

Blue Perspective



**BlueCross BlueShield
Association**

An Association of Independent
Blue Cross and Blue Shield Plans

1310 G Street, N.W.
Washington, D.C. 20005
202.626.4780
Fax 202.626.4833

BCBSA Position on Legislative and Regulatory Issues

House Health Insurance Exchange Would Result in a Federal Takeover of Many State Regulatory Functions Federal Approach is Unnecessarily Costly, Complex and Confusing

Issue: The House bill would create a federal health insurance exchange to facilitate the purchase of coverage by individuals and employers. In contrast, the Senate bill relies on the states to implement exchanges under a federal framework and with federal oversight.

Position: The Blue Cross 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 takeover of state regulation, creating conflicting rules and adding unnecessary costs to the system by establishing a new federal bureaucracy to perform many of the regulatory functions already carried out by states;
- Create confusion for consumers who would not know where to turn to for assistance;
- Not provide adequate flexibility for states to administer their own exchanges; and
- Increase risk of insolvency by having different entities negotiate rates with health plans.

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.

Less than one-third of the fully-insured population – 30 million people -- would purchase through the exchange under the House bill (CBO). Creating a new federal agency to perform many of the regulatory functions states already perform for the exchange eligible population would create unnecessary expense and increase bureaucracy.

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. For example, would consumers use the federal or state appeals process, or both, and which would control?

It is also unclear as to which of the thousands of state laws and regulations would apply to the federal exchange. For example, would state mandates for providers (e.g., coverage of chiropractors), limits on balance billing, mandatory assignment, health plan liability or consumer protection laws apply inside the federal exchange in each state?

Having states implement exchanges under federal rules reduces the complexity that consumers would face from having two different marketplaces – one federal and one state regulated – in each state.

The bill would not provide adequate flexibility for states 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

Increase 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 allowing the exchange to negotiate premiums and benefits while states would regulate solvency and continue to have authority over rates and benefits. 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 implement exchanges at the state level under a federal framework of rules, as under the Senate bill. However, we urge greater state flexibility by allowing HHS to grant the state innovation waivers for the first year the exchanges become effective instead of 2017 and permitting states to phase-in coverage for small employers gradually (as was done in Massachusetts) given the much greater complexity of building exchanges for employer coverage .

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.