



## ESTABLISHING HEALTH INSURANCE EXCHANGES: A National Overview of State Efforts

State-based health insurance exchanges are a key component of the Affordable Care Act (ACA) and will facilitate expanded access to private health insurance coverage for millions of individuals and employees of small businesses. Exchanges will be the mechanism through which low and moderate-income individuals receive premium and cost-sharing subsidies to make health coverage more affordable. State exchanges are required to be fully operational by January 1, 2014. The coming year may prove pivotal for states to make critical legislative and policy decisions necessary to meet this deadline. Looking forward to 2012, we review states' progress to date in establishing health insurance exchanges.

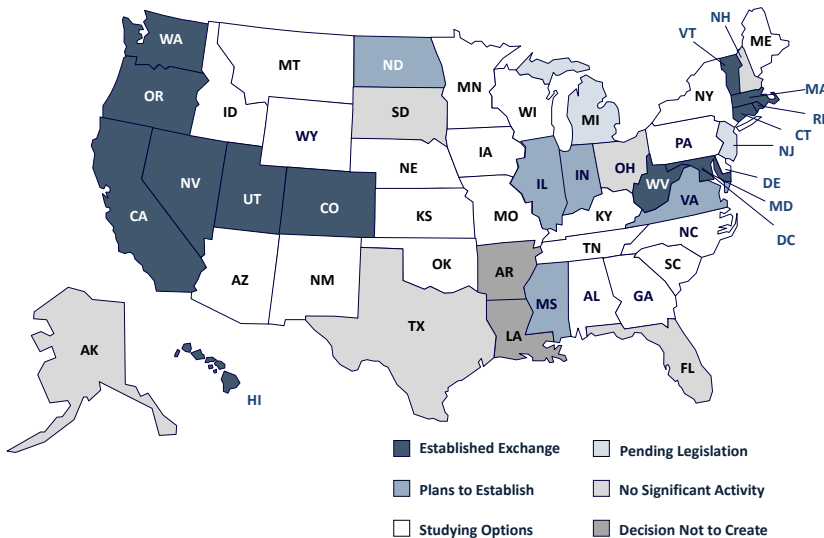
Some states have taken major steps toward establishing their exchanges, while others have struggled to pass legislation or have already opted for a federally-operated exchange. To date, 13 states have established exchanges and five more have signaled their plans to establish one. The District of Columbia City Council gave final approval to a bill establishing an exchange in late December; however, the bill is subject to a 30-day Congressional review and has yet to be signed into law by the Mayor. Six states show no significant planning activity and two, Louisiana and Arkansas, have announced plans to stop pursuing a state-based exchange.

The majority of states however continue to study their options for exchange implementation, making use of federal exchange planning and establishment grant funding. Several states have created planning or advisory committees to develop recommendations on

whether and how the state should create an exchange. As part of the planning process, many states have conducted analyses of their uninsured populations and insurance markets and have held stakeholder meetings.

Although much attention has been focused on state legislative activity, this year has demonstrated that legislation is not the only avenue for establishing an exchange. Notably in states where the legislatures have failed to enact exchange legislation, some governors have taken alternative action. By December 2011, the governors of eight states had issued Executive Orders, announcing their states' interest in further study of a state exchange or, in the case of Rhode Island, going so far as to establish an exchange. Additionally, other states, like Mississippi, have found the legal authority to operate an exchange through entities created legislatively in years prior.

### State Action Toward Creating Health Insurance Exchanges



#### Key Design Decisions

As states proceed with establishing their exchanges, they must make a number of important decisions, including how their exchange will be structured and governed, how it will contract with plans, and how it will be financed (Table 1).

**Exchange Structure:** The ACA gives states options for how to structure their exchanges, including establishing within an existing or new state agency, as an independent public entity, or as a non-profit. For states that have begun to define the parameters of their exchanges, eight states have chosen a quasi-governmental structure, four will house the exchange within a state agency, and two have opted to create the exchange as a non-profit corporation.

**Contracting Relationship with Qualified Health Plans:** Another important consideration for states is defining the relationship between the exchange and participating qualified health plans (QHPs). States can opt to require the exchange to contract with all QHPs which meet specified criteria, commonly referred to as the clearinghouse model, or states can require the exchange to be an active purchaser and selectively contract with only certain QHPs. Of the 13 states with established exchanges, six have decided to act as active purchasers while three others will serve as clearinghouses. The remaining states have yet to define the contracting relationship.

**Exchange Governance:** Exchanges established as independent state agencies or as non-profit entities, must have a clearly-defined governing board overseen by the state. Nearly all states with established exchanges have created independent governing boards to direct their exchanges, and most have moved forward to appoint members to these boards. The Boards range in size from 5 to 15 members. Board composition varies across states, but most include representatives from state government, consumers, subject matter experts, and small and large employers. Whether to allow representatives of insurers and brokers to serve on the Board has been a contentious issue in some states. Typically, states with active purchaser exchanges prohibit industry representation.

To ensure stakeholders have a voice in the design and operation of the exchange, some states have also created advisory groups to provide feedback to the exchange Board on issues ranging from plan certification to consumer protections.

**Federal Funding**

By December 2011, over \$640 million had been distributed to states through federal exchange planning grants, establishment grants, and early innovator grants. Almost every state received some amount of funding to study exchange implementation. Twenty-nine states received Level One Establishment grants and one state, Rhode Island, received a Level Two Establishment grant. States now have the opportunity to submit applications for federal funding until June 29, 2012. This money is largely being used to build the information technology infrastructure necessary to support exchange functions.

**Future Prospects for State Exchanges**

While a sizeable number of states have established or intend to establish an exchange, others are moving much more cautiously and continue to study their options. Reasons for the slow pace are numerous, but a critical issue is the uncertainty that continues to surround the ACA in general and the exchange provisions in particular. The Supreme Court is scheduled to address the individual mandate and its severability from health reform in the spring of 2012- with a final decision expected by next summer. Some states are reticent to take any steps toward creating an exchange until the lawsuits are decided. However, delaying could severely impede a state from meeting the federal timetable for establishment.

By January 2013, the federal Department of Health and Human Services will evaluate states to identify those that lack sufficient progress toward establishing an exchange. In states that are not ready or choose not to run an exchange, a federally-facilitated exchange will be implemented. States may also choose to partner with the federal government and assume some exchange functions.

There is no single path toward establishing state-based exchanges, as is evidenced by the myriad approaches states have taken to date. For those states interested in running their own exchanges, these next two years provide a unique opportunity to plan a health insurance exchange tailored to the needs of their state with the support of federal funding.

For more information on state’s health insurance exchange implementation please visit, <http://healthreform.kff.org/the-states.aspx>

**Table 1: Key Characteristics of Established State Exchanges**

State	Structure of Exchange	Contracting Type of Exchange	Governance
California	Quasi-governmental	Active purchaser	5- member Board; no industry representation
Colorado	Quasi-governmental	Clearinghouse	12- member Board; majority cannot represent industry
Connecticut	Quasi-governmental	Active purchaser	14- member Board; no industry representation
Hawaii	Non-profit	Clearinghouse	15-member Board*
Maryland	Quasi-governmental	To be decided by the Board of Directors	9-member Board; no industry representation
Massachusetts	Quasi-governmental	Active purchaser	11-member Board; no industry representation
Nevada	Quasi-governmental	Not addressed in legislation	10-member Board
Oregon	Quasi-governmental	Active purchaser	9-member Board; no more than two members can be affiliated with insurers, producers, or providers
Rhode Island	Operated by State	Active purchaser	13-member Board; no industry representation
Utah	Operated by State	Clearinghouse	NA**
Vermont	Operated by State	Active purchaser	5-member Board; no industry representation
Washington	Quasi-governmental	Not addressed in legislation	11-member Board
West Virginia	Quasi-governmental	Not addressed in legislation	10-member Board

\*Description of Hawaii’s Interim Board, which will be replaced on June 30, 2012. The ultimate Board of Directors will include eleven members.

\*\*Although Utah’s Exchange doesn’t have a formal Governing Board, the state has created an Executive Steering Committee to advise Exchange staff on operations and transparency issues and a Defined Contribution Risk Adjuster Board to manage risk sharing mechanisms.

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