Exchanges in PPACA – What Are the Requirements for States and Exchanges

I. Introduction:

Exchanges will not be insurers, but will provide qualified individuals and small businesses with access to insurers’ QHPs [qualified health plans] in a comparable way (in a similar way, for example, that Travelocity or Expedia are not airlines but provide access to available flights and fares in a comparable way). Exchanges will be state-established government or nonprofit entities that will have additional responsibilities as well, such as certifying plans and identifying individuals eligible for Medicaid, CHIP, and premium and cost-sharing credits.


“The Affordable Care Act provides that each State may elect to establish an Exchange that would:

1) facilitate the purchase of qualified health plans;
2) provide for the establishment of a Small Business Health Options Program (“SHOP Exchange”) designed to assist qualified employers in facilitating the enrollment of their employees in QHPs [qualified health plans] offered in the SHOP exchange; and
3) meet other requirements specified in the Act.”

Grant Application Announcement, at p. 3.

II. Steps by the State on Grants:

1. §1311(a) – State may apply for grant for planning and other activities for establishing an Exchange.

2. §1311(a) – State may apply for renewal of grant – State must be making progress in establishing Exchange, making progress on implementing insurance reforms, and meeting other benchmarks HHS will set.
III. Steps by the State on Exchange:

1. §1311(b) – **State shall** establish Exchange by 1/1/14 that (i) facilitates purchase of qualified health plans (QHP) and (ii) provides for establishment of SHOP Exchange for small employers to enroll employees in QHPs.

   - §1311(d) – **State shall** establish an Exchange that is a governmental agency or nonprofit entity.

   - §1321(b) – **State shall elect** to apply HHS requirements by adopting Federal standards or adopting State law or regulation that implements HHS standards.

   - §1321(b) - **if State does not** have operational Exchange by 1/1/14, or fails to elect to apply HHS requirements for operation of Exchange, HHS shall establish and operate Exchange in the State.

2. §1311(b)(2) – **State may** elect to merge Exchange and SHOP Exchange.

3. §1311(c)(5) – **State** to develop and maintain internet portal similar to the one **HHS shall** operate.

4. §1311(d)(3) – **State may** require additional benefits, at the State’s expense.

5. §1311(d)(5) – **State shall** ensure Exchange is self-sustaining by 1/1/15.

6. §1311(f) – **State may** permit regional or subsidiary Exchanges.

7. §1311(f)(3) – **State may** elect to authorize Exchange to enter agreement to have an eligible entity (not a health insurer; may be state Medicaid agency) carry out Exchange responsibilities.

8. §1312(f) – **State may** allow large group market issuers to offer QHPs through Exchange, beginning in 2017.

9. §1332(a) – **State may** apply for waiver for innovation for plan years beginning on or after 1/1/17.

10. §1332(a), (b) – **if State applies** for a waiver, **State shall** enact a law providing for State actions under the waiver.

11. §1341(a) – **State shall** adopt or enact reinsurance standards by 1/1/14 to stabilize individual market for first 3 years of Exchange.

12. §1341(a) – **State shall**, by 1/1/14, establish or contract with reinsurance entity to provide reinsurance to individual market for first 3 years of Exchange.

14. §1413(b) – **State may** use HHS form or its own “single, streamlined form” for applicants to apply for all applicable State health subsidy programs – Exchange, Medicaid, CHIP, etc.

   “Such system shall ensure that if an individual applying to an Exchange is found through screening to be eligible for medical assistance under the State Medicaid plan under title XIX, or eligible for enrollment under a State children’s health insurance program (CHIP) under title XXI of such Act, the individual is enrolled for assistance under such plan or program” with no additional paperwork.

15. §1413(c) – **State shall** develop electronic interface for all applicable State health subsidy programs to exchange data, and each State program shall participate.

16. §2201 – **State shall** establish procedures so that individual may apply through website for Medicaid with electronic signature, or enroll in Exchange; website must screen for eligibility in Medicaid, CHIP, or Exchange.

   - Medicaid and CHIP **may** contract with Exchange to have Medicaid or CHIP determine eligibility if agreement satisfies Treasury’s requirements for reduction of administrative costs, likelihood of eligibility errors, and disruptions in coverage.

   - Medicaid and CHIP **shall** participate in streamlined enrollment process outlined in PPACA §1413.

**IV. Steps by the State on Qualified Health Plans:**

1. §1301(a) – **State shall** have licensed issuer that offers a QHP, and issuer shall be in good standing with the State.

2. §1312(b) – **State may** require individual and small group markets in the state to be merged.

3. §1312(d)(2) – **State shall** continue enforcing state laws on plans offered outside of Exchange.

4. §1312(e) – **State may** allow producers to enroll individuals and employers in a QHP through the Exchange.

5. §1322(c) – **State shall** enforce licensing, solvency and operational requirements with respect to qualified nonprofit health insurance issuers created under CO-OP program (Consumer Operated and Oriented Plan) established by HHS.
6. §1332 – **State may** apply for waiver for innovation for plan years beginning on or after 1/1/17.

V. **Steps by the Exchange:***

1. §1311(d) – **Exchange shall** make available qualified health plans (QHP) to qualified individuals and qualified employers

2. §1311(d) - **Exchange shall** allow plans offering dental benefits only if plan provides pediatric dental benefits

3. §1311(d)(4) – **Exchange shall** perform, at a minimum, the following functions:
   - implement procedures for certification of qualified health plans
   - provide for operation of a toll-free hotline for assistance
   - maintain website with comparative information on plans
   - assign rating of plans
   - utilize standardized format for presenting options in the Exchange
   - inform individuals of eligibility for Medicaid or CHIP or other state program, and, if eligible, enroll those individuals in that program
   - make available electronic calculator to determine actual cost of coverage after premium tax credit and cost-sharing reductions
   - grant certification if person is exempt from individual responsibility requirement
   - transfer list of those certified persons to Treasury
   - establish Navigator program

4. §1311(d)(5) – **Exchange shall not** use funds on staff retreats, promotion of legislative or regulatory modifications, etc.

5. §1311(d)(6) – **Exchange shall** consult with stakeholders – educated consumers, enrollment facilitators, small business and self-employed representatives, state Medicaid offices, advocates for hard to reach populations

6. §1311(d)(7) - **Exchange shall** publish costs on website, including monies lost to waste, fraud and abuse.

7. §1311(e) - **Exchange shall** certify QHP if it meets HHS requirements and it is in interest of qualified individuals and employers in the State.

8. §1311(e) - **Exchange shall** post information about plans’ justification of premium increases, and use that information plus information from State under PHSA (re patterns of premium increases) into consideration in determining if plan is qualified.
9. §1311(e)(3) - Exchange shall require transparency on claims and rating practices, cost-sharing.

10. §1311(i) – Exchange shall establish a program for awarding grants to entities to carry out Navigator duties. Navigators shall not be health insurance issuers. Funds for grants shall come from operational funds of the Exchange.

11. §1312(d)(4) – Exchange shall not impose penalty for individual who cancels enrollment because he becomes eligible for minimum essential coverage.

12. §1313 – Exchange shall keep accurate accounting and cooperate with investigations and be subject to audits.

13. §§1401, 1402 – Exchange anticipated to have role in IRC premium assistance calculations.

14. §1411 – Exchange shall receive enrollment information from applicant and shall submit information electronically to HHS for verification.

15. §1411(d) – Exchange shall make reasonable effort to address inconsistencies in application information and follow up with applicant and employer (for premium assistance).

16. §1412 – Exchange may request of HHS advance determinations of income eligibility.

17. §1413(d) – Exchange may contract with State Medicaid agency to determine eligibility if Medicaid agency complies with HHS requirements; Title XIX requirement that eligibility for participation in Medicaid be determined by a public agency is unchanged.

VI. Steps by State on Alternative Programs:

1. §1331 – State may enter into contracts to offer standard health plans to eligible individuals in lieu of offering coverage through the Exchange.

2. §1331 – State shall provide satisfactory (to HHS) premiums, cost sharing, and benefits under alternative program.

3. §1331 – State shall use competitive process for contracts under alternative program.

4. §1331 – State may negotiate regional compacts for alternative program.

5. §1331(c)(4) – State shall seek to coordinate alternative program with Medicaid, CHIP, and any other State-administered health program to maximize efficiency of such programs and improve continuity of care.