Law and the Public's Health

This installment of *Law and the Public's Health* examines the legislative provisions of the Affordable Care Act that establish health insurance Exchanges, and discusses the implications of their establishment for public health policy and practice.

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HEALTH INSURANCE EXCHANGES: IMPLICATIONS FOR PUBLIC HEALTH POLICY AND PRACTICE

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This installment of *Law and the Public's Health* examines health insurance Exchanges. Exchanges, a centerpiece of the Patient Protection and Affordable Care Act (hereinafter referred to as the Affordable Care Act [ACA]),¹ are a longstanding concept underlying health reform models that turn on the competitive purchase and sale of health insurance products.² An overview of the Exchange provisions and key issues surrounding state implementation is followed by a discussion of the implications of health insurance exchanges for public health policy and practice.

BACKGROUND

In the world of employer-sponsored health insurance, employers select the health insurance products in which their employees will participate, while larger employers select the “third party plan administrators”³ of their self-insured plans. Smaller employers tend to have fewer purchasing options; furthermore, individuals who do not have access to employment-based coverage may find themselves without critical assistance in understanding their coverage choices, selecting a plan, and navigating their coverage arrangements once enrolled. States historically have regulated health insurance, and state health insurance agencies in all states oversee the business and marketing practices of insurers. But the primary responsibility of state insurance agencies is the regulation of insurance, not oversight of the relationships between consumers and the insurance market.

A basic purpose of the Affordable Care Act is to

strengthen the health insurance market for both individuals and employers, with a particular emphasis on creating better choices for small employers and creating a stable insurance market for individuals and families without access to employer-sponsored benefits. To this end, the ACA establishes health insurance Exchanges as a principal feature of the law to provide the type of market structure and source of ongoing assistance and oversight missing from the existing insurance regulatory framework. In so doing, the ACA takes a page from the 2006 Massachusetts health reform legislation, which included the creation of the Massachusetts' Commonwealth Health Insurance Connector Authority, the state's health insurance exchange authorized to serve both individuals and small groups.⁴

The ACA authorizes federal funding to assist states in establishing American Health Benefit Exchanges; states that elect to establish an Exchange must complete their planning and be ready to become operational by January 1, 2014.⁵ In the case of states that either elect not to establish an Exchange or that are unable to meet federal standards as of January 2013, the Secretary of the Department of Health and Human Services (HHS) is required to operate a default federal Exchange⁶ to ensure that state residents will have access to Exchange services and operations. Access to an Exchange is crucial, not only for the consumer and small employer assistance an Exchange provides, but also because Exchanges represent the means of gaining access to the hundreds of billions of dollars in premium tax subsidies authorized under the ACA in the case of small employers and low- and moderate-income individuals and families.⁷

By 2015, states must ensure their Exchanges are operational and “self-sustaining.” In other words, the Exchanges must be functioning with sufficient funding derived from states' budgets, user fees, assessments, or other sources of funding. While HHS is required to issue regulations to provide further information about Exchange requirements and operation, there are