

Comments on Exchange White Paper #2: Key Questions on Promoting Competition

To: Virginia Health Reform Initiative

From: John McInerney, Health Policy Director, The Commonwealth Institute for Fiscal Analysis; Jill Hanken, Staff Attorney, Virginia Poverty Law Center

Summary of Recommendations

Creating a health benefit exchange that allows for effective competition is an important priority. The Exchange should seek to have a selection of plans that all provide quality, affordable and accessible health insurance options for Virginia's consumers.

We have the following recommendations (followed by further discussion) for the seven questions posed:

1. How should Virginia seek to build capacity within the Virginia HBE so that it can remain compliant with federal performance requirements while ensuring that over time Virginia maintains autonomy from the federal government?

- The capacity and success of Virginia's health benefit exchange is going to rest largely on cooperation and coordination among all relevant state agencies (e.g. Bureau of Insurance, DMAS and DSS), as well as the use of existing resources to allow the exchange to operate as efficiently as possible. We specifically support Alternative 1 in the White Paper for the role of the BOI, although the Exchange and its governing board must develop all specific certification requirements.

2. Should the Virginia HBE be statewide, multi-state, or a set of geographically contiguous sub-state exchanges?

- Because of time constraints, the initial Exchange should be statewide. However, we believe it would be useful to participate in discussions with Maryland and the District of Columbia about the feasibility of a future Capital Region exchange that could possibly better serve the residents of Northern Virginia.

3. Should Virginia combine the non-group and small group risk pools or keep them separate as they are today?

- We support combining the non-group and small group risk pools because, as a general rule, larger risk pools reduce the costs of insurance. Improving affordability is a major goal of the Exchange. In addition, people who cannot obtain insurance from their employers should not be disadvantaged.

4. How small is a "small group?"

- At the outset, the Exchange should only allow firms with fewer than 50 employees to participate in the "Small Business Health Option Program" (SHOP) exchange. This will help to focus initial activities on the businesses that typically fail



to offer health insurance to their workers.

5. Should Virginia require more benefits than the "essential benefits package"?

- Yes. Virginia plans - in and outside the Exchange - should include all of Virginia's mandated benefits.

6. Should Virginia make all market rules that will be adopted inside the HBE also applicable to the parallel markets (individual and small group) outside the HBE?

- Yes. Standardized rules between the market outside and within the Exchange will reduce the risk of adverse selection that would undermine the viability of the Exchange.
- In addition, the Exchange should limit the incentive of brokers, operating as Exchange Navigators, to direct business to plans outside of the Exchange.

7. Should Virginia encourage or require the HBE to be more of an active purchaser or an open market facilitator?

- Virginia's Exchange should retain the authority to be an Active Purchaser to select plans for participation.

Discussion

1. How should Virginia seek to build capacity within the Virginia HBE so that it can remain compliant with federal performance requirements while ensuring that over time Virginia maintains autonomy from the federal government?

The capacity and success of Virginia's health benefit exchange is going to rest largely on cooperation and coordination among all relevant agencies, as well as the use of existing resources to allow the exchange to operate as efficiently as possible.

The exchange should emulate and utilize existing web-based resources and comparison tools when designing the web portal. Online resources, such as the Orbitz travel website and the Massachusetts Insurance Connector have modified and simplified information provided to allow for easy comparisons between products. Beyond the necessity of simple comparisons between products, a main objective of the exchange is to make accessing, enrolling in and renewing health insurance as easy and seamless as possible. We recommend consideration of the FAMIS online application process as an example of a system which works very well for consumers and which has benefitted from ongoing review and improvements.

The health benefit exchange is a significant undertaking that will require many government entities to play a role. DMAS, DSS and the Bureau of Insurance (BOI) are state entities that must remain actively engaged with the exchange. DMAS should continue its role overseeing and running the Medicaid and FAMIS programs. With a 'no wrong door' requirement, the Exchange must facilitate enrollment for Virginians who are eligible for Medicaid or FAMIS. Likewise, people seeking health insurance at a local DSS office who are found

ineligible for public insurance must be guided through the Exchange to review and obtain private insurance there.

The BOI should also continue to implement and enforce insurance regulations and consumer protections, consistent with its mission and mandate. The BOI should maintain its role in licensure and enforcement of solvency requirements. While the health benefit exchange staff and governance board should establish the specific rules and regulations for certifying which plans can participate in the Exchange, we believe the BOI should be responsible for actually certifying health plan eligibility for the exchange. (Alternative 1 in the White Paper). BOI has the expertise to perform this function along with its current responsibilities.

2. Should the Virginia HBE be statewide, multi-state, or a set of geographically contiguous sub-state exchanges?

The Capital Region (Northern Virginia/Suburban Maryland/Washington D.C.) has many similar attributes among consumers who live and work in the area. Residents of Northern Virginia often commute to work in the District or in suburban Maryland. There is some shared sense of community between the different jurisdictions.

A geographic exchange would contain many attractive elements. Having a consistent insurance plan would certainly help employers with workers from multiple jurisdictions, something that is very common in the Capital Region. Sharing of administrative costs could also help Virginia in financing and operating its exchanges. And, for consumers who move to another area within the Region, the prospect of continuity in their health insurance could make such a move more attractive/feasible.

However, a regional exchange would face several obstacles. Rules would need

to be aligned in the exchange plans, and state insurance regulations would need to be standardized. Insurers could face significant administrative difficulties if the rules were not standardized and they were forced to comply with different regulations in each jurisdiction.

The possibility of a regional exchange is further complicated by Maryland having already enacted its own state exchange plan. Although it is uncertain if Maryland would revisit the idea of a separate exchange for the Capital Region, their Exchange Board of Directors indicated in early June that they were still open to considering the "feasibility and desirability" of a regional exchange.

Because of the above concerns and the current time constraints to initiate Exchange operations, Virginia should move forward in building its Exchange as a statewide system. However, Virginia should continue to participate in discussions regarding a regional exchange with Maryland and Washington D.C. (or other regional exchange proposals that might arise). Even if the discussions do not yield an agreement, Virginia could gain valuable information about how other states are addressing important and complex exchange design questions.

3. Should Virginia combine the non-group and small group risk pools or keep them separate as they are today?

We support combining the non-group and small group risk pools because, as a general rule, larger risk pools reduce the costs of insurance. Improving affordability is a major goal of the Exchange. In addition, people who cannot obtain insurance from their employers should not be disadvantaged by continuation of separate risk pools.

Experts have found that merging the existing individual and small group markets reduced the cost of purchasing insurance on the individual market,

while slightly increasing the cost of small employer insurance coverage. Ultimately, combining the markets should also produce some administrative simplicity and reduced costs. And, if insurers were compelled to participate in both the individual and small group markets, it could increase the insurance options for individuals.

4. How small is a “small group?”

According to the Agency For Healthcare Research and Quality’s Medical Expenditure Panel Survey (MEPS), most Virginia businesses with 2-50 employees are not even offering coverage to their employees. In 2009, only 37 percent of firms with fewer than 50 employees offered coverage. Businesses with more than 50 employees almost always offer coverage to their workers, and over 80 percent of those employees take up coverage when offered.

Beginning in 2016, the exchange must be opened to businesses with up to 100 employees. Until then, states have the option of restricting it to firms with fewer than 50 employees. Numbers like those cited above and in the VHRI memo suggest Virginia should concentrate on the very small businesses while the exchange is getting up and running. The preponderance of working Virginians without health insurance are employed by small firms. Early efforts to reach and encourage these businesses to participate in the exchange could have a profound impact on the uninsured rate in the state.

In addition, as mentioned in the VHRI memo, opening up the exchange at the outset to firms with 51-100 employees would increase the risk of adverse selection. Businesses with high health costs and a sicker risk pool would have more incentive to join the exchange, which would increase the cost of coverage for exchange plans. The insurance market for larger employers is also not nearly as

strained as the small group market, since most businesses are able to continue offering coverage for their workers. It makes more sense to get the market running efficiently with the businesses most in need and then expand access to larger firms once Virginia’s exchange is more well-established.

5. Should Virginia require more benefits than the “essential benefits package”?

Yes. The Essential Benefits Package (EBP) and state mandates should apply to all state regulated insurance. While we do not yet know how many of Virginia’s mandated benefits will be included in the EBP, we should aim to maintain Virginia’s mandated benefits which are all intended to protect the consumer and help ensure a healthier state population. Changing those mandates would weaken the protections for Virginia consumers who already have coverage.

Instead, these mandates should be maintained in the current individual and small group markets and added to the health benefit exchange plans as well. Virginians purchasing health insurance coverage through the exchange should not have access to lesser coverage than is available in the current marketplace today.

Virginia’s benefit mandates are enacted after a long and deliberative legislative and regulatory process involving significant thought and debate. The overall cost of Virginia’s mandates is a small fraction of the overall health insurance premium. (While Virginia has a large number of mandates, according to MEPS data the average premium cost for employer-sponsored insurance is about average compared to other states.) These mandates should be maintained so consumers in Virginia can continue to have access to comprehensive health insurance.

6. Should Virginia make all market rules that will be adopted inside the HBE also applicable to the parallel markets (individual and small group) outside the HBE?

Yes. Just as we recommend that Virginia’s exchange plans offer the same benefit mandates that are required outside the exchange, it is important that other insurance “rules of the game” also be standardized regardless of the market through which the product is sold. Doing so will decrease the risk of adverse selection, which could ultimately create a less healthy group of enrollees inside the exchange and eventually increase the cost of insurance in that market. Significant adverse selection will undermine the viability and success of the exchange in Virginia.

Below are three specific recommendations that would help prevent adverse selection in the health benefit exchange:

1. Require insurers in the current individual and small group market to follow the same marketing, quality and transparency rules that are required for certification as a Qualified Health Plan in the Exchange. If insurers outside of the exchange do not have to comply with the same requirements as those that do participate in the exchange, they will be able to offer policies with fewer consumer protections. This will destabilize the marketplace and increase the risk of adverse selection.
2. Standardize the coverage offerings to prevent insurers outside the exchange from only offering less comprehensive coverage that attracts a younger, healthier risk pool. Insurers within the exchange can offer a “bronze” level insurance plan, but must also offer “silver” and “gold” options. Outside of the exchange, there is only a requirement

that a “bronze” level plan is offered. This increases the risk of adverse selection, since a firm choosing not to participate in the exchange could only offer less comprehensive coverage and siphon off the healthy risks. Firms not participating in the exchange should be required to follow the same rules and offer “silver” and “gold” plans to help maintain a level playing field and prevent against adverse selection. Furthermore, plans offering coverage in the exchange should be required to offer the same plans both inside and outside the exchange. If the rules are standardized, there should be no reason why a plan sold on one market cannot also be offered in the other.

3. Virginia should enforce the single riskpool requirement. As mentioned, insurers participating in the exchange and also in the current individual and small group markets must use a single risk pool to prevent them from segmenting the market and creating adverse selection. However, enforcement of this requirement could prove difficult. The health benefit exchange in Virginia must work in concert with the Bureau of Insurance to ensure that firms are able to prove compliance with the ACA’s requirement.

The VHRI White Paper #2 also raises issues about the role of insurance brokers as Navigators for the exchange. We believe the exchange should limit the incentive of “Broker-Navigators” to direct business to health plans outside of the exchange. The role of Broker-Navigator should be to inform consumers and others about the insurance options available to them. It should not be to direct consumers to the insurance product for which they have the greatest financial incentive. The Navigator program is set up to protect the consumer, not to preserve financial arrangements of brokers or other entities.

As a condition of participating in the exchange, brokers should have to disclose the fees they receive to show that they have no increased financial incentive to steer business away from the exchange. Some uniform limits on broker fees should also be considered.

In addition, it is imperative that the exchange does not limit the ability of consumer groups and community organizations, especially those with a history of working with low-income populations, from serving as Navigators. The ACA fully intends for nonprofits and other direct service providers to serve as Navigators to help consumers work their way through the process and gain access to public or private insurance. Any efforts to limit their participation as Navigators, through restrictive licensure requirements or other measures, would be contrary to the intent of the law and would hamper outreach and enrollment efforts that will be necessary to increase enrollment in the exchange and Medicaid/FAMIS beginning in 2014.

7. Should Virginia encourage or require the HBE to be more of an active purchaser or an open market facilitator?

We believe the health benefit exchange should retain authority to be an active purchaser. In other words, the exchange should not be required to accept all plans if they do not meet a reasonable standard of quality and value. While we are still awaiting federal guidance to determine what the minimum standard for a Qualified Health Plan will be, the state should not give up its authority to set the standard above the minimum standards set by the federal government or to deny a plan that does not meet the needs of the consumer.

In addition, the exchange should provide full transparency and require comprehensive and user-friendly information for consumers to compare health insurance options and make

choices that best fit the needs of themselves and their families. As mentioned in the VHRI memo, the Exchange will be required to publish price and quality information, likely on the web portal. It is important that such information be clearly presented in a way that the consumer can understand and utilize it—making “apples to apples” comparisons. It should include medical-loss ratio information as well, so consumers can know how much of their premium dollar is being spent on health care and not administrative costs.

Additionally, the state should consider restricting the number of plans offered at each level of coverage. Having too many plans could confuse the consumer, as insurance plan details can be extremely complicated even for those with insurance knowledge and expertise. Such confusion has been common in Medicare Part D, where dozens of plans are available, making the purchasing decision more difficult.

Thank you for this opportunity to present our comments.