

## HEALTH INSURANCE EXCHANGES GOVERNANCE DISCUSSION

ACA requires the governance structure of an Exchange to be a governmental agency or nonprofit entity established by the state. In establishing the governance structure, states should strive to incorporate the following principles:

1. Broad stakeholder representation including representation from health plans including dental carriers, consumer representatives, and employers. There is significant value in seeking input on design issues and involving a wide spectrum of stakeholders in that process.
2. Transparent process for decision-making.
3. Financial and budgetary expertise to ensure that the Exchange operation maximizes efficiency and keeps administrative expenses low.
4. Accountability to state legislators or another appropriate body with respect to any funding assessments and taxes related to Exchanges to ensure the proper and efficient use of such funding for Exchange operations.
5. Ensuring a mission closely linked to the functions outlined in the statute such that regulatory functions performed by other regulatory bodies are not duplicated in order to ensure a better, high value experience for the consumer.

States have the option of creating an independent, non-profit entity to govern the Exchange or establish the Exchange within an existing or newly-created government agency.

- One approach is to establish a quasi-governmental non-profit entity to govern the Exchange that is free from the jurisdiction of other state agencies such as Medicaid and the Department of Insurance. This type of entity would have a board that could either be appointed by the Governor and legislative leadership, or some other state authority as the Insurance Commissioner. Some have suggested that the initial board could be appointed by a nominating Commission.

The legislative model language to follow this approach suggests appointments made by a state agency, legislature or Governor. If a nominating Commission is recommended, the model language would need to provide for the creation of the commission but otherwise would mirror the existing language setting forth the number of members of the commission, their constituency and their term of office.

Creating an independent entity could permit administrative autonomy and independence from existing state agencies. If an Exchange is established as an independent nonprofit entity, it should have accountability to the state Legislature with mandatory statutory reporting requirements that provide the Legislature with oversight of the funding and operations of the independent Exchange entity.

- If a state chooses to establish the Exchange as a governmental agency, the Exchange could be created as its own agency or housed within a state's Insurance or Medicaid agency. In either case, an independent advisory committee should be created to set policy on behalf of the Exchange.

Creating a new government agency to administer the Exchange may ensure that regulatory duties and operational considerations are clearly allocated. The new agency approach may also provide the independence from existing regulators that is necessary to ensure that decision-making relating to the Exchange maintains the central focus of efficiently and effectively administering Exchange operations. In states creating a new government agency to administer the Exchange, careful consideration should be paid to avoiding duplication of regulatory and enforcement responsibilities already allocated to existing state agencies.

- Instead of creating an entirely separate government agency, an Exchange could operate within an existing state agency such as the Department of Medicaid or the Department of Insurance. A potential drawback to this approach is the potential for a more political and less independent decision-making process and potential confusion of roles within the existing agencies. But potential positives exist, too. Some states may find greater efficiencies, coordination, and use of resources by establishing an Exchange within an Insurance Department. They can also avoid conflicting or duplicative regulations or enforcement responsibilities.

In addition, it is recommended that any governance body has multi-stakeholder representation including from health insurance issuers. In cases where there is a concern about conflict of interest, the model legislation could include a recusal provision to ensure a process by which Board or Advisory Committee members may recuse themselves from discussions in which they have a financial conflict.