# Health Care Reform Implementation
# ☑ WATCH LIST ☑

As the Affordable Care Act is implemented, state officials are creating Exchanges, or marketplaces, where qualified individuals and small businesses can buy health insurance that will be made more affordable by federal subsidies in the form of premium tax credits. These Exchanges will also be charged with screening people for eligibility for an expanded Medicaid program and helping them enroll, either directly or through a referral.

State officials creating Exchanges have to make a lot of decisions. In some states, those decisions are being influenced by anti-choice, anti-gay and anti-immigrant forces, as well as by people who are adamantly opposed to health reform on principle. Health industry representatives are also busy trying to craft Exchange policies that serve corporate interests rather than those of consumers, and are typically not designed to address goals such as health equity or quality of care.

How do we influence Exchange policies to make sure they serve the health care needs of women and our families, people of color, immigrants, LGBTQ people and low-income people? Advocates for those groups can use this checklist to influence the creation and development of their state's Exchange. It will be important for all advocates to keep a watchful eye on these issues, in order to ensure Exchanges work for those who need them the most, and to insist on Exchange data collection and analysis that will help evaluate whether Exchanges are meeting their programmatic goals.

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**EXCHANGE LEADERSHIP:** The development of each state Exchange will be affected by the type of leadership appointed to the governing and stakeholder advisory boards. These boards should reflect the diversity of the state's residents, value consumers' interests and well-being and include members with special knowledge about health care, health disparities and women's health.

- ☐ Insist that at least one member of the Exchange Board has expertise in public health and/or in addressing health disparities, which can include disparities associated with race, class, ethnicity, gender, sexual orientation, gender identity, disability or geographic location. This requirement can be accomplished by clearly spelling out qualifications for Exchange board members in legislation or Executive Orders establishing a state Exchange.
- ☐ Insist on strong conflict-of-interest provisions that will prevent the selection of Exchange board members who are representatives of insurance companies, brokers and other health industry representatives, or who would benefit financially from serving in exchange leadership positions.
- ☐ Ensure robust consumer representation on the governing and advisory boards, and include *both* people who would potentially enroll in the Exchange *and* health care advocates who represent their interests.

- ☐ Insist on diversity (such as racial, gender or geographic diversity) among the members of Exchange advisory boards.
- ☐ Insist that people appointed to Exchange boards affirm that they are committed to supporting the purposes of the Affordable Care Act and will not be working to undermine its implementation.
- ☐ Recruit and promote the appointment of "friendly" candidates for state Exchange boards and stakeholder advisory boards. Carefully research the qualifications of other candidates to identify and oppose those who may be anti-choice, anti-gay, anti-trans, anti-immigrant or anti-reform.

**GOVERNANCE:** The Exchange must operate in a way that is transparent and engages stakeholders, including consumers, at all points of policy development and operational decision-making.

- ☐ Require the Exchange Board to conduct meetings and other business transparently. Many states have legal standards that require public governing bodies to hold "open meetings" and produce "open records" in a timely manner. These standards help promote public engagement and increase public accountability. The Exchange Board should be required to abide by these standards whether the Exchange is a governmental, quasi-governmental or private entity.
- ☐ Encourage the Exchange Board to consistently promote stakeholder engagement and seek public comments so that decisions accurately reflect consumers' values and address consumer needs.

**CONSUMER ASSISTANCE:** Exchanges are required to create websites and call centers to help people find out about their health coverage options, be screened for eligibility and actually enroll in health plans. But the choices will be complicated, and many people (especially those with low health literacy) may find the process daunting. That is why the ACA authorizes state Exchanges to designate and fund "Navigators" to conduct outreach to hard-to-reach populations and assist people in obtaining health care coverage.

- ☐ Ensure that Exchange websites, call centers, consumer outreach and education efforts provide unbiased information about the benefits covered in an insurance plan, such as whether abortion is covered (if allowed in your state).
- ☐ Make sure Exchange consumer information and outreach is culturally and linguistically competent and uses language that recognizes non-traditional families. The Exchange should also be accessible to people with disabilities, particularly those individuals who may use assistive devices.
- ☐ Support the use of community-based organizations that represent and can effectively communicate with diverse and/or hard-to-reach populations, such as LGBTQ or low-income communities. In addition, include essential community providers as Navigators.
- ☐ Avoid requirements that would make it difficult for community-based organizations with limited resources to serve as Navigators. Don't require them to undergo costly, lengthy licensing processes. Provide sufficient financial support for these organizations to prepare for and serve effectively as Navigators.
- ☐ Restrict insurance brokers' role in the Exchange to assisting small businesses in choosing health plans for their employees and assisting their employees with enrollment, as they do now. Community-based organizations serving as navigators are more likely to be able to assist a wide

range of individuals to understand their options and enroll in Exchange health plans because of their experience serving low-income/immigrant/people of color communities.

**PROVIDER NETWORK ADEQUACY:** In order for a health insurance plan to be sold within the Exchange, it will need to meet certain standards, such as having an "adequate" network of providers. Provider networks will need to be broad and diverse enough to ensure that enrollees have access to all needed health care services in their own communities

- ☐ Fully integrate reproductive health care providers into provider networks.
- ☐ Ensure patients have coverage for out-of-network providers without incurring additional costs if there are not an adequate number of reproductive health care providers who provide all covered services *or* health providers who work with the LGBTQ community, *or* providers who honor end-of-life choices.
- ☐ Require providers to disclose to health plans and the Exchange any ethical or religious restrictions on the services, information or referrals they offer. The Exchange should require health plans to ensure there are alternative providers available within their networks and assess the adequacy of a network after taking these disclosures into consideration.
- ☐ Ensure that federally-qualified health centers and other providers serving low-income communities are included in the networks of plans offered in the Exchange.
- ☐ Ensure the Exchange website and call centers make available lists of providers who are within the network of each plan offered in the Exchange. Consumers should be able to search for their preferred medical providers and determine whether they are within the networks of specific health plans.

**COVERAGE BENEFITS:** Plans sold within the Exchange will need to meet federal and state standards about the benefit packages they offer. The federal government is expected to define what an Essential Benefits Package must include, but states may be given a significant role in defining those benefits in more detail. States can also add benefits that are not included in the federally-defined Essential Benefits Package, but at a cost to the state.

- ☐ Prevent restrictions on the coverage of abortion services in plans offered in the Exchange. While, abortion coverage will not be included in the federal Essential Benefits Package, states can choose whether or not to allow insurers to cover abortion in the Exchange. If a state's Exchange establishment legislation is silent on the topic, then abortion coverage is allowed and insurers can choose whether to include it or not. So far, the 11 states that have created exchanges have been silent on abortion coverage in their legislation or Executive Orders.

- ☐ Advocate for a benefit package that works to reduce health disparities and build health equity. For example, ask if plans include coverage for services that correspond to strategies in the *HHS Action Plan to Reduce Racial and Ethnic Disparities National Partnership for Action to End Health Disparities* and the *National Stakeholder Strategy for Achieving Health Equity*

- ☐ Make sure eligibility for coverage takes into account the needs of transgender individuals. For example, there should be assurances of coverage for cross-gender care, such as Pap smears for

transgender men and prostate cancer screening for transgender women. Additionally, coverage for medical care related to gender transition should be offered.

- ☐ Pay close attention to coverage decisions in the Basic Health Plan (BHP), if it is offered in your state. The Basic Health Plan is designed to be a state-specific, affordable option that will generally offer coverage for individuals between 134% and 200% of poverty. (These individuals are ineligible to enroll in Medicaid, yet have trouble affording private insurance rates.) If your state establishes a BHP, eligible individuals will have to obtain coverage from their state's BHP and will not be eligible to participate in health plans offered in the Exchange. The Basic Health Plan will operate under somewhat different rules than the rest of the Exchange plans. You may need to specifically advocate for the inclusion of abortion coverage in a Basic Health Plan.

**REFUSALS/RESTRICTIONS:** The Exchange needs to make sure that consumers can actually obtain vital health services covered by plans sold in the Exchange. Unnecessary barriers, such as broadly-worded insurer or provider "refusal clauses," can undermine a state Exchange's ability to truly serve its enrollees.

- ☐ Oppose Exchange policies endorsing generalized "conscience" refusals on behalf of all taxpayers for coverage that some people object to, such as abortion. This type of refusal assumes that all taxpayers object to abortion, and allows one-sided "conscience" protection for those who object to these services.
- ☐ Oppose Exchange policies allowing "conscience" refusals by individuals who do not want their premium dollars going to other people's coverage for abortion or other services they find objectionable. Insurance is based on pooling risk and sharing burden. Individuals should not be allowed to pick and choose what services they find acceptable to cover in plans used by and paid for by thousands of other plan enrollees.
- ☐ Develop state strategies to simplify compliance with administrative requirements pertaining to the segregation of funds for abortion coverage. These requirements force insurers to bill separately for abortion coverage and keep a separate account for monies received and used to cover abortion services. If these requirements are interpreted in too onerous a way, insurers may drop abortion coverage to avoid the hassle of complying.
  - ☐ Oppose religious freedom claims made by providers, insurers or others who want to discriminate against the LGBTQ community.
  - ☐ Allow for penalty-free disenrollment from a plan if it does not cover comprehensive reproductive health care. Affected consumers should then be allowed to enroll into a different plan as soon as possible.

**EFFECTS ON PROVIDERS:** The implementation of health care reform may have unexpected effects on health care providers. State advocates should consider these questions in consultation with local providers.

- ☐ How will family planning providers and other essential community providers accommodate the anticipated increased volume of newly-insured patients?
- ☐ What strategies are available to preserve existing family planning programs and limited-scope pregnancy coverage as Medicaid expansion is rolled out?

- ☐ Will the reimbursement rates for health care providers be sufficient and sustainable?
- ☐ Will abortion restrictions in their insurance coverage drive more women into women's health centers, where they can pay out of pocket on a sliding scale?
- ☐ How will safety net and family planning providers serve individuals who will not be eligible for coverage under the Exchange or expanded Medicaid programs, such as undocumented immigrants?
- ☐ How can we ensure physicians and nurse practitioners will be reimbursed for patient consultation on end-of-life options?

**ADDITIONAL ISSUES TO WATCH:** Beyond the establishment of state Exchanges, there are other issues in health care reform that health care advocates need to be watching.

- ☐ Push for strong anti-discrimination enforcement. The anti-discrimination clause in the Affordable Care Act health care reform law has the potential to be useful in addressing many types of health discrimination, but it is not as strong on LGBTQ issues as are some state laws.
- ☐ Insist on robust data collection and analysis, which can be used to address issues such as the design of the navigator program and assess progress addressing health disparities, especially those affecting populations who are underrepresented in data collection, such as the LGBTQ community. Insurance companies that sell plans within the Exchange should be required to submit data on disenrollment, denied claims, and other aspects of their performance. This information can be used to continuously improve the standards and requirements of an Exchange.
- ☐ Monitor the status of HHS' proposed religious employer exemption in the ACA's contraceptive coverage mandate. Allowing broader categories of religious employers, such as religious hospitals and colleges, to refuse this vital coverage may set an unfortunate expectation that these employers should be granted additional refusal rights in other aspects of ACA implementation.
- ☐ Keep an eye on the establishment of "Accountable Care Organizations" in your state. These are a new form of partnerships among hospitals, insurance companies and individual health providers that is authorized by the Affordable Care Act. We need to be alert to the potential need for patient protection from religious restrictions or refusals throughout an entire Accountable Care Organization network, if one or more religiously-affiliated health providers or insurers are involved.

*This Watch List was developed based on suggestions from members of the National Advisory Board on Religious Restrictions to Care, co-coordinated by NHeLP and the MergerWatch Project, and enhanced by suggestions from MergerWatch's partners in the Raising Women's Voices for the Health Care We Need initiative. Many thanks to all of the organizations that contributed valuable suggestions to this list.*