

Blue Perspective



**BlueCross BlueShield
Association**

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BCBSA Position on Legislative and Regulatory Issues

House Exchange Represents a Federal Takeover of Many State Functions Federal Approach is Unnecessarily Costly, Complex and Confusing

Issue: The House Tri-Committee reform bill would create a federal health insurance exchange to facilitate the purchase of coverage by individuals and employers. In contrast, the Senate HELP bill relies on the states to implement exchanges under a federal framework. The Senate Finance Committee is also expected to encourage the creation of state-based exchanges.

Position: The Blue Cross and Blue Shield Association (BCBSA) believes that properly designed state health insurance exchanges – operating under a federal framework of minimum rules – can help consumers shop, compare, and enroll in coverage while simultaneously improving competition. We believe the federal exchange proposed by the House would:

- Result in a federal takeover of regulatory functions already carried out by states;
- Create confusion for consumers who would not know where to turn to for assistance;
- Not improve “pooling” beyond a state-based approach;
- Not provide a real opt-out for states that want to administer their own exchanges; and
- Heighten the risk of insolvency by having different entities negotiate rates and ensure solvency.

A federal exchange would result in a takeover of state regulation and create conflicting rules

The House bill would establish a new federal agency that would assume dozens of functions – from negotiating plans to handling consumer complaints and assuring consumer protections – that the states currently perform. This would result in a massive shift of authority to the federal government that would both undermine existing state authority and create conflicting state and federal rules. For many of the new federal rules, both states and the federal government would be charged with enforcement, which is a recipe for consumer confusion and regulatory problems.

Insurance has been regulated at the state-level in the United States for the past 135 years. States already have the infrastructure – including 13,000 experienced staff – to design, oversee, and enforce these regulations. The federal government has no staff with direct experience in insurance regulation.

Creating a new federal agency to perform many of the regulatory functions states already perform would create unnecessary expense, increase bureaucracy, and quite possibly delay reform.

A federal exchange would create confusion for consumers

Since many functions would be duplicated at both the state and federal levels, consumers would not know where to turn for answers. With different provisions governing a single consumer’s health plan

subject to regulations imposed by two different regulatory bodies – states and the federal government – consumers would not know where to turn for assistance, clarifications, or to report complaints.

A federal exchange would not improve “pooling” beyond a state-based approach

Some proponents believe a national exchange would reduce costs by pooling small employers or individuals across states. However, the national exchange in the House bill calls for geographically adjusted premiums reflecting local costs. Health plans would contract with the exchange on a state-by-state basis. Each of these health plans, not the exchange, would pool the risk of their members – a point the bill clarifies by stating that purchasers would pay their premiums to their health plan and not to the exchange. Thus, national exchanges would not pool risk across state lines or provide any other advantages over state-based exchanges that might lower costs.

The bill would not provide a real opt-out for states that want to administer exchanges

The Senate proposal follows the framework Congress adopted in HIPAA, where there is a presumption that states would implement exchanges and only a limited federal “fallback” if states fail to act. The House bill deviates from this well-accepted approach by establishing a new federal agency to administer the exchange. States could opt-out only upon the approval of the federal Commissioner if the state develops a qualified exchange. The federal government would also retain authority to enforce standards and continue to perform certain functions even when a state opts-out.

The Nation’s governors and insurance commissioners have expressed a strong desire to have flexibility to implement exchanges that respond to local markets and regulations. According to the National Governors Association, “Exchange mechanisms should be established, operated, and regulated at the state-level. State flexibility is needed to design the structure, specify the functions, and determine how insurance products operate within a marketplace that has an exchange.”¹

It is doubtful that many states would implement exchanges given the level of regulation the federal government would assume in the House bill. What incentive would there be for states to assume the cost of operating an exchange if their hands were tied with regard to its design and implementation?

Heighten the risk of insolvency by having different entities review rates and ensure solvency

Today, the states regulate premiums and solvency in tandem to assure that health plans are stable. The House bill increases the risk of insolvency by having the federal exchange to negotiate premium rates while states would regulate solvency. Federal negotiation over rates could lead to premiums that are insufficient to ensure the ongoing plan solvency, thus heightening the risk of health plan failure.

Recommendation

BCBSA believes that a better approach is to permit states to implement exchanges at the state level under a federal framework of rules. State-based exchanges could build on existing state capacities and minimize the need for new resources and administrative costs.

The Blue Cross and Blue Shield Association is a national federation of 39 independent, community-based and locally operated Blue Cross and Blue Shield companies that collectively provide healthcare coverage for more than 100 million individuals – nearly one-in-three of all Americans. For more information on the Blue Cross and Blue Shield Association and its member companies, please visit www.BCBS.com.

¹ Testimony by Ray Sheppach, Executive Director of the National Governor’s Association, before the Subcommittee on Health, House Committee on Energy and Commerce, June 24, 2009.