Exchange Stakeholder Report

December 1, 2014

Submitted by the Nebraska Exchange Stakeholder Commission

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A.

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 § 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.§ 44-8705(5) to issue a report on or before each first of December "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 second of these required reports.

B.

Members of the Nebraska Exchange Stakeholder Commission as required by Neb.Rev.Stat. § 44-8703:

Craig Buescher, Sherry Wupper, Laura Gyhra, and Michael Groene were appointed to represent the interests of the consumers. 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. Shari Flowers was appointed to represent the interests of health insurance carriers who are eligible to offer health plans in the exchange. 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 Nebraska 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.

C.

Nebraska Exchange Stakeholder Commission Meeting Summaries for 2014

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i.

Notes from the February 19, 2014 Meeting

The Department of Insurance (DOI) and the Division or Medicaid and Long-term Care (Medicaid) gave briefings on the federally facilitated marketplace (FFM) and its interaction with the FFM. The Department of Insurance stated that 20, 407 Nebraskans purchased a plan through the marketplace and then gave a detailed breakdown of the types of plans that were purchased. Medicaid gave a detailed briefing on how they are transferring applications with the FFM and some of the challenges that are occurring.

In addition Coventry, CoOportunity and Blue Cross Blue Shield presented about their interactions with the FFM, stating that there are still many data and enrollment issues. BCBS reported that 5,115 of its members enrolled through the marketplace. Coventry reported that 1,600 Nebraskans bought a Coventry plan through the marketplace. CoOportunity reported that 7,353 Nebraskans purchased a plan from them.

Other invited speakers included the Navigator entities as selected by the federal government, namely, Community Action of Nebraska (CAN) and the Ponca Tribe of Nebraska (Ponca Tribe) and the Health Center Association of Nebraska (HCAN) which performs certified application counselor duties. Community Action of Nebraska reached out to over 25,000 people and is now mostly dealing with post enrollment issues. HCAN, filed 3,300 applications since the beginning of open enrollment. The Ponca Tribe did not appear before the commission.

ii.

Notes from the June 4, 2014 Meeting

a.

The Report from the DOI

The DOI gave a presentation regarding the status of the FFM. 42,975 Nebraskans were enrolled in the FFM as of May, 2014. Eighty-four percent of those enrolled in an Exchange plan received tax credits from the Exchange. Additionally, the DOI reported that federal grant money for the building of a state based exchange will expire this year pursuant to federal law and the state will not be able to obtain future grant funding for the building of an Exchange. The DOI also reported that transitional plans are allowed in Nebraska. The final rates for the plans that intend to participate on the FFM in 2014 were not available

but will be published on the DOI's website in the future. The DOI is also reviewing numerous rules and regulations, which included payment parameters for 2015, information on Navigators and other technical changes regarding plan filings. The DOI also reported that essential health benefits will remain in effect until 2016; however, they may be changed at the discretion of the federal Secretary of Health and Human Services. The DOI did not know when that regulation would be released or what it will entail. The DOI indicated that Employee Choice for the FFM Small Business Health Options Program (SHOP(is allowed. The federal government provided an option for the states to allow for employee choice for purposes of selection of a plan on the FFM SHOP by an employee. Employee choice means that employees will be able to choose the company and plan from the employer pre-selected metal tier. The DOI further reported that the four companies that are currently participating on the Exchange have expressed intent to participate on the exchange in 2015 with a fifth one possibly being included. Companies need to file their rates and forms with the Department of Insurance by the end of June. Those filings will then be sent on to the FFM in August. The DOI will continue to approve rates and forms continuing to perform its traditional functions for companies. DOI expressed a concern that companies still do not have rate experience with the marketplace. The health insurers on the FFM haven't had much experience with experience thus far because of the limited amount of time the exchanges have been in operation. Several board members wondered if companies will be raising their premiums. DOI indicated that it is difficult to know this early in the process. DOI also indicated that they would be conducting a study on the amount of newly insured because of the ACA. The commission also asked whether or not the DOI would be asking for additional requirements on Navigators. The DOI indicated that they had no plans to do so at this time.

b.

The Report from Medicaid

Medicaid gave a power point presentation. In the report, Medicaid provided eligibility numbers regarding Medicaid and the methods of contact if the individual had difficulty with the process due to federal government technological issues. The reconciliation process is thus continues. The projected increase of people applying for Medicaid has not happened. Medicaid indicated that they added additional staff to follow enrollment better.

c.

Reports from Other Entities

In addition CAN and the HCAN as well as the Ponca Tribe were invited to speak before the Commission. CAN and HCAN gave reports to the committee.

CAN's Report

CAN indicated that they held a number of outreach events from August 15, 2013 to June 3, 2014 which included around 19,576 attendees. They had assisted, via phone or email,

around 5,854 individuals and had 7,799 in person assistance contacts. In total, CAN assisted 33,229 individuals in their capacity as one of the Navigator entities.

CAN indicated that many complicated situations that they encountered in those contacts, including divorced parents with shared custody of children and how enrollment would work with those individuals, what was considered a special enrollment period, how Native Americans with income above 400% federal poverty level (FPL) could be enrolled and those consumers who were at the 'end of their rope'. CAN also noted that because of their assistance included health centers seeing more insured clients, they still see a need for 'health literacy'. For example, people continue to go to emergency rooms instead of seeing their primary physicians, if they even have one. Consumers are unsure how to use the insurance so they don't, and consumers are not making payment or aren't making it in a timely manner. The Committee asked if there were any reports regarding assisting consumers and who had not paid premiums. CAN estimated that the number from the people they assisted was 10%. CAN will be staying on to help with next open enrollment, however, the grants for Navigators have yet to be released and the contract between the federal government and the Navigators ends in August.

HCAN

In their report, HCAN indicated that Nebraska's Federally Qualified Health Centers serve 65,000 primarily low income patients annually in twenty-eight locations across the state including Omaha, Lincoln, Plattsmouth, Norfolk, Madison, Gering, Columbus, and now Grand Island. The majority of their patients have no insurance. The uninsured patients are almost entirely low income working adults, people whose employers don't provide health insurance and people who aren't making enough money to afford a private premium. HCAN employed 41 Certified Application Counselors (CACs) to help these patients and the communities served by Federally Qualified Health Centers. From January 1st through March 31st, the CACs assisted almost 12,000 people directly with information about the Health Insurance Marketplace and have helped nearly 5,000 people file applications. From October 1st-March 31st, the CACs assisted over 18,000 consumers and had submitted over 8,000 applications. January through the end of March, the health centers saw an increase in consumers visiting their health centers. Many of these consumers reported how happy they were to be able to afford health insurance for the first time. Others were surprised at how affordable their health insurance was. The last three months of Open Enrollment proved to be very busy for the health centers as they experienced an increase of consumers requiring their assistance. Many of the health centers expanded their hours to include evening and weekend hours to accommodate consumers. To address the challenge of reaching consumers most effectively, the health centers partnered with community members to conduct outreach. Another challenge occurred with the changes to the Medicaid program at the beginning of the year, but these were worked through by having trainings and community partner calls. CACs have been busy with additional training in Medicaid, Medicare, Economic Assistance, health literacy, and helping our consumers understand and use their new insurance. During this time period before the next open enrollment our CACs

have participated in conferences, webinars, and calls to increase their knowledge/sharpen their skills and will continue to do so.

Centers for Medicare and Medicaid (CMS)

Also at the meeting was a representative from (CMS) Region 7. The representative indicated that the regional office was helping provide information on insurance literacy.

Blue Cross Blue Shield (BCBSNE)

As of June 1, 2014, 15,797 were Marketplace enrollment and 16,101 were off the Marketplace for a total of 31,898. Blue Cross indicated that they believe that 88-90% of these insureds on the exchange were subsidized. Their enrollment age range was 1/3, ages 1-30, 1/3, and ages 31-50 and 1/3, 51 and older. They did not have data on how many were previously uninsured who now had insurance with BCBNE. BCBSNE indicated that it is difficult to set premiums for next year with limited experience and also had a concern that the federal risk programs will not pay out until 2015. There are still some issues with the FFM and that the federally set grace period is causing some concerns as well. When questioned by the committee, BCBSNE denoted that the ACA addressed access, not necessarily affordability. BCBSNE also indicated that there is always a concern about how much more regulation will be issued by the federal government.

Coventry

Coventry indicated that four thousand Nebraskans signed up on the exchange for a plan with Coventry and that eighty-nine percent made binder payment and that the Silver policy was popular choice. Individuals signed up for plans not knowing what they signed up for. Coventry will continue to participate on the exchange in 2015 but will pull out of catastrophic product next year. Coventry also indicated that they would implement rate decrease in premiums next year.

Delta Dental

Delta Dental of Nebraska is a stand-alone dental plan, i.e., not linked with any medical plan and is a separate dental plan. Delta Dental offers dental benefit plans to individuals both on and off the Exchange. Since January 2014, Delta Dental of Nebraska has enrolled 867 individual members in the FFM and 98 individual members off the FFM. Small employer business was not functional through healthcare.gov so small groups were not able to purchase via the FFM SHOP. In2015, the FFM SHOP will be functional for small groups to purchase medical coverage but not stand alone dental. Small groups wishing to purchase dental will need to contact Delta Dental directly.

CoOportunity

CoOportunity has enrolled 81,827 in Nebraska and Iowa. Specifically, for Nebraska, they had 21,149 individuals sign up on the FFM and, 10,140 off the FFM. The age variation was 1/3 were ages 1-30, 1/3 were 31-50 and 1/3 were 51 and older. CoOpportunity indicated

that they were still going through the education process because the ACA has "changed everything" in how insurance is done.

iii.

Notes from September 08, 2014

The Exchange Transparency Commission met and approved the minutes from the previous meeting. The Commission heard from different stakeholders including Navigators, the Department of Insurance, the Division of Medicaid Long-term Care and the Health issuers. There was discussion of the required statutory report and an initial draft was compiled.

iv.

Notes from November 24, 201414

The Exchange Transparency Commission met and approved the minutes from the previous meeting. The Commission heard from different stakeholders including Navigators, the Department of Insurance, the Division of Medicaid Long-term Care and the Health issuers. The Commission finalized the required statutory report and is ready to submit to the Legislature.

D.

Implementation and Operation of the Federally Facilitated Exchange

Since the Commission's first report, which was issued December1, 2013, the Federally Facilitated Marketplace (FFM) is now a reality and operational. Through the implementation process, issues have arisen in regards to the operation of the FFM as well as state based exchanges. After the troubled launch of healthcare.gov, CMS fixed many technical and organizational issues by hiring a project manager to salvage the website. Once those corrective measures were taken, the FFM eventually signed up over 6.7 million individuals nationwide, with just over 42,000 of those individuals signed up in Nebraska. The FFM has made strides in improving the consumer experience over time after the troubled launch last year.

In addition to improvements to the FFM, Federal HHS extended the cancellation date of non-ACA compliant health plans until 2017. These health plans are plans that do not meet the essential health benefit requirements as defined by the benchmark plan as previously selected for Nebraska by the Secretary of the Federal Health and Human Services Department. The transitional plans will allow individuals who were signed up for plans that they already had, to continue to purchase those plans in certain circumstances.

Even though the FFM has made great strides on the consumer side with the healthcare.gov website, the "back end" of the site is still being developed and corrective measures are being implemented to address technological issues. Those issues include, but are not limited to, providing payment to insurance issuers, and verifying an individual's identification through the Federal HUB. The Federal HUB is where confirmation of citizenship, social security numbers, income verification and other aspects of "proving" one's status to claim a tax credit and, in some instances, the ability to purchase coverage from the FFM take place. There have also been concerns raised that some companies are receiving incomplete or incorrect information from the FFM. As of the time of this report, the federal government is implementing corrective measures to attempt to rectify these issues.

Additionally, the construction of the FFM SHOP program portal is still a work in progress. The FFM SHOP program was not operational via an electronic basis in 2014, meaning a small business owner could not go to the website to purchase small group coverage from this portal. . Center for Consumer Insurance Information and Oversight (CCIIO) has stated that the FFM SHOP Exchange will be operational for open enrollment in 2014-2015 and will have dedicated portals for agents at the beginning of the 2014 open enrollment process.

The State of Nebraska decided to give business owners the option to provide their employees choice of which plan an employee can pick in the FFM SHOP Exchange. However, it must be noted that this is dependent upon the ability of the federal government to make the FFM SHOP fully functional.

Nebraska Medicaid was able to meet the demands of added calls and applications with its implementation plan for open enrollment. In addition, it was able to send the single streamline application in batch form to the FFM for those individuals who were determined not to be Medicaid eligible even though the FFM was unable to send batch files to Nebraska Medicaid until the beginning of the year.

In examining a wider scope with regard to what other states had experienced, Nevada, Oregon, and Maryland have had major computer issues in regards to implementation and have returned their Exchanges to the Federal Government as did Massachusetts. In total, these failed attempts at creating state based marketplaces have cost tax payers over $700 million dollars. In addition the Justice Department is investigating Oregon for misuse of Federal funds totaling over $305 million dollars.

On the legal front there are two conflicting court cases with regard to subsidy payments for purchase of a health plan in a FFM. The conflict arises out of how the ACA is supposed to be read and whether or not Congress allowed for the specific payment of tax subsidies to individuals who purchased policies from a FFM. The U.S. Supreme Court has decided to address this conflict by granting certiorari in King v. Burwell out of the 4th Circuit Court of Appeals. Depending on how the Court rules, it will not be known until later in 2015 what the eventual impact of the decision may be on the FFM.

E.

Recommendations

With several states returning their Exchanges to the federal government, the lack of future funding from the federal government for the building of exchanges, and the continuation of the issuance of new regulations and guidance that makes the building of a state based exchange difficult at best, it is the recommendation of this Commission to continue being a federally facilitated Exchange and for the state to continue its cooperation with the FFM. It also appears that Nebraska has placed itself in a good position within the federal system. They have kept as much autonomy as possible with regard to the filing of forms and the review of rates. They still have the ability to assist consumers once the health insurance policy is effectuated. They continue to work with the federal government directly and through the National Association of Insurance Commissioners to address any issues that may arise. Many of the Medicaid issues with regard to the transfer of data have been resolved The Commission recommends to the Governor and the Legislature that they consider whether this Commission continues.

In the absence of a legislative decision to disband this board, the Commission will continue to fulfill its statutory duty to meet and focus on ongoing challenges of the FFM and its interaction with Medicaid and the DOI and to provide the Governor and the Legislature with these reports as to the activities of the FFM.