, Aloor Safi, Liberty Montessori High School; Dan Roberts, SOS Foundation

Chairman Wood(27) called the meeting to order at 9:04 a.m.

Jack Rovner, Attorney, The Health Care Law Consultancy, presented to the committee on the Health Care Exchange. He explained that beyond the question of whether the health care exchange (HIX) is good or bad is the fact that the law is here and the exchange will happen. A more fundamental question asks if this health insurance marketplace mall is to be run by the federal government in the state or by the state, itself, as a business. The federal government will fund either option; however, the Centers for Medicare and Medicaid (CMS) will run any exchanges that are not state based. Mr. Rovner stated that a state-based exchange would deal directly with issues of oversight, finance and governance. A federal exchange would have CMS oversight, with possible state Department of Insurance (DOI) consultation. Mr. Rovner emphasized the distinction between accessibility, accountability, and answerability for Idaho residents with a state exchange, as opposed to a federal centralized operation, which could be in another state.

The proposed state exchange would be an independent business, without state tax dollars or funding guarantees, and will have to justify its existence by attracting customers through incentives and the highest quality product at the lowest price. This is not a government agency philosophy, as evidenced by the Medicare Advantage program. The state exchange, together with the DOI, would decide which plans are offered. This could allow similar products from a variety of plans for customization. A federal exchange, also known as an open market exchange, will allow sales by any insurer licensed in a state, but will limit the product variety to prevent similar products that might confuse consumers.

Mr. Rovner described the new navigator role as trained individuals who will assist consumers and be paid a salary by assessment proceeds. Federal exchanges will only use navigators, with certified agents or brokers allowed to assist only in the enrollment process. State based exchanges can determine navigators qualifications, wages, and the part played by agents and brokers. As a business delivering value, a state exchange must work closely with agents and brokers to provide products and services that meet the customers' needs and provide input to the governing board to understand what is needed for it to be an effective vehicle. Recent CMS guidance indicates a five hour online test will be available to certify agents and brokers so they can connect to the federal portal for enrollment purposes only.

Regulation for a state-run exchange would remain with the DOI; however, the CMS would make all federal exchange decisions, although they say they will work closely with any DOI.

The law establishes that the federal government pay 100% of implementation costs for a state or federal exchange. **Mr. Rovner** emphasized that all federal tax dollars will be spent to set up either type of exchange, and all exchanges must be self sustaining by 2015. It has been announced that federal exchanges will assess a 3.5% insurer monthly premium tax, which will probably be passed onto premium costs. He stressed that the 3.5% can be adjusted higher or lower at any time, based on a review of state-based exchanges. He suggested that the exchanges chosen for any rate review would likely be the more expensive systems. It is also possible that the rate could change due to miscalculation.

State-based exchanges will have no state tax dollars, no additional federal dollars, and no state full faith and credit. As a business, it will have to deliver value to its customer base at the lowest cost efficiency possible. Idaho already has an effective market with low premiums and low cost, and should be able to run the exchange operation at a continued low cost of a 1% to 1-1/2% premium. Additionally, there is nothing in the law that prevents state exchanges from considering other products and services, which may be another mechanism to lower costs.

Mr. Rovner stated that an overlooked aspect, when considering a state or federal exchange, is jobs. As a business, any new exchange needs to purchase equipment for their call centers and employees. As a federal exchange, those purchases and jobs may not be in Idaho, and may be contracted with existing large Medicare call centers in other parts of the country. A state exchange will benefit Idaho citizens and businesses with jobs, purchases, and possible in-state procurement standards.

Mr. Rovner said premium tax subsidies would be available to both state and federal exchanges because the statute defines an exchange as one, either state or federal, that meets the Department of Health and Human Services (HHS) requirements.

Reproductive rights and abortion are important. **Mr. Rovner** noted that this debate is actually about PHSA changes to the delivery of health insurance benefit packages, and has nothing to do with an exchange. By law, no insurance company can be forced to cover abortion procedures.

Responding to questions, **Mr. Rovner** agreed that non profit groups could be chosen as navigators, as could any community organization or trade association. The state exchange would be subject to new federal rules only to the extent that they change the basic requirements of the state exchange.

The federal exchange will allow small employers to pick a metallic contribution level, such as gold, bronze, or silver. Employees could buy either a product at that level from the exchange companies, or, they could enroll in their employer's metallic package. A state exchange has the flexibility to allow small employers the selection of a defined metallic benefit package, a defined contribution package, or a mixture of the two. Premium tax credits will be available with a federal exchange and are mandated for employers with 50+ employees, if the employer fails to offer the minimum essential coverage. If such coverage is not offered and any employee receives a premium tax subsidy from the exchange, the employer would pay the mandated tax. The challenge lies in the fact that the exchange receives only the applicant information, while the employer reports to the Internal Revenue Service (IRS) if any coverage is offered and the names of the enrollees.

Mr. Rovner explained that the application process is evolving. The federal website section for applications is straight forward and takes about fifteen minutes to complete. The self-reported information goes through a federal hub and is verified through the IRS, based on prior tax returns. This verification could be a long and complicated process. The federal government must provide a standard application that the state exchanges can either use or modify, with federal approval.

He emphasized that federal implementation funds run out at the end of 2014, so if a state-based exchange is desired, but not established by that time, implementation costs would be at the expense of the state. **Mr. Rovner** reminded the committee that the money will be spent by 2015, either by the federal government or the state.

Mr. Rovner responded to a question about insurance sales, stating that PPACA has no provision about selling across state lines. He said the nature of insurance is based on a provider network, not traditional indemnity, so successful products require a good local provider network. He said the more flexible state exchanges will shift the health insurance business model from employer wholesale to individual retail sales. This will provide an opportunity for insurers to enter new markets and negotiate better provider contracts, lower premiums, and expand businesses. The metallic levels provide an effective entry business model for out-of-state companies offering the silver plan to attract new insureds to build enrollment and gain a foothold, thereby introducing new insurance competition into the market. With the DOI help, state exchanges will be able to bring new entrants effectively into their state. The federal exchange may not have the same willingness and flexibility.

Any state can continue to evaluate and implement the best exchange solution for their population. Should a state exchange be unable to operate as a business and actually go out of business, the federal government would come in and operate the exchange their way.

He said that the federal government has not set any solid milestones other than the October 1, 2013, open enrollment. There is a great deal of pressure on the administration to make the exchanges work, with a cooperative intent to get it up and running. A federal website and information technology (IT) back room are all that is needed for the open enrollment deadline, and they are well underway.

Mr. Rovner stated that joining other states and saying "no" to all exchanges is a philosophical issue, not a strategy. Exchanges will exist and so saying "no" won't make them go away. The question is, what is the best solution for the state of Idaho.

He explained that the term "CMS" refers to the Centers for Medicare and Medicaid Services, which operates Medicare and the federal portion of Medicaid. A new bureau within CMS, the Centers for Consumer Information and Oversight (CCIIO), has been created for oversight of the exchange.

An employer must offer the minimum essential coverage, as defined by the PHSA. If an individual applying on the exchange has access to the minimum employer coverage, he is not eligible. The employer would pay a penalty if the individual is eligible to purchase insurance on the exchange, but not eligible for subsidies. Once the exchanges are established, some organizations with 25-100 employees may decide they are economically better off letting their employees purchase on the exchange and paying the penalty. This overlooks the important part that insurance plays as a benefit package feature to attract and keep quality employees. The small employer level, where costs are already a problem, may find the penalty payment economically a better option, if insurance package costs go up.

Mr. Rovner predicted that health insurance will become a retail market. He cited a recent newspaper article about an insurance company opening retail stores, which indicates a variation of how health insurers are already responding to the new market place. The large new enrollee pool is already proving attractive to specialty insurance companies who have not ventured into this venue before. A state-based exchange, has a great deal of flexibility to encourage new market entry and foster competition. They can choose which metallic levels and benefits are offered, if they will have an open market exchange, and if they will allow health insurance supplemental products. The state exchange can be as transparent and consumer-friendly a marketplace as the state desires. He stressed that this will not happen with the federal government running twenty-six state exchanges across the country.

Written into the exchange requirement is the directive to engage in quality improvement activities when working with health insurers. At a federal level, the ability to introduce, implement, and accept innovative choices will be tempered by regulatory process, as experienced in Medicare Advantage plans. State exchanges have flexibility to use DOI regulations, local providers, state based insurers, and the broker community to bring and manage exchange products.

A state exchange would require an insurance pool that could be a multi-state pool. The federal exchange would adopt the state pool model, unless they decide it is not working and change the pool.

The 3.5% premium fee is monthly, but whether or not payment is monthly is still unclear. It is anticipated that administrative payment processing expenses will be passed on to the consumer. A state exchange could require payments be made annually, quarterly, or in another low-cost time frame.

There are twenty-six states that have not applied for a state based exchange. Six states have opted for a partnership exchange. Seventeen or eighteen states are setting up their own exchange, including the District of Columbia.

Mr. Rovner stated that the high risk pool plans will be phased out, including the federal high risk plan. Anyone without an employer-based program would use the exchange for coverage. Traditionally, insurers have underwritten risk, so they didn't want to underwrite anyone who was already sick. Since preexisting exclusion and underwriting are gone, everyone who wants insurance gets insurance. PPACA would not pertain to the indigent population or questions that fall into the Medicaid programs.

Rep. Rusche clarified for the committee that 10% of individuals previously qualified for indigent care would be eligible for the exchange and 90% would be cared for through the Medicaid expansion.

Mr. Rovner said it is extremely challenging to meet the spread of risk among a population of diverse health needs in a pool without diversity. Risk can be managed by changing the business model to delivering high deductible health plan value to the "young-invincibles" uninsured 19-30 year old population group. State exchanges will have more flexibility to invite and market high deductible health plans with health savings accounts. The law condenses the risk bands, resulting in higher costs for young people and lower costs for older people. New ways to attract individuals may include value added products and services.

Mr. Rovner explained that states banding together to reject the exchange would have little impact. The federal government exchange will be operational on October 1, 2013, with countrywide ads beginning in September. The required website and IT back office are already being built. In his opinion, the hope that the health care exchange goes away is not a strategy and the concept that the states band together in protest does not serve the constituency of any state. He shared the history of the Medicare modernization in 2005, which had similar protests by insurance companies, who had to scramble to take advantage of the increased market. He said they learned that the federal government's philosophy will have the exchange up and working on time, with a smooth consumer section, and possibly a bumpy portion for health insurers. He stated that any distaste for ObamaCare is best expressed at the ballot box, especially once the anticipated increased health care and health insurance costs are evident. He emphasized that there will be an exchange and having a local exchange is best for any state to provide the best local accessibility, accountability, and answerability to meet the needs of the population.

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 10:48 a.m.

Representative Wood(27)
Chair

Irene Moore
Secretary