

Exchange Stakeholder Report  
November 30, 2015

***Submitted by the Nebraska Exchange Stakeholder Commission***

J.J. Green, Chairperson, Small Business Owner Representative

Kyle Kolmorgen, Vice-Chairperson, Health Insurance Representative

Patrick Booth, Health Care Provider Representative

Craig Buescher, Consumer Representative

Shari Flowers, Insurer Representative

Ed Rieker, Consumer Representative

Laura Gyhra, Consumer Representative

Britt Thedinger, M.D., Health Care Provider Representative (Resigned effective October 26, 2015)

Sherry Wupper, Consumer Representative

***Ex Officio***

Bruce Ramge, Director of Insurance

Calder Lynch, Director of the Division of Medicaid and Long-Term Care

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**A.**

***Nebraska Exchange Transparency Act***

In 2013, the Legislature passed and the Governor 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 third 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 Ed Rieker 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 (Dr. Thedinger resigned effective October 26, 2015). 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 2015***

*i.*

*Notes from the July 7, 2015 Meeting*

The Department of Insurance (DOI) and Division of Medicaid Long-term Care (MLTC) briefed the commission on their respective roles with the Federally Facilitated Marketplace (FFM). The DOI updated the Commission on King vs Burwell, a case that was before the United States Supreme Court regarding whether or not a FFM, which Nebraska has, could provide subsidies to individuals for the purchase of health insurance on the FFM. The Court found that FFMs could continue to provide subsidies for the purchase of insurance so no changes were necessary, nor were contemplated, for the current exchange arrangement between Nebraska and the Federal Government. The DOI also informed the commission that there were four proposed participants on the individual FFM which included Blue Cross Blue Shield

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of Nebraska (BCBS), Aetna/Coventry and new entrants for 2016, United HealthCare of the Midlands and Medica. Time/Assurant sold its major medical health insurance business and discontinued being in the health insurance business and their participation in the FFM and CoOpportunity was in the process of liquidation. Additionally, the DOI provided an update on the pending rate reviews of plans filed with the DOI and also discussed the status of the remaining policy holders on CoOpportunity and the progress being made on the liquidation of the company.

MLTC gave an update on how Medicaid interacts with the FFM and what its role is as a Medicaid assessment state. MLTC informed the Commission that 240,000 Nebraskans are enrolled in Medicaid and that 21% of Medicaid application denials are because of income. MLTC also indicated that there still remains data transfer issues due to the federal government's computer system. MLTC was hopeful that the data glitches in regards to split households are remedied for the 2016 open enrollment.

BCBS and Aetna updated the Commission on their enrollment numbers. BCBS of Nebraska enrolled 20,705 individuals of which 84.5% received an advance premium tax credit. BCBS of Nebraska informed the Commission that significant issues remained between the FFM and them regarding "back end" operations. While the consumer typically did not see any of these issues at the initial sign ups, the technical glitches usually occurred during the post enrollment process including, but not limited to, the payment and transfer of tax credits by the FFM to BCBS.

Aetna stated that it was a large beneficiary of the liquidation of CoOpportunity, enrolling 46,000 individuals on exchange and 8,000 individuals off the exchange.

Community Action Partnership of Nebraska and the Federally Qualified Health Centers also spoke. The Community Action Partnership of Nebraska informed the committee of its efforts of reaching out to hard to reach populations and that they applied for a \$600,000 three year grant to continue their efforts. The Federally Qualified Health Centers updated the Commission on their outreach activities and on the opening of a new location in Fremont.

ii.

Notes from the September 16, 2015 Meeting

Minutes from the previous meeting were approved. The DOI updated the Commission on the states uninsured rate and demographics. In 2014 the uninsured rate decreased from 13% uninsured to 9.5% uninsured. In addition, the DOI updated the Commission on the issues that states and companies are having with the risk corridor program. DOI also updated the Commission on the liquidation on CoOpportunity.

MLTC briefed the Commission on its interactions with the FFM, stating that the process is manual and that MLTC receives weekly flat files through the FFM. From October of 2014 to August of 2015, there were 15,000 account transfers (25,000 people) and out of the 15,000 account transfers there were 3,000 duplicate accounts.

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Community Action Partnership of Nebraska and the Federally Qualified Health Center also presented information. Community Action informed the Commission that it received the bulk of the \$600,000 grant from CMS. The remainder of the grant will go to HRS Erase, which is headquartered in Missouri, but will be operating an office in Omaha. Community Action will focus on most of the state excluding the Omaha Metro Area where HRS Erase operates. Both the FQHC's and community Action updated the Commission on their outreach and education efforts.

BCBS of Nebraska informed the Commission that they have 12,500 contracts and 20,200 members in the FFM and that the SHOP had a total of 55 contracts with a grand total of 79 employees. Medica, a nonprofit health insurer from Minnesota, introduced itself to the Commission and indicated that will offer health insurance plans in all Nebraska counties.

iii.

Notes from the November 16, 2015 Meeting

The Commission met and approved the minutes, with amendments, from the September 16th meeting. The Commission heard from DOI, MLTC, BCBS of Nebraska, Community Action Partnership of Nebraska and the Federally Qualified Health Center. The Commission reviewed a draft copy of the Commission's annual report, discussed changes, and approved the final report as amended.

**D.**

**Implementation and Operation of the Federally Facilitated Marketplace**

Since the Commission's second report on December 1, 2014, the Federally Facilitated Marketplace has fixed most of the front end operations issuers. In June of 2015, King vs Burwell was decided, determining that a FFM can provide tax credits. More consumers know about the health law, but a significant amount of Nebraskans do not understand the legal requirements to purchase insurance or have made a conscious choice not to purchase a policy for various reasons.

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. There have been several issues as well with the FFM making switches of an insured's plans, which is called cross-walking, that the consumer may become unaware of and, as such, may be in a different provider network than the consumer previously had. As of the time of this report, the federal government is implementing corrective measures to attempt to rectify these issues.

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Lack of competition in SHOP continues to be an issue with a total number of 79 members participating in the only plans offered by BCBS of Nebraska in 2015. BCBS is participating in the SHOP exchange because they are mandated to do so under federal law.

**E.**  
**Recommendations**

With the continued improvements in the FFM and the King v. Burwell ruling, the commission believes that its' scope of work has been completed and it respectively recommends its own dissolution.

Multiple states have or are returning their state based exchanges to the federal government. The lack of available federal funding, the cost and technological issues and the continued lack of flexibility and independence given to the states that do run state based exchanges have also played a motivating factor for other states to yield back their exchanges to the Federal Government. The Commission recommends that the State continue to utilize the Federally Facilitated Marketplace.

While issues continue with the Federally Facilitated Marketplace as we denoted above, those issues are being addressed by the state agencies, insurance producers, Navigators and the individual insurers on a case by case basis. The Commission notes that the FFM is making significant strides in improving its' systems to coordinate with the MLTC.

While CoOpportunity caused a significant disruption to the policyholders in this State, it must be noted that the DOI, agents, brokers, Community Action Partnership of Nebraska and the Health Centers all worked to minimize the impact of its' collapse by moving consumers to other plans. It must be noted that CoOpportunity was just the first of several COOPs that have now been or are in the process of being liquidated. Congress continues to investigate the demise of these entities. At the time of this report, roughly half (12 of 23) of the ACA COOPs will have been placed into receivership or similar processes and will have ceased operations by 1-1-16.

Fortunately, the overall structure of Nebraska's health insurance marketplace remains strong. Competition exists both on and off the FFM that allows consumers choices for their health insurance needs. That is not always the case in other states where COOPs and other insurers are failing. Other states also have smaller carriers that are facing the specter of becoming bankrupt as a result of the ACA and lack of risk corridor payments that were promised, but not delivered in full, by the Federal Government. In Nebraska, two carriers fell off the FFM for 2016 while two other carriers joined, providing robust competition for consumers.

While the issue of what type of exchange Nebraska should have is currently settled, the commission also recognizes that there are overall concerns with the system overall that merit mentioning. After the King v. Burwell decision that ruled the FFM could, in fact, distribute subsidies that taxpayers are now paying a significant portion of the cost of insurance for those on the exchange. In 2015, 89.8% of 63,380

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individuals signed up on the FFM received some sort of subsidy in Nebraska, which totaled about 56,910 individuals. The subsidy was approximately \$257 per individual per month. For Nebraska, that averages to be over \$14.6 million expended by United States taxpayers for this subsidy in Nebraska alone.

What is also not clear yet is that while Nebraska's uninsured rate has decreased from around 13.2% to 9.6%, what the total amount fiscal cost to the taxpayers of the reduction of uninsured to 3.6% will be in the end. While the subsidy number is known, it is believed that most of those individuals already had coverage and simply enrolled into the exchange for the subsidy. The commission lacks the data from years previous to the implementation of the ACA to fully grasp the total cost of the reduction. Moreover, the subsidy is only one piece of the cost factors not seen, namely, cost of implementation of the exchange system and other aspects of the ACA. Additionally, the individual market, at least in Nebraska, was relatively a small sliver of the market since most insurance coverage in Nebraska was provided by employers, either through fully insured plans or self-funded plans.

Much of the subsidy itself is funded by new taxes on medical devices, insurers, and penalties on employers and the Cadillac Tax on large employers for providing insurance that exceeds certain ACA standards. Other money is taken from other programs, like Medicare, or is simply authorized under the federal budget. It is unclear if this model is sustainable and the Commission is concerned of the future viability and burdens placed upon taxpayers to continue to fund the subsidy.

The Commission also has a significant concern for those Nebraskan's who do not qualify for a subsidy. These individuals and families are now paying the full cost of insurance which, as the DOI has noted in their reports to us, continually increase and will continue to do so in the foreseeable future. It is unclear how the continual increase in premiums, especially for these particular families, will ultimately be affordable to these individuals thus negating the purported purpose of the ACA.

We also note that the "cost curve" of health care costs in general has not been bent because while people have additional coverage, utilization of those services have increased which, in turn, drives up premiums because of the pent up need that some of these individuals who previously were not insured are now using the services under their plan.

In short, the Commission has concerns about the future viability of this system as a whole and while it lauds and encourages health insurance coverage, it is unclear whether or not the system, as a whole as contemplated by the ACA is sustainable.

Because the issues raised in the various court challenges to the ACA have been largely settled, the fiscal impact to create a new system would be overwhelming and the health insurance market in Nebraska remains vibrant, it would appear that the need to keep this Commission in operation is mute. Therefore, it is the recommendation of this Commission that Nebraska continue to operate as a FFM and that the Commission should be disbanded.