Center for Consumer Information and Insurance Oversight

State Planning and Establishment Grants for the Affordable Care Act's Exchanges

First Quarter Project Report

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State: Tennessee

Project Title: Tennessee Planning Initiative for the PPACA Health Insurance Exchange

Project Quarter Reporting Period: Quarter 1 (09/30/2010-12/31/2010)

Grant Contact Information

Primary Contact Name: Brian Haile
Primary Contact Number: 615-253-8555
Primary Contact Email Address: brian.haile@tn.gov

Secondary Contact Name: Brooks Daverman
Secondary Contact Number: 615-532-3163
Secondary Contact Email Address: brooks.daverman@tn.gov

Website: http://www.tn.gov/nationalhealthreform/exchange.html

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Project Summary by Core Area

1. Background Research

We have researched the demographics of Tennessee's uninsured and direct purchasers of insurance using the Current Population Survey. We have also researched the number and characteristics of Tennessee's small businesses using Medical Expenditure Panel Survey – Insurance Component Data.

Our Actuary/Underwriter TAG (see Stakeholder Consultation, below) has drafted a recommendation not to combine the individual and small group markets, with a memo on their reasoning and assumptions.

On November 23, 2010 Tennessee issued RFP # 31701-04100 for actuarial services to assist with background research and projections regarding the market for an insurance exchange in Tennessee. Six vendors responded, and their proposals are currently being evaluated.

2. Stakeholder Consultation

We have held the following stakeholder presentations (for informational purposes we include meetings that occurred outside the first quarter):

Stakeholder Group	Meeting Location	Date
General stakeholder audience	Nashville	October 22, 2010
Tennessee Association of Health Underwriters	Nashville	November 4, 2010
Middle Tennessee Employee Benefit Council	Nashville	November 16, 2010
Tennessee Association of Health Underwriters	Jackson	November 18, 2010
Roundtable meeting with providers and advocates	Nashville	December 8, 2010
Tennessee Association of Mental Health Organizations	Nashville	December 10, 2010
NFIB and Kingsport Chamber of Commerce	Kingsport	January 6, 2011
NFIB and Knoxville Chamber of Commerce	Knoxville	January 7, 2011
NFIB and Memphis Area Action Council	Memphis	January 19, 2011
Association of Government Accountants	Nashville	January 19, 2011
Tennessee Association of Health Underwriters	Chattanooga	January 26, 2011

In addition to these meetings, we have a listserv of 350 stakeholder emails that receives regular communications on all aspects of our work.

We have also created two technical advisory groups (TAGs). The Agent/Broker TAG has twenty members and has met four times. The Actuary/Underwriter TAG has eleven members and has met three times. All documents related to these meetings are posted at http://www.tn.gov/nationalhealthreform/exchange.html.

We sent the following poll to a number of stakeholders and interested parties, and asked for feedback by Friday, November 12, 2010:

"Assuming that the insurance exchange provisions of Title I, Subtitle D, Part I of the Patient Protection and Affordable Care Act (Pub. L. 111-148), as amended, remain in effect as of January 1, 2014, would your organization prefer: (a) the state of Tennessee (or a non-profit established in state law) to operate the insurance exchange; or (b) the federal government to operate the exchange for Tennessee?

"If you currently have insufficient information with which to form a position, please feel free to respond by saying so. Also, please let us know if we can provide you with any information or materials."

Key stakeholders expressed (in writing) their preference that Tennessee operate the exchange instead of the federal government. These groups include all of the major insurers, both major associations for brokers and agents (i.e., Tennessee division of the National Association of Health Underwriters (NAHU) and National Association of Insurance and Financial Advisers (NAIFA) in Tennessee), Tennessee Medical Association (TMA), Tennessee Hospital Association (THA), Tennessee Health Care Campaign, National Federation of Independent Business (NFIB), Tennessee Primary Care Association (TPCA), and American Cancer Society-Tennessee Chapter. No group expressed a preference for a federally-run exchange.

3. Legislative and Regulatory Action

We have reviewed the model legislation drafted by the National Association of Insurance Commissioners and other states. We have not taken any other steps toward legislation at this time.

4. Governance

We have evaluated all options available to Tennessee for governance of an exchange, and briefed administration officials.

5. Program Integration

An insurance exchange in Tennessee will meet federal requirements for a "no wrong door" process for applicants for premium subsidies, Medicaid, and CHIP. We are in close communication with the leadership of TennCare and CoverKids. Prior to the grant, Tennessee created www.findhelptn.org, an online screening tool for State and Federal programs and services. This tool provides a foundation for future work on an integrated application process within the exchange.

We have also worked with the Department of Insurance to determine how state insurance regulations interact with the requirements for an insurance exchange.

6. Exchange IT Systems

We have reviewed documents related to exchange IT systems, especially CCIIO's "Guidance for Exchange and Medicaid Information Technology (IT) Systems" issued November 3, 2010 and proposed rule 42 CFR Part 433 published in Federal Register Vol. 75 No. 215 on November 8, 2010.

We have reviewed the existing examples of insurance exchange website design, including Massachusetts, Utah, the Wisconsin prototype, and ehealthinsurance.com. We have also attended presentations by vendors in this area.

7. Oversight and Program Integrity

We are reviewing the policies and procedures for the public sector employee plans, CoverKids and TennCare to determine their applicability to the exchange. We also have ongoing consultations with Benefits Administration's Program Integrity Group.

In addition, we have discussed the role of insurance agents in eligibility determination for employees in the small group market and the need to build in similar functions within the exchange.

8. Health Insurance Market Reforms

The Tennessee Department of Commerce and Insurance has researched the extent to which Tennessee's insurance laws impact implementation of an insurance exchange in Tennessee. The Actuary Underwriter TAG has issued a recommendation not to combine the individual and small group market.

9. Providing Assistance to Individuals and Small Businesses, Coverage Appeals, and Complaints

The Agent/Broker TAG has discussed the current and future role of agents in resolving claims payments and coverage issues among their clients and the need to build in similar functions within the exchange.

10. Business Operations of the Exchange

We have had discussions of many specific areas of business operations, especially in our meetings with our Agent/Broker TAG and Actuary and Underwriter TAG. We have especially discussed aspects of the navigator program, eligibility determinations and premium tax credits, enrollment process, and small group exchange-specific functions.

On November 23, 2010, Tennessee issued RFP # 31701 – 04101 for policy and operational consulting services to assist with background research and projections regarding the market for an insurance exchange in Tennessee. Six vendors responded, and their proposals are currently being evaluated.

Barriers, Lessons Learned, and Recommendations to the Program

Our execution of contracts for actuarial consulting and policy consulting has been delayed while the legislature reviews the funding for our planning grant. State staff conducted all other activities in the grant proposal so there were no delays on other deliverables.

We recommend CCIIO move as quickly as possible to give guidance to states on unresolved issues such as the requirements for determining eligibility for premium assistance tax credits and Medicaid, as well as whether state-operated exchanges would have the responsibility (and

financial liability) for reconciling income changes and premium assistance tax credit payment. Resolution of these issues will be more valuable than any other assistance or guidance. Attachment A is excerpts from emails we have sent to CCIIO regarding questions and suggests for Insurance Exchanges.

Technical Assistance

We will need technical assistance in planning for an exchange IT system. We have several options for IT technical assistance, and we will work with state IT experts to select the best option.

Draft Exchange Budget and Work Plan

With Governor Haslam inaugurated January 15, 2011, his administration has not yet selected policy options for an insurance exchange in Tennessee. To present a budget or a work plan that extends beyond the term of the current grant would be premature at this time.

Collaborations/Partnerships

We have had many important and useful discussions with all types of stakeholders in Tennessee. Below we list a few organizations with whom we are currently collaborating extensively.

- **Name of Partner:** Bureau of TennCare
- **Organizational Type of Partner:** Medicaid
- **Role of Partner in Establishing Insurance Exchange:** TennCare is a key partner for policy and implementation decisions that need to be made about the exchange. Most importantly, an insurance exchange in Tennessee will have a role in determining TennCare eligibility. In addition, TennCare has valuable experience administering health insurance through private insurance firms. We greatly appreciate the guidance of TennCare's Director and staff.
- **Accomplishments of Partnership:** Ongoing advice.
- **Barriers/Challenges of Partnership:** An exchange in Tennessee will need to design its Medicaid eligibility program to comply with the laws and legal decisions regarding TennCare eligibility.

- **Name of Partner:** Tennessee Association of Health Underwriters, the National Association of Insurance and Financial Advisors, the Society of Financial Service Professionals, and the Mid-South Health Underwriters Association
- **Organizational Type of Partner:** Insurance agents
- **Role of Partner in Establishing Insurance Exchange:** Insurance agents will need to be a major distribution channel for any successful health insurance program in Tennessee.
- **Accomplishments of Partnership:** We have presented at three area meetings of these agent organizations, and we have plans for at least seven more meetings across the state in the coming months. In addition, members of these groups serve on the TAGs.

- **Barriers/Challenges of Partnership:** None

- **Name of Partner:** National Federation of Independent Businesses and various Chambers of Commerce in Tennessee
- **Organizational Type of Partner:** Employer group
- **Role of Partner in Establishing Insurance Exchange:** The guidance of these groups will be very important for policy decisions, design, and implementation of the small group portion of Tennessee's exchange.
- **Accomplishments of Partnership:** The NFIB and various Chambers of Commerce are co-hosting meetings about insurance exchanges for small business owners across the state.
- **Barriers/Challenges of Partnership:** None

- **Name of Partner:** Tennessee Department of Commerce and Insurance (TDCI)
- **Organizational Type of Partner:** Insurance department
- **Role of Partner in Establishing Insurance Exchange:** TDCI's role of regulator of the insurance industry and insurance agents is separate but complimentary to the required functions of an exchange in Tennessee.
- **Accomplishments of Partnership:** The Tennessee Department of Commerce and Insurance has researched the extent that Tennessee's insurance laws impact implementation of an insurance exchange in Tennessee.
- **Barriers/Challenges of Partnership:** None

- **Name of Partner:** Tennessee Health Care Campaign (THCC)
- **Organizational Type of Partner:** Healthcare Consumer Advocacy Group
- **Role of Partner in Establishing Insurance Exchange:** THCC is dedicated to making affordable health care choices available to all Tennesseans.
- **Accomplishments of Partnership:** THCC is scheduling five meetings statewide which will include a presentation on the Insurance Exchange Planning Initiative.
- **Barriers/Challenges of Partnership:** None

- **Name of Partner:** Health Assist Tennessee (HAT)
- **Organizational Type of Partner:** Healthcare Consumer Assistance Organization
- **Role of Partner in Establishing Insurance Exchange:** We can learn from HAT's experience serving the uninsured and special needs populations accessing health insurance and health care.
- **Accomplishments of Partnership:** We will present on insurance exchange planning at a training hosted by HAT
- **Barriers/Challenges of Partnership:** None

News Coverage

Erin Lawley, "Making a Market," Nashville Post and City Paper, November 1, 2010.

Cary Harrington, "State Studies Exchanges: Reforms Require Systems to Ease Insurance Costs," Knoxville News Sentinel, November 24, 2010.

"Chamber/NFIB Host Health Insurance Exchange Info Session" Knoxville Chamber website, January 18, 2011, www.knoxvillechamber.org.

"NFIB Members Discuss Health Exchanges at East Tennessee Chamber Events," NFIB Tennessee website, January 18, 2011, www.nfib.com/tennessee.

James Dowd, "Tennessee Insurance Exchange in Offing" Memphis Commercial Appeal, January 20, 2011.

"What Will a Tennessee Insurance Exchange Look Like?" Nashville Business Journal, January 20, 2011.

Emily Bregel, "State Plans Health Insurance Exchange," Chattanooga Times Free Press, January 27, 2011.

Emily Bregel, "State Plans Health Insurance Exchange," Knoxville News Sentinel, January 27, 2011.

Attachment A

Excerpts from Policy Questions Sent to CCIIO (formerly OCIIO)

Date: December 28, 2010
Subject: Are any willing provider laws additional benefits?

…At the [December 16-17 OCIIO] Grantee conference, various OCIIO staff members provided differing guidance as to whether any willing provider (AWP) laws are additional benefits within the meaning of PPACA Section 1311(d)(3). We would appreciate OCIIO's written clarification on this point.

If OCIIO determines that AWP are additional benefits, then states would be responsible for 100% of the actuarial costs associated with the AWP requirements -- at least to the extent that the AWP requirements apply to qualified health plans provided via the insurance exchanges. To avoid this financial liability, states would likely to exempt the exchange-based qualified health plans from the AWP requirements (and other "additional benefit" requirements). Presumably, any such exemption(s) would lower the costs of (and therefore premiums for) qualified health plans offered in the exchange; these exemptions may also mitigate some of the risks of adverse selection with the exchange.

If OCIIO determines that AWP laws are not additional benefits within the meaning of PPACA Section 1311(d)(3), then state law would continue to apply to the qualified health plans and the state would incur no associated liability. This approach may be consistent with PPACA Section 1333(b)(7), even if that provision may not apply to this portion of the statute.

We look forward to receiving your response.

Thanks,
Brooks Daverman

Date: December 30, 2010
Subject: Two suggestions on eligibility

…Thank you for taking the time to hear the ideas and concerns of state officials at the December 16-17, 2010 exchange grantee meeting in Crystal City. At that meeting, I made two specific suggestions to you:

1. CMS should grant a one-year exemption from PERM to all Medicaid and CHIP eligibility determinations made via the insurance exchanges during 2014; and

2. CMS should harmonize the definitions of income and resources across the Medicaid, Food Stamps/SNAP, TANF, and the new premium assistance tax credits in order to simplify and streamline the eligibility process.

With respect to #2, I mentioned that CMS had approved a comprehensive SPA from the District of Columbia back in 2006 that accomplishes this goal -- which was the same document that you had helped Kate Jesberg and I put together while Kate led the DC Income Maintenance Administration. This SPA might serve as a template or pre-print for other states. I append below a short summary of that approach and attach the relevant SPA documents for your review.

Please give serious considerations to both of these suggestions.

Thank you again for hearing the concerns of the state officials at the grantee meeting.

Sincerely,
Brian Haile

Date: December 30, 2010
Subject: Three suggestions re: provider issues within exchange

…Thank you for taking the time to hear the ideas and concerns of state officials at the December 16-17, 2010 exchange grantee meeting in Crystal City. I wanted to follow up with you about three critical issues that we discussed:

1. Network Adequacy Standards: OCIIO acknowledged that provider network adequacy standards would be difficult to promulgate across markets and that stringent standards would substantially increase negotiating leverage of certain providers, thereby inflating health care costs. Several state officials suggested that OCIIO set minimum standards only for primary care providers (inclusive of OB/GYN, internists, etc.) and defer to States as to the rest. Please give serious consideration to this option.

2. Multiple Networks within Tier: Based on our experience with the public employee health plans in Tennessee, we believe that insurers may wish to differentiate their products by offering more and less expansive networks. Thus, carrier X might offer the same benefit design at the same premium level (e.g., platinum) -- but "charge up" for an expanded network offering. Several states discussed the possibility of requiring individuals to pay 100% of the actuarial value of their choice of the larger, more expansive network (i.e., individuals could not use federal premium assistance tax credits to cover the costs of the expanded network). In our public employee plan, we require employees to pay 100% of the marginal costs associated with the more expensive network choice as we believe that this will help to contain costs. I encourage OCIIO to provide maximum flexibility to states in this regard.

3. Reinsurance, Risk Corridors and Risk Adjustment: You indicated to me in an offline conversation that you considered the "3 R's" to be exclusively a federal function. I explained our view that PPACA did not limit state authority to engage in parallel risk adjustment structures. I also shared the concern (from the industry experts in our state-level technical assistance groups) that insurers might use the federal risk adjustment, risk corridors, and reinsurance mechanisms to manipulate the calculations of their medical loss ratios. Separately, Norman Thurston from Utah spoke strongly in favor of a locally-developed system that was market-specific and driven by

local technical experts. To address these issues, I mentioned the possibility of having the states take the lead on the policy development related to the 3R's, and I suggested that we consider limiting risk adjustment and reinsurance payments to plans within the exchange so as to encourage participation in the exchange and mitigate adverse selection risk. Please give serious consideration to this option.

Finally, I would ask that OCIIO indicate to states as soon as possible those areas in which it plans to defer to states and/or provide substantial flexibility. We will need lead time to conduct analyses and formulate the appropriate policies. Ideally, OCIIO would share this information with us in early Spring 2011.

I would be happy to discuss these and any related issues with you. Please let me know how I can be of assistance.

Sincerely,
Brian Haile

Date: January 5, 2011
Subject: Key Issues: Premium Assistance Tax Credit Eligibility Questions

… I wanted to flag three items as key issues for us:

1. Continuous Eligibility and Tax Credits: At the Exchange Planning Grantee Meeting on December 16, 2010, Cindy Mann addressed the state folks about Medicaid issues related to the exchange. Dr. Mann said that CMS was considering a 12-month continuous eligibility process for adults, but she provided no details or commitments; rather, she indicated that the CMS General Counsel is apparently reviewing this issue now

In reflecting on this issue after our meeting, I wondered about the extent to which CMS and OCIIO are working with the IRS-Treasury to ensure that the premium assistance tax credit use the same continuous eligibility rules as Medicaid. With respect to continuous eligibility, we very strongly advocate for consistency in approach across the Medicaid and premium assistance tax credit programs.

2. Tax Credit Recoveries: On a related note, we have a concern regarding the provisions of Sec. 208 of the "doc fix" or the Temporary Extension Act of 2010 (Pub. L. 111-309). The enactment of this statute in early December 2010 caused us to question again whether state-operated exchanges would have the responsibility (and financial liability) for reconciling income changes and premium assistance tax credit payments. We have heretofore assumed that the recovery function will be the responsibility of the Internal Revenue Service. If this is not the case, then this change would definitely affect our determination of whether to operate a state-level exchange. Thus, OCIIO clarification as to role of state-operated exchanges here would be helpful.

3. Tax Credit Eligibility Issues: Finally, I remain hopeful that the upcoming NPRM related to eligibility issues will also address the issues described below related to premium assistance tax credit eligibility. We continue to struggle with these issues and look forward to receiving federal guidance.

Thanks,
Brian

Date: January 24, 2011
Subject: Setting Premiums

…In our ongoing dialogue with our agent/broker technical advisory group (TAG) and our actuary/underwriter TAG, we've been asked a few questions regarding premiums:

(a) Will states have the flexibility to use different age and tobacco bands inside and outside the exchange?
(b) Will states have the flexibility to set premium rules for premium tiering (e.g., two tiers of single/family vs. four tiers of single/applicant + spouse/applicant + child(ren)/applicant + spouse + child(ren))?
(c) Must premium tiers be the same inside and outside of the exchange?
(d) Will states have the flexibility to set age bands by the head-of-household (e.g., determine that the premium tier is based on the oldest member of a married couple vs. based on youngest member of a married couple)?
(e) To what extent will applicants who self-report tobacco use be required to pay the 50% rate penalty without premium assistance tax credits? For example, will a 60-year-old with a household income of 150% FPL qualify for premium assistance tax credits just for the base premium or for the base premium + tobacco penalty?

To be clear, we are not asking for answers to these questions. Rather, we want to raise them and have a chance to discuss what we believe are the pros and cons with the appropriate decision-maker(s) within OCIIO. If helpful, we could bring together some of the more insightful and articulate TAG members for a meeting with OCIIO here in Nashville to discuss.

Please let us know how we might be able to connect and proceed.

Thanks!
Brian

Date: January 24, 2011
Subject: Open Enrollment

…For purposes of the text below, please assume that the state will elect an annual open enrollment period.

The brokers and agents from our Technical Assistance Group (TAG) have expressed tremendous concern that open enrollment for individuals and the small group market would be on a calendar year basis. While that might be convenient in terms of flexible spending account deferrals, it may generate a transaction volume that the agents/brokers, navigators, exchanges, and health plans would simply be unable to handle.

Here's why: most large employers (including state governments) and Medicare conduct calendar year open enrollments -- which is already hugely challenging to process during a period when folks understandably want to take leave for the holidays. It also makes for a large volume of calls on the first business day after January 1st when a large number of members go to fill pending prescriptions, and a few will discover that their eligibility or enrollment has not transmitted accurately.

We understand that all persons (individuals and employees in small groups) will have coverage that begins on January 1, 2014. However, we strongly encourage OCIIO to set up "anniversary dates" that would move individuals and groups to mid-year renewals. For example, OCIIO could have one-sixth of all members renew in July 2014, one-sixth in August 2014, etc. -- and then the following year, have one-eighth of members renew in May 2015, one-eighth in June 2015, etc. That would transition folks to a cycle that would become much more manageable.

Anyway, that was the recommendation of the members of the TAG -- and I wanted to pass it along. It makes a lot of sense, and it's consistent with the way that business is currently done in the individual and small group market (and for that matter, in Medicaid).

Thanks,
Brian

Date: January 24, 2011
Subject: Idea/recommendations

Just about every state is going to need to procure the following: (a) communications/media vendor; (b) call center/enrollment counseling vendor; (c) banking vendor (for premium collection, etc.); (d) health plan contracts; and (e) IT/website vendor.

Wouldn't it expedite the process if OCIIO were to post template RFPs that states could steal and adapt?

Tennessee has an odd procurement law that requires us to include the actual contract with the RFP. Thus, we've got to come out of the chute with really solid RFP text and pro forma contracts. I'm about half-way done on the contracts for (a), (b), and (c) -- and I plan to plagiarize heavily from the health plans contracts that I wrote last year for the public sector plans for (d). But I've got nothing for (e).

I'll happily share what we have -- and it should be in good shape by May. Is there a quid-pro-quo where you could take these templates and maybe trade us some technical assistance on the IT side?

I'm a contracts attorney by training -- so I fixate on this stuff. But we also write really good contracts that our friends in other states tend to borrow frequently.

Anyway, just an idea. But also a very serious proposal.

Thanks,
Brian