

State of Illinois Request for Comment
Health Insurance Reform and the Option of
Establishing an Insurance Exchange

I. Functions of a Health Benefit Exchange

1. *What advantages will Illinois see in operating its own exchange versus permitting the U.S. Department of Health and Human Services (HHS) to run an Exchange for the State?*

Blue Cross and Blue Shield of Illinois (BCBSIL) supports the creation of an Illinois state exchange rather than a federal exchange.

The Affordable Care Act (ACA) recognizes the important role states play in regulating insurance by maintaining the state-based enforcement structure of the Public Health Service Act, encouraging states to develop Exchanges and providing states with substantial flexibility to develop Exchanges that meet their unique market needs. We support the state of Illinois in its desire to design an exchange that works best for Illinois consumers.

A state-based approach to designing and administering Exchanges builds on states' expertise as the regulators of the health insurance market. Health insurance markets, regulatory environments, and consumer preferences vary substantially across states. No proven Exchange model exists today that has been shown to effectively meet all the goals of improving access, controlling costs, providing choice and improving quality. State flexibility will be critical to harness state innovation to test which Exchange models provide the best value over time, ensure that Exchanges meet local consumer needs, and ensure that states are invested in creation and ongoing management of Exchanges.

2. *What are the most desirable outcomes from an insurance market perspective? What features should the Exchange contain in order to reach those outcomes?*

BCBSIL encourages the implementation of an open market exchange that increases access for consumers and assures maximum consumer choice.

Allowing for an open, competitive market based exchange would ensure consumer choice, flexibility, and innovation in purchasing insurance coverage. Consumers and employer groups should have the flexibility to compare and purchase coverage through the Exchange or existing distribution channels and maintain their current plan if they choose to do so. By enabling choice and flexibility, the implementation of the Exchange can minimize disruption to the employer and individual markets and create a stable market for purchasing coverage. This stability can also be accomplished by implementing consumer friendly selection and enrollment processes that encourage transparency and ease of use for purchasers. An open market exchange model would also help to improve access to healthcare, especially for low income populations without a centralized resource to purchase coverage today.

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BCBSIL supports an Exchange that:

- 1) Ensures that all qualified plans can participate on the exchange (to maximize consumer choice)
 - 2) Is a market facilitator – an entity that will maximize competition, choice, and participation among health plans
 - 3) Imposes reasonable standards that create a level playing field for competing health plans
 - 4) Creates an effective risk adjustment mechanism
 - 5) Provides flexibility in offering health benefit options
3. *What, if any, Exchange functions beyond the minimum clearinghouse functions required in the ACA would benefit Illinois and why?*

To ensure successful implementation and the delivery of an Illinois Exchange that adds consumer value, BCBSIL encourages the initial creation of a simplified purchasing experience for consumers.

Since the Exchange concept is largely untested, it is important that Illinois take a measured and prudent approach to implement this new coverage option to ensure market stability and choice on behalf of Illinois' consumers.

With budgetary constraints for the state in implementing this new untested marketplace, it is recommended that a prudent approach be utilized. Costs for Information Technology (IT) enhancements, billing, customer service, and consumer support will be important considerations for the state and all participating health plans. Associated indirect consumer costs will occur, and the ability for the exchange to expand after initial implementation based on lessons learned will be essential for success.

Additionally, as a consumer protection safeguard, BCBSIL believes that efforts should be made to avoid duplication of existing regulatory and administrative responsibilities. For instance, while ACA gives Exchanges the authority to consider excessive or unjustified rate increases as a reason for excluding health plans from Exchange participation, Exchanges should not determine rates for health plans or product offerings. Instead, to avoid duplicative regulation, an Illinois Exchange should work in concert with the Illinois Department of Insurance (DOI) to make such determinations within the rate review provisions of ACA.

Any effort to de-link rate regulation from solvency regulation could create conflicts between two regulators and uncertainty for health plans. It could also jeopardize a key consumer protection – the assurance that a health plan offering coverage on the exchange has adequate reserves to pay for enrollees' claims.

4. *What advantages are presented to Illinois if the Exchange were to limit the number of plans offered; for example, plans could be required to compete on attributes such as price or quality rating? Is the Exchange a stronger marketplace if it permits "any willing provider" to sell coverage?*

BCBSIL supports the creation of reasonable standards for qualified health plans (QHPs), multiple carriers and multiple plan designs, to facilitate maximum consumer value and health plan participation.

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BCBSIL urges the state to adopt an exchange model that allows all interested health plans that meet QHP standards to participate. While ACA includes numerous, specific certification criteria for QHPs, including requirements in the areas of marketing, network adequacy, accreditation, quality improvement, and enrollment forms, it also provides states with flexibility in the QHP certification process. The state of Illinois will be more likely to foster participation in an exchange, and an Illinois Exchange will therefore be more likely to succeed, if they encourage the participation of all health plans that meet clear, objective and defined QHP standards that are free from political influence.

Standards for exchange participation should ensure that consumers have a choice of valuable plans on an exchange – this will also allow for a broad array of plans allowing maximum consumer choice and promoting innovation of plan design in the early exchange launch. Illinois consumers, the market, will then decide which plans work best for them.

BCBSIL believes that an Exchange can meet the goal of ensuring high value choices for consumers by applying clear and objective standards for participation by QHPs that ensure both quality and value. Universal minimum standards to ensure competition/choice must be balanced with adequate QHP standards to guarantee market stability and consumer protection, such as assuring that only state-licensed health plans with a proven ability to bear risk may participate. These standards should be applied uniformly to all QHPs seeking to participate.

Clear solvency and quality standards for all QHP has several advantages, including:

- **Enhancing health plan participation:** The cost of developing plans for exchange participation will be substantial. Assuring that all health plans that meet the clear, objective and defined QHP standards will be accepted for participation will increase the number of health plans willing to invest in the infrastructure to support an exchanges and therefore increase competition,
- **Delivering the choices consumers want:** A model where an exchange limits the number of QHPs that may offer coverage would result in fewer choices for consumers and less assurance that choices will evolve over time to continue to meet consumer expectations and needs,
- **Reducing duplication and regulatory confusion:** Creating an exchange with regulatory powers to pick and choose among health plans may result in overlapping and conflicting regulation from insurance departments which will confuse consumers and health plans alike,
- **Minimizing disruption for consumers:** Having an exchange actively limit plan choices could have a significant impact on consumers by forcing them to change health plans on a year-to-year basis if plans selected for participation one year are barred from participation the following year, and in 2014 when many consumers will be migrating to Exchange health plans from their current health plans, and
- **Ensuring consumer safety:** BCBSIL recommends that state and federal officials work together to establish clear, objective and reasonable

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standards for QHPs in order to ensure broad health plan participation beginning in 2014. Some exchange requirements – including certain certification standards and IT infrastructure requirements may pose challenges for health plans in the initial years of exchange operation. At the same time, QHP standards must guarantee market stability and consumer protection by assuring that only state-licensed health plans with a proven ability to bear risk may participate. Consumers will not be well served if undercapitalized or inexperienced players enter an exchange and then fail.

Standards should also recognize the enormous operational and educational challenges health plans will face in implementing all of the 2014 reform requirements. Standards for QHPs can always be strengthened over time once an exchange becomes well established.

In addition, such standards need to be in place in time for health plans to modify their operations, plan for provider and network impacts, and educate the provider community in the lead up to the January 2014 effective date for an Illinois exchanges. Examples of processes that need to be modified include tracking subsidy eligibility, development of IT/website infrastructures, product design, outreach, and marketing. BCBSIL recommends that an Illinois Exchange specifies its operational requirements for health plans as soon as possible.

II. Structure and Governance

1. *If Illinois chooses to establish its own Exchange, which governance structure would best accomplish the goal of more affordable, accessible health insurance coverage? Why?*

Exchange Governance Must Ensure Protection from Political Influence, Knowledge of Insurance Markets, and Fiduciary Accountability

The Governance Structure should include a model that provides for accountability for public funds, promotes transparency and competition, and includes participation by consumers, employers and individuals with expertise in insurance including insurance carriers, agents, actuaries, as well as representation from state agencies like the Department of Health and Family Services and the Department of Insurance. While the state of Illinois is in the best position to determine the appropriate governance structure for its Illinois Exchange, we recommend consideration of the following factors:

- The Exchange should be designed and implemented in a manner that complements the functions of state insurance regulators. Exchange functions should not conflict with, overlap with, or build upon functions currently performed by insurance regulators, such as market conduct, review or approval of rates and forms, or solvency regulation;
- The Exchange should include a governance approach that provides for adequate formal input from key stakeholders with knowledge of the health insurance market, including health actuaries and health plans, and for

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appropriate accountability to a legislative or executive body within the state;

- The Exchange should be structured in a manner that ensures that they have a fiduciary relationship to enrollees. An Illinois Exchange could potentially handle billions of dollars in premiums annually. Therefore, specific fiduciary standards are necessary to safeguard the use of these funds and ensure that funds are not diverted for other purposes;
- The Exchange should be free from overt political influence concerning the plan choices available to consumers. An Illinois Exchange should develop governing documents that explicitly incorporate ethics standards, accountability to members, freedom from conflict of interest and political interests, transparency and fiduciary standards.

III. The External Market and Addressing Adverse Selection

1. *Should Illinois establish a dual market for health insurance coverage or should it eliminate the external individual market and require that all individual insurance be sold through the Exchange? What would be the effects of doing so?*

The Illinois Exchange should supplement existing markets and ensure that consumers have a choice of coverage inside and outside of the exchange.

ACA makes it clear that purchasing health insurance coverage through an exchange is voluntary, thereby guaranteeing that consumers will have their choice of whether to buy coverage inside of an exchange or outside of an exchange. The overarching structure of ACA ensures that there will be a marketplace inside and outside of the exchange and thereby guarantees consumers varied options for health insurance coverage. The current individual and small group markets should be allowed to continue offering coverage outside the exchange.

Countless ACA provisions assume that a robust health insurance market outside of an exchange will continue. For example:

- Congress expressly stated in "Empowering Consumer Choice" that a market outside of an exchange should continue and that "Nothing in this title shall be construed to prohibit a health insurance issuer from offering outside of an exchange a health plan to a qualified individual or a qualified employer;" [ACA Section 1312(d)(1)]
- Congress also expressly stated that "Nothing in this title shall be construed to compel an individual to enroll in a QHP or to participate in an exchange." [ACA Section 1312(d)(3)(B)].
- Congress required health insurers to have a single risk pool for all individual coverage inside and outside of the Exchange, and requires the same for small group coverage, whether sold inside or outside an exchange; [ACA Section 1312(c)]

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- Congress required health insurance issuers to ensure that any coverage offered in the individual and small group health insurance market include the same "essential health benefits package" required to be provided by exchange plans; [PHSA Section 2707(a)]
- Congress prohibited exchanges and exchange plans from penalizing individuals who cancel enrollment in an exchange plan to enroll in coverage outside of an exchange; [ACA Section 1312(d)(4)], and
- Congress required the General Accounting Office to oversee exchanges, including collecting data on the market outside of exchanges; [ACA Section 1313].

In addition, the elimination of a non-exchange market prevents the effective implementation of ACA's express instruction to foster consumer choice. Consumers with different or additional needs should not be forced into these standard plans. A government-operated exchange – especially one that substantially limits health plan choices – may not provide the choices and customer service that consumers demand.

Consumer needs differ across segments, and eliminating the non-Exchange market will cause consumer dissatisfaction and limit consumer choice. Moreover, preserving a marketplace outside of exchanges would help assure an effective transition to exchanges and reduce the potential for consumer dissatisfaction in the transition to 2014. Allowing those who are not subsidy eligible to choose their preferred purchasing channel (with their insurance agents or health plans) and the option of maintaining their existing coverage would maximize access to coverage and reduce the pressure on a state exchange to work without flaw when they first become operational.

2. *What other mechanisms to mitigate "adverse selection" (i.e. requiring the same rules for plans sold inside and outside of the Exchange) should the state consider implementing as part of an Exchange?*

The ACA includes numerous specific provisions that will protect Exchanges from adverse selection from the outside market, including applying all insurance rules (including rating rules) equally to coverage sold inside and outside of Exchanges, and requiring health plans to have a single risk pool for all individual and small group coverage, whether sold inside or outside an Exchange, which will make it impossible for insurers to offer lower prices for the same coverage offered outside the exchange.

BCBSIL recommends that consideration is given to the following additional areas to help prevent adverse selection:

- Seamless eligibility verification to ensure consumers have access to the appropriate coverage, subsidies, etc. – whether private or public
- Eligibility rules that avoid having people without prior credible coverage entering into the exchange, paying a few months premium, getting large claims paid for anticipated medical expenses and then dropping coverage
- Development of actuarial sound rating areas and rating requirements
- An effective risk adjustment mechanism
- Monitoring of market conduct to avoid adverse selection

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- Flexibility of Plan design

3. *If the Exchange and the external market operate in parallel, what strategies and public policies should Illinois pursue to ensure the healthy operation of each? Should the same rules apply to plans sold inside and outside an Exchange? Should the same plans be sold inside and outside the Exchange without exception?*

BCBSIL encourages the state of Illinois to develop consistent rating and solvency rules to prevent adverse selection of plans and enable consumers and employer groups to drive benefit design. In addition, health plans should have the ability to vary their product offerings inside and outside the exchange while ensuring each product meets the existing actuarial standards. To preserve consumer's ability to choose among meaningfully different health insurance options, states must preserve the non-exchange health insurance market and not require plans to sell all "metal" levels outside the exchange. These policies will facilitate successful variety in distribution channels and allow for market variance while enabling consumer choice, flexibility and encouraging plan and product innovation.

4. *What rules (if any) should the State consider as part of establishing the open enrollment period?*

BCBSIL suggests the state establish effective open and special enrollment policies to ensure a stable health insurance market in 2014 and beyond.

Open enrollment periods should be adequate in length to allow individuals time to make decisions and enroll in coverage, but should not be long enough to allow "just in time" insurance. The use of a limited period is intended to encourage individuals – including healthy individuals – not to delay enrollment given they are unable to predict health needs for extended periods of time. This in turn creates more affordable premiums because of a more balanced, stable insurance pool.

A longer initial open enrollment period in advance of 2014 is recommended given that the public will be need to become accustomed to the new system of an Illinois Exchange and federal subsidies. More public education will be needed for 2014 than subsequent years.

Based on experience implementing Medicare Part D, it may be necessary to begin this open enrollment period as early as August, with coverage effective January 1, 2014. In later years, open enrollment could occur during October, with a January 1 effective date.

We recommend distinguishing between open enrollment periods in the individual market versus the small group market. A limited open enrollment period is critical to prevent adverse selection in the individual market. However, continuous guaranteed issue in the small group market has been the practice in all states since the 1990s. The regulations should clarify that carriers have flexibility to provide continuous guaranteed issue in the small group market while limiting open enrollment to a single 30-day period in the individual market. However, once employers enroll in an exchange, their employees must select plans within 30 days (consistent with how employer plans generally address

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initial open enrollment today) and adhere to special enrollment periods outside of this period.

5. *The ACA requires states to adopt systems of risk adjustment and reinsurance for the first three years of Exchange operation. How should these tasks be approached in Illinois? What are issues the State should be aware of in establishing these mechanisms?*

BCBSIL recommends a robust risk adjustment system and reinsurance program to ensure broad choice of plans on the Illinois Exchange.

An effective risk adjustment system is critical to assuring a broad choice of health plans to compete for consumers on an exchange, as well outside an exchange, when significant market reforms (e.g., guaranteed issue) go into effect in 2014. Experience with state purchasing cooperatives indicates that health plans offering higher benefit levels and broad networks are likely to suffer adverse selection. While risk adjustment may not fully be able to account for this selection, developing the most robust risk adjustment system possible will help assure consumers have a range of plan choices.

Extensive planning, in coordination with the American Academy of Actuaries, will be needed prior to 2014 to develop an effective risk adjustment system. While Medicare and Medicaid will provide valuable insights into developing risk adjustment systems for the private market, key differences between government programs and private markets such as source of payments and variation in benefit design, need to be taken into account. The frequency with which enrollees will be expected to migrate in and out of individual and small group coverage or governmental programs to private insurance will also pose design challenges.

Careful consideration should be given to how risk adjustment will interact with the temporary reinsurance and risk corridor programs, as well as other requirements affecting enrollee premiums and carrier finances (e.g., substantive rating rules, calculation of medical loss ratio rebates, timing of premium subsidy payments, etc.). It is noteworthy that different parties have different responsibilities for administering these programs and regulations. A failure to coordinate these requirements could be extremely disruptive to the marketplace. Consideration should also be given to the phase out of the state of Illinois high risk pools. The initial influx of high risk members into an Illinois Exchange and non-exchange pools will cause highly volatile, unpredictable large loss scenarios for some if not all health plans and therefore should be included in the risk adjustment modeling.

6. *Given the new rules associated with the Exchange, and the options available for restructuring the current health insurance marketplace, what should the state consider as it relates to the role of agents and brokers?*

BCBSIL believes the broker channel should continue to play an important role in the employer and individual markets.

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A new Exchange marketplace will provide additional needs for education and support, and brokers will be a key resource for consumers. New and existing consumers will require attention and guidance in the purchase of insurance in this new post-reform insurance marketplace, and certain consumers will choose to work with a broker for assistance through the purchasing process.

IV. Structure of the Exchange Marketplace

1. *Should Illinois operate one exchange or two separate exchanges for the individual and small group markets? Why?*

BCBSIL recommends the implementation of separate underwriting pools for the individual and small group markets in a manner that is consistent with the structure of the insurance marketplace.

It is important to recognize that the individual and small group markets vary in a number of important ways, and it is important for the state of Illinois to structure their exchange administration accordingly. For example:

- Not all health plans serve both the individual and small employer markets;
- State and federal legal requirements vary between the individual and small employer markets (e.g., state benefit mandates, COBRA, legal remedies);
- Products are likely to differ between the individual and SHOP exchange in a state that does not merge the individual and small group markets;
- Distribution channels may differ between markets, with small employers likely to rely heavily on agents in an exchange; and
- Rating structures may differ between the two markets. For example, composite rating is common in the small group market, but has no corollary in the individual market. (Composite rating provides employers with a flat rate per employee, versus age-rated policies, which vary based on an individual's age.)

The state of Illinois will need to carefully evaluate the impact of a merger of the individual and small employer markets on policyholders, as merger of the markets may result in undesirable adverse selection and cross-subsidization of markets that would outweigh the perceived advantages of pooling these markets.

2. *What should the Illinois definition of small employer be for initial Exchange participation in 2014?*

BCBSIL recommends small group employer definitions be aligned with SEHIRA to limit market disruption and maintain consistency.

We recommend limiting SHOP Exchanges to the small group market (groups of 2 to 50 employees) initially because this approach would help ensure success by starting with more manageable levels of participation. Implementing Exchanges in the small employer market will be substantially more administratively complex than in the individual market. Only after state Exchanges are functioning well at serving small employers with up to 50 employees should consideration be given

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to expansion. Offering Exchanges in the employer market adds levels of complexity (e.g., employer contributions, etc.) that need to be managed carefully to ensure high service levels.

Starting with small firms would also limit adverse selection that would cause higher premiums for individuals and small employers. Large employers have more substantial experience in evaluating benefit policies and will evaluate whether to self-fund or purchase coverage on an Exchange. If larger employers with higher costs disproportionately seek coverage through the Exchange it will undermine affordability of coverage on Exchanges.

While starting small might be perceived as having a smaller base across which to spread costs, the ACA's requirement that health plans' pool their Exchange and non-Exchange business will ensure that Exchange costs will be spread over the entire small group market – which, when combined, comprises a sizeable market in most states over which to spread total Exchange-related costs.

2. *Should Illinois consider creation of separate, regional exchanges for different parts of the State? Should Illinois consider a multi-state Exchange?*

BCBSIL recommends the creation of a single state exchange to enable consistent administrative functions and avoid multi-state regulations conflicts.

Regional exchanges within the State would cause additional administrative functions that could hinder successful implementation in 2014. Within the State, regional differences could be addressed by tying rating areas and service areas together. To ensure adequate protection for consumers and stability in the insurance market as well as a level playing field for all health plans available to consumers in any given geographic area, a single Exchange should be developed for the State of Illinois.

Multi-state exchanges cannot, by definition, be as flexible as states in addressing local market conditions and consumer needs. The level of state regulation, public program options and eligibility requirements, underwriting requirements, and the number and distribution of uninsured are important market conditions that can vary dramatically among states, even contiguous ones. Multi-state exchanges, with their overlapping state authority, could also lead to regulatory confusion and complexity in the certification of QHP and the determination of essential benefits. It is unclear how these differing laws would apply if health plans were offered across multi-state Exchanges, and there is no determination regarding which state's laws would prevail.

V. Self-Sustaining Financing for the Exchange

1. *How should the Exchange's operations be financed, after federal financial support ends on December 31, 2014?*

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BCBSIL recommends that Exchange financing should be modeled in a way that creates low administrative costs.

When developing this model, BCBSIL recommends that consideration is given to:

- The ability of the Exchange to leverage existing infrastructure for its operations
- The manner by which eligibility for premium subsidies will be processed
- The need to establish and maintain interfaces between the Exchange and health insurers for various functions
- Whether the Exchange will handle premium billing, collection and reconciliation

2. *Should the State consider a separate funding source for maintaining state benefit mandates? If so, what are some options?*

BCBSIL recommends that the State benefit mandates match ACA's definition of essential benefits to avoid additional administrative and regulatory complications.

Under the ACA, states are allowed to extend their benefit mandate requirements to health plans participating in state Insurance Exchanges. However, if they do so, states must agree to pay for those benefits outside the core package on behalf of ALL individuals enrolled in the Exchange – not just those receiving premium subsidies. This, if state chooses to require Exchange-participating plans to cover benefits mandates above and beyond the HHS defined essential health benefits, it must be prepared to assume the added costs of those benefits for Exchange enrollees. Thoughtful consideration should be given to the financial impact of added benefit mandates upon the affordability of health plans offered in Illinois.