

# ***Exchange Stakeholder Report***

December 1, 2013

Submitted by the Nebraska Exchange Stakeholder Commission

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### ***Nebraska Exchange Transparency Act***

In 2013, Governor Heineman signed into law LB 384, the Nebraska Exchange Transparency Act, codified at Neb.Rev.Stat. §§ 44-8701 to 44-8706. Pursuant to Neb.Rev.Stat. § 44-8702, the purpose of the Act is to “provide state-based recommendations and transparency regarding the implementation and operation of an affordable insurance exchange, as required by the federal Patient Protection and Affordable Care Act, 42 U.S.C. 18001 et seq., by creating the Nebraska Exchange Stakeholder Commission.” The Commission is required by Neb.Rev.Stat. § 44-8706(5) to issue a report on or before each December 1 “concerning the implementation and operation of the exchange, challenges and problems identified in the implementation and operation of the exchange, and recommendations to address such problems and challenges.” This is the first of these required reports.

### ***Members of the Nebraska Exchange Stakeholder Commission***

As required by Neb.Rev.Stat. § 44-8703, Governor Heineman appointed nine members to the Commission. Governor Heineman appointed four members to represent the interests of consumers who will access health insurance in the exchange with at least one of such members to represent the interests of rural consumers who will access health insurance in the exchange: Craig Buescher, Sherry Wupper, Laura Gyhra, and Michael Groene. JJ Green was appointed to represent the interests of small businesses who are qualified to purchase health insurance in the exchange. Patrick Booth and Dr. Britt Thedinger were appointed to represent the interests of health care providers in the state. Michaela Valentin was appointed to represent the interests of health insurance carriers who are eligible to offer health plans in the exchange; upon her resignation, Shari Flowers was appointed. Kyle Kollmorgen was appointed to represent the interests of health insurance agents.

The Director of Insurance and the Director of the Division of Medicaid and Long-Term Care of the Department of Health and Human Services or his or her designee serve as nonvoting, ex officio members of the commission. Agendas, minutes, and other materials are posted at <http://www.doi.nebraska.gov/nesc/index.html>.

### ***Nebraska Exchange Stakeholder Commission Meetings***

The Commission met August 21, September 23, November 6, and November 20, 2013. The following is a summary of those meetings:

#### *August 21, 2013*

Director of Insurance Ramey convened the first meeting of the Commission on August 21, 2013 in Lincoln. The members of the Commission were briefed on the requirements of the Open Meetings Act, the Public Records Statutes. The Commission elected Mr. Green as Chairperson and Mr. Kollmorgen as Vice-Chairperson. The Commission adopted Roberts Rules of Order as the basis for future proceedings, and adopted a policy for notice of meetings to be provided via email to members and posting on the state website. The Department of Insurance and the Division of Medicaid and Long-Term Care briefed the Commission on the activities of the agencies related to the federal health insurance marketplace. Additionally, both agencies answered questions from the Commission regarding the progress of the connectivity between each respective agency and the federal health insurance marketplace. The Commission also invited public comment.

#### *September 23, 2013*

The September 23, 2013 meeting included briefings by the Department of Insurance and the Division of Medicaid and Long-Term Care and a discussion of the member goals for the Commission. Questions were asked of both Departments and the public was, once again, asked

for any input regarding the activities of the Commission. The Department of Insurance briefed the Commission on the Affordable Care Act educational tours it conducted across the state and updated the Commission on the status of the federal health insurance marketplace in the state. The Division of Medicaid and Long-Term Care briefed the committee on the connectivity issues the marketplace was having in regards with the federal health insurance marketplace's delay in connectivity with thirty-six different state Medicaid systems.

*November 6, 2013*

The November 6, 2013 meeting included briefings by the Department of Insurance and the Division of Medicaid and Long-Term Care on the activities of the federal health insurance marketplace. The Commission received briefings on the activities of Certified Application Counselors employed by Federally Qualified Health Centers and Navigators operating under federal grants. The Commission received briefings from insurers doing business both on and off of the federal health insurance marketplace, including Blue Cross/Blue Shield of Nebraska, CoOpportunity Health, Coventry, and UnitedHealthcare. The Commission invited testimony from the Ponca Tribe and Health Alliance, neither of which were able to send a representative.

*November 20, 2013*

The November 20, 2013 meeting included briefings from the Department of Insurance and the Division of Medicaid and Long-Term Care, Stephene Moore, Regional Director of the U.S. Department of Health and Human Services, Community Action of Nebraska, and the Health Center Association of Nebraska. The Commission discussed amendments to a draft report and adopted this report.

### ***Implementation and Operation of the Federally Facilitated Exchange***

During the spring through early fall of 2013, the Department of Insurance accomplished the review of several hundred plans that were intended to be sold on the federally facilitated marketplace. Although the timelines were stringent, the Department of Insurance accomplished its agreed upon duties with the federal government to review the policies and rates that were filed with it and transmitted those plans to the federal government. Additionally, the Department of Insurance continued to prepare for an increase in consumer questions and inquiries and the potential of fraudulent activities in the marketplace.

Similarly, the Division of Medicaid and Long-Term Care improved upon its technology connectivity and also prepared for the potential increase of Medicaid enrollees.

Open Enrollment began on October 1, 2013. The Commission is aware of no report that has termed the launch of the federal health insurance marketplace as a success. As of the November 2, 2013 report from the federal government, 338 Nebraskans have been able to enroll in private sector health insurance products on the federally facilitated marketplace.

Additionally, the federal government had informed Nebraska that the transfer of information for potential Medicaid eligibility would not be available, at the earliest, until December 2, 2013 because the federal system was unable to properly connect to any Medicaid systems around the nation in states where a federally facilitated marketplace was operating, including Nebraska's. As of November 19, 2013, there were 3,102 Nebraskans assessed for potential eligibility for Nebraska's Medicaid program by the federally facilitated marketplace.

The delay in providing enrollment numbers until the federal report was issued on November 13, 2013, can be immediately traced back to the failure of the federal government to properly implement much of the Affordable Care Act. As both the Department of Insurance and

the Division of Medicaid and Long-Term Care explained, there were significant delays in the implementation of regulations and guidance issued by the federal government, some of which are still being issued as of the date of this report. Due to those delays, it is suspected that this caused significant issues in other aspects of the federal implementation of this law.

One of those issues can be found with the enrollment process and the federal website, [www.healthcare.gov](http://www.healthcare.gov). The website, which is the primary driver of enrollment, has experienced outages, security issues and significant delays for consumers. Additionally, consumers have experienced long wait times on the phone to receive assistance from the federal call centers. These issues were not limited to the consumer experience. Agents and brokers, who have long served the needs of individuals and businesses seeking health insurance, had difficulty in becoming “certified” to sell insurance policies from the federal government. Once certified, the same issues appeared when attempting to sell a plan as existed with individuals attempting to purchase plans on their own with the federal website. The federal government is working on an agent/broker portal. As of the date of this report, this portal is a pilot test site.

In August 2013, the federal health insurance marketplace awarded grants to two entities, Community Action of Nebraska and the Ponca Tribe to fund a statewide network of Navigators to help people obtain health insurance coverage in the federal health insurance marketplace. Community Action of Nebraska was awarded \$562,000; they planned to hire ten full-time positions across Nebraska and train a total of sixty-two or more additional people to act as Navigators as well. The Ponca Tribe was awarded \$37,000. As of the November 6, 2013 meeting of the Commission, the Community Action of Nebraska has reported contacts with 2,478 Nebraskans. These newly created Navigators, have also expressed frustration via media reports of an inability to sign up individuals due to the federal website being unavailable.

In addition, on July 10, 2013, federally qualified health centers operating in Nebraska were awarded a total of \$678,562 to provide enrollment assistance for their patients. These funds will be used to train and hire certified application counselors. As of the November 6, 2013 meeting of the Commission, the federally qualified health centers reported contacts with 1,800 Nebraskans as of a report dated November 1. This Commission has yet to hear what their success rate with the federally facilitated marketplace has been.

Insurers have also expressed a frustration that information received back from the federal government has been inaccurate or does not follow their “business rules” that were required to be used under the federal system. The insurers must work with both the Department of Insurance and the federal government to attempt to reconcile these issues.

As mentioned earlier in this report, transfer of Medicaid applications from the federal health insurance marketplace website has been delayed. Although early federal requirements required marketplaces to create a “no wrong door” through which Medicaid applicants could access Medicaid, actual federal implementation has focused instead on a “better door” referral to state Medicaid programs. Medicaid assessments have not yet been received from the federal health insurance marketplace.

President Obama, and several other federal officials, have admitted that the federal website is not functioning as well as intended. A “tech surge” has been announced to rectify these issues. However, as of the date of this report, success has yet to be determined.

### ***Challenges and Problems***

Before discussing the challenges and problems associated with the federal marketplace as required under the statute creating the Commission, the Commission wanted to highlight areas of success associated with implementation of the federal marketplace.

- State staffs, of the Department of Insurance and the Division of Medicaid and Long-Term Care, have been good resources for the commission and have provided neutral information on Marketplace implementation;
- Insurers in Nebraska have made good faith efforts to implement the marketplace and work within challenges posed by the marketplace; and
- Navigators and Certified Application Counselors have done good work in reaching out to Nebraskans.

The Commission has been advised, and the members of the Commission have learned in their individual capacities that the federal health insurance marketplace Open Enrollment process has not been successful. The primary challenge at this point appears to be the operation of the federal health insurance marketplace website. The Commission also would note that the issues are not limited to the federally facilitated marketplace; rather, it appears that a majority of state based marketplaces are having difficulty in complete operation of their systems as well. While a few states have had limited glitches, a majority of state based marketplaces have limited their technological scope or are experiencing significant technical issues.

Further challenges include:

- Security systems have not been adequately tested, putting highly sensitive information of Nebraskans at risk;
- Cancellation of non-ACA compliant coverage has been difficult for Nebraskans. Cancellation of non-ACA compliant coverage may cause a lapse in coverage if the insurer does not automatically enroll policyholders in an ACA-compliant plan.;
- Cost of coverage has increased due to restrictions on insurer rating flexibility, the end of underwriting, and the breadth of the essential health benefits and required coverages;
- Website technical glitches have made access difficult for many Nebraskans; and
- Data reconciliation has not been successful.

### ***Recommendations to Address Problems and Challenges***

As of the date of this Report the federal health insurance marketplace has not been the subject of successful reports either in the media, from state agencies, or from stakeholders. As the full scope of those problems has not yet come to light, the Commission believes that recommendations are premature as of the date of this report, with two exceptions.



The Commission strongly recommends:

- Consumers should be advised that there are security concerns associated with the federal health insurance marketplace that have yet to be resolved; and
- State officials continue to work with federal counterparts to work through the challenges and problems created by the federal health insurance marketplace.

## **Appendix A: The Nebraska Exchange Transparency Act**

**44-8701. Act, how cited.** Sections 44-8701 to 44-8706 shall be known and may be cited as the Nebraska Exchange Transparency Act.

Source: Laws 2013, LB384, § 1.  
Effective Date: May 17, 2013  
Termination Date: July 1, 2017

**44-8702. Purpose of act.** The purpose of the Nebraska Exchange Transparency Act is to provide state-based recommendations and transparency regarding the implementation and operation of an affordable insurance exchange, as required by the federal Patient Protection and Affordable Care Act, 42 U.S.C. 18001 et seq., by creating the Nebraska Exchange Stakeholder Commission.

Source: Laws 2013, LB384, § 2.  
Effective Date: May 17, 2013  
Termination Date: July 1, 2017

**44-8703. Nebraska Exchange Stakeholder Commission; created; members; terms; vacancy; removal; hearing.** (1) The Nebraska Exchange Stakeholder Commission is created. For administrative and budgetary purposes only, the commission shall be housed within the Department of Insurance. The commission shall be composed of eleven members as follows:

- (a) Nine members shall be appointed by the Governor in the following manner:
  - (i) Four members to represent the interests of consumers who will access health insurance in the exchange with at least one of such members to represent the interests of rural consumers who will access health insurance in the exchange;
  - (ii) One member to represent the interests of small businesses who are qualified to purchase health insurance in the exchange;
  - (iii) Two members to represent the interests of health care providers in the state;
  - (iv) One member to represent the interests of health insurance carriers who are eligible to offer health plans in the exchange; and
  - (v) One member to represent the interests of health insurance agents. This member shall not be a captive agent of any health insurance carrier;
- (b) The Director of Insurance or his or her designee is a nonvoting, ex officio member of the commission; and
- (c) The director of the Division of Medicaid and Long-Term Care of the Department of Health and Human Services or his or her designee is a nonvoting, ex officio member of the commission.

(2) The terms of appointed members of the commission shall commence on July 1, 2013.

(3) The appointed members of the commission shall serve for terms of four years, except that of the members first appointed, the Governor shall designate:

- (a) One of the members representing the interests of health care providers in the state to serve a term of three years and the other to serve a term of two years;

(b) The member representing the interests of health insurance carriers to serve a term of two years;

(c) The member representing the interests of health insurance agents to serve a term of three years; and

(d) All other members to serve for terms of four years.

(4) A member may be reappointed at the expiration of his or her term. All succeeding appointments to the commission shall be made in the same manner as the original appointments are made, and succeeding appointees shall have the same qualifications as their predecessors.

(5) An individual appointed to fill a vacancy occurring other than by the expiration of a term of office shall be appointed for the unexpired term of the member such individual succeeds and shall be eligible for appointment to subsequent full terms thereafter.

(6) All appointments whether initial or subsequent shall be subject to the approval of a majority of the members of the Legislature, if the Legislature is in session, and, if the Legislature is not in session, any appointment shall be temporary until the next session of the Legislature, at which time a majority of the members of the Legislature may approve or disapprove such appointment.

(7) A member shall have his or her membership terminated if he or she ceases to meet the qualification for his or her appointment. A member may be removed from the commission for good cause upon written notice and upon an opportunity to be heard before the Governor. After the hearing, the Governor shall file in the office of the Secretary of State a complete statement of the charges and the findings and disposition together with a complete record of the proceedings.

Source: Laws 2013, LB384, § 3.

Effective Date: May 17, 2013

Termination Date: July 1, 2017

**44-8704. Nebraska Exchange Stakeholder Commission; officers; meetings; quorum; expenses.** (1) The Nebraska Exchange Stakeholder Commission shall organize by selecting a chairperson and a vice-chairperson who shall hold office at the pleasure of the commission. The vice-chairperson shall act as chairperson in the absence of the chairperson or in the event of a vacancy in that position.

(2) The commission shall hold at least four meetings annually, at times and places fixed by the chairperson.

(3) A majority of the members of the commission shall constitute a quorum.

(4) Members of the commission shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

Source: Laws 2013, LB384, § 4.

Effective Date: May 17, 2013

Termination Date: July 1, 2017

**44-8705. Nebraska Exchange Stakeholder Commission; duties.** The Nebraska Exchange Stakeholder Commission shall:

(1) Work with state and federal agencies and policymakers to provide recommendations regarding implementation and operation of the exchange, including, but not limited to:

(a) Improving access to high-quality, affordable health coverage options and improving policies and processes on the exchange to ensure a positive and seamless consumer experience;

(b) Promoting competitiveness of the exchange, minimizing administrative burden for issuers, and ensuring consumer protections;

(c) Incorporating existing state policies, capabilities, and infrastructure that can also assist in exchange implementation and operations;

(d) Ensuring the effectiveness of the navigator grant program;

(e) Promoting a seamless integration with the medicaid program and continuity of care for those transitioning between publicly funded coverage and private coverage; and

(f) Ensuring the small business health options program or SHOP Exchange meets the needs and provides value to small businesses;

(2) Create technical and advisory groups as needed to discuss issues related to the exchange and make recommendations to the commission, state or federal agencies, and the Legislature;

(3) Assist the exchange in meeting the stakeholder consultation requirements established in 45 C.F.R. 155.130, as such regulations existed on January 1, 2013;

(4) Identify challenges and problems in the implementation and operation of the exchange and prepare recommendations to alleviate the problems identified; and

(5) Provide a report on or before December 1, 2013, and each December 1 thereafter, to the Governor and the Legislature concerning the implementation and operation of the exchange, challenges and problems identified in the implementation and operation of the exchange, and recommendations to address such problems and challenges. The report to the Legislature shall be submitted electronically.

Source: Laws 2013, LB384, § 5.

Effective Date: May 17, 2013

Termination Date: July 1, 2017

**44-8706. Act; termination.** The Nebraska Exchange Transparency Act terminates on July 1, 2017.

Source: Laws 2013, LB384, § 6.

Effective Date: May 17, 2013

Termination Date: July 1, 2017