Implementation of the Affordable Care Act: The Utah Model for Implementing Exchanges

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HIGHLIGHTS

On May 10, 2013, Utah received approval from the federal government for Avenue H, the state's existing health insurance exchange for employers, to function as one of the two exchanges required by the federal Affordable Care Act (ACA). The federal government will operate the other exchange, an online marketplace for individual (not employer-sponsored) health insurance policies. This approval followed months of negotiations between the state and the United States Department of Health and Human Services (HHS).

Supporters of Utah's proposal to divide operation of the two exchanges between the state and the federal government see several advantages over the alternatives originally proposed by HHS. First, the state will not be required to submit data that would be used to facilitate the enforcement of the ACA's individual and employer mandates. Second, the state will likely be able to develop and implement it's own risk adjustment program without having to also administer federal premium and cost-sharing subsidies. Third, the state will be able to operate a limited "navigators" program for exchange marketing and other consumer outreach. And fourth, the choice of plans in Avenue H will likely be superior to the choice of plans offered in a federally run employer exchange.

BACKGROUND

In March 2010, Congress passed, and President Obama signed, the Patient Protection and Affordable Care Act, commonly known as the "Affordable Care Act," the "ACA," or "ObamaCare." The ACA requires the creation of two health insurance exchanges—or online marketplaces—in each state to facilitate the offering and purchase of health insurance. One exchange will market *individual* insurance policies for individuals and families who do not have an offer of employer-sponsored health insurance meeting requirements specified by the ACA. The other exchange will market employer-sponsored *group* policies for employees (and their families) of employers with 50 or fewer employees.

Those purchasing individual policies through an ACA exchange may be eligible for federally funded subsidies to reduce premiums and limit cost-sharing (copays, deductibles, and coinsurance). Premium and cost sharing subsidies are based on income and are available to individuals with household incomes of up to 400% of the federal poverty level.

Under the ACA, individuals are required to obtain ACA-approved insurance or pay a penalty/tax. This is commonly referred to as the "individual mandate." Employers, on the other hand, are *not* required to offer ACA-approved health insurance to their employees. However, if an employee of an employer with more than 50 employees qualifies for a federally subsidized policy, the employer is subject to a "shared responsibility" payment, commonly referred to as the "employer penalty."

UTAH'S BIFURCATED EXCHANGE MODEL APPROVED

On May 10, 2013, the United States Department of Health and Human Services approved Utah's unique proposal for implementing health insurance exchanges under the ACA. The announcement was another milestone along a path begun 37 months earlier and marked by repeated attempts to ensure that implementation of the ACA preserves the state's oversight of the Utah insurance industry and does not require the state to enforce the ACA's individual or employer mandates.

"Third Option" Bifurcates Exchange Implementation

Under the ACA, each state may create its own exchange for individual health insurance policies or leave the task up to HHS. In implementing the ACA, HHS ruled that if a state elects to operate the individual exchange, it must also operate the employer exchange. Conversely, if a state operates the employer exchange, it must also operate the individual exchange. In other words, a state has two options: either operate both exchanges or operate no exchange at all. Utah, however, proposed a third option—bifurcate exchange implementation so that HHS runs the individual exchange and the state runs the employer exchange. HHS agreed and on May 10 said that it would amend its rules to permit use of the third option not only by Utah, but by any interested state. On June 19, HHS published proposed rules sanctioning use of the third option. Comment on the rules closed one month later. As of this writing, final rules have not been published.

Advantages of the Third Option The bifurcated approach to exchange implementation will allow Utah to operate Avenue H, its existing health insurance exchange created by the state in 2009, as the sole ACA-certified employer exchange in the state. Proponents of this approach see several advantages not available under HHS's original two options:

- **State Does Not Facilitate Mandates** Unlike HHS's first two options, the third option lets the state continue development of Avenue H without facilitating the ACA's individual and employer mandates. Prior to passage of the ACA, the Legislature passed—and the governor signed—legislation prohibiting any requirement that an individual carry health insurance. The same legislation also prohibited using Avenue H to "facilitate the [ACA] individual mandate or to hold an individual in this state liable for any penalty, assessment, fee, or fine as a result of the individual's failure to procure or obtain health insurance coverage." HHS's approval of the third option will allow Utah to operate the ACA-required employer exchange without submitting to HHS

Figure 1
UTAH'S BIFURCATED EXCHANGE MODEL—GOVERNMENT ROLES

	FEDERAL GOVERNMENT	UTAH
Individual Exchange (AHBE, "American Health Benefit Exchange")	➢ Administers federal subsidies ➢ Enforces individual mandate and employer "shared responsibility" payments ➢ Runs *full* navigator program ➢ Designs and operates risk adjustment and reinsurance programs (in/out of exchange)	➢ Retains oversight of individual market in/out of exchange; makes recommendations for qualified health plan certification ➢ Retains authority to give final approval for Medicaid eligibility ➢ May seek approval for use of a state risk adjustment model for 2015+ (in/out of exchange)
Employer Exchange (SHOP, "Small Business Health Options Program")	➢ Does not operate a competing employer exchange ➢ Operates risk adjustment (in/out of exchange)	➢ Continues to operate *Avenue H* ➢ Does not submit information to the federal data hub for enforcement of the individual mandate and employer "shared responsibility" payments ➢ Runs navigator program *limited to outreach and education* ➢ Retains oversight of small group market in/out of exchange; has sole responsibility for qualified health plan certification ➢ May seek approval for use of a state risk adjustment model for 2015+ (in/out of exchange)

detailed participation data that could be used to help determine whether an individual is enrolled in or has access to ACA-approved coverage.

- **Risk Adjustment is Possible** A permanent risk adjustment program is one of three ACA tools created to address the large increases and shifts in risk expected among insurance plans in 2014 and beyond. Risk adjustment evens out risk among plans. It does so by transferring payments from plans that attract individuals with lower than average risk to plans that attract individuals with higher than average risk. However, the effectiveness of risk adjustment depends on the methodology employed. Under HHS's original two exchange options, a state could tailor HHS's risk adjustment methodology to the needs of insurers within its boundaries only if the state operated the individual *and* the employer exchange. Under the third option approved by HHS, Utah may develop and implement its own risk adjustment methodology, if necessary, without also operating the individual exchange.

- **State Operates Limited Navigator Program for the Employer Exchange** The ACA calls for the creation of a "navigators" program in each state to conduct education and special population outreach for each of the exchanges. In HHS-operated exchanges, HHS selects the navigators and the amount and method of funding for the program. HHS's approval of the third option will allow Utah to implement a limited navigators program tailored to the needs of Utah employers without also implementing the individual exchange.

- **Consumer Choice is Improved** The third option makes it far more likely that Utah employees participating in Avenue H will continue to a have a significant range of plans from which to choose rather than only a single plan in 2014 and only a limited range of plans later, as will be the case in HHS-operated employer exchanges.

- **State Retains Control of Health Reform** By retaining control of the primary vehicle used since 2009 to increase the availability of affordable health insurance, the state can continue its experiment with Avenue H, refining the type and number of plans offered, increasing the availability of information designed to enhance consumer choice and improve carrier accountability, and determining whether

Figure 2
UTAH'S BIFURCATED EXCHANGE MODEL—AVENUE H FUNCTIONS

AVENUE H (SMALL EMPLOYER EXCHANGE) FUNCTIONS	
➢ Employees continue to have choice of carriers, networks, and plans (will not be limited to one plan in 2014, or one metal level in 2015 and beyond, as federal SHOP enrollees)	➢ *new:* Website, call center support, and marketing available in Spanish
➢ Employers continue to have consolidated billing (unlike federal SHOP in 2014)	➢ *new:* At least two state-licensed "navigators" for consumer outreach and education
➢ Education and outreach continues	➢ *new:* Stand-alone dental (stand-alone vision prohibited by ACA)
➢ Brokers continue to assist employers and employees	➢ *new:* Rates not based on health factors or gender (in/out of exchange)
➢ Employer participation rate (minimum employees) continues at 75% or less	➢ *new:* Exchange participation qualifies certain employers to receive federal credits
➢ Employer funding flexibility continues (no minimum contribution)	

governance of the exchange should be moved beyond the direct control of state government.

Summary In summary, approval of the "third option"—dividing operation of the two exchanges required by the ACA between HHS and the state—will let the state respond to the ACA's requirements in a way that better reflects its stated health reform priorities than the two options originally proposed by HHS. A summary of the "Utah Model," based on flexibility provided under the third option and other flexibility already available under the ACA, is shown in Figures 1 and 2.

HOW WILL AVENUE H HAVE TO BE MODIFIED?

Avenue H, the second government sponsored health insurance exchange in the nation, was created by the state in 2009 and opened to all small employers and their employees in 2011 after a one-year test involving 11 employers and 380 covered individuals. Today, policies sold through the exchange cover over 8,000 individuals associated with approximately 350 employers.

Over its short existence, the policies governing Avenue H and the procedures it uses to carry out those policies have been adjusted repeatedly by the Legislature and the governor to improve the operation of the exchange. Among other things, these changes have affected how rates are set and what plans are offered. To function as an ACA-approved employer exchange, additional changes must be made. Avenue H plans to implement the following modifications before October 1, 2013, the date employers and employees begin enrolling for coverage effective January 1, 2014:

- Add carriers and policies for dental coverage;
- Add additional health savings account administrators;
- List new plans and rates using ACA data mechanisms;
- Modify application and rate setting processes to conform to ACA requirements;
- Enhance the transparency of plan rates;
- Update carrier quality information;
- Categorize plans according to their actuarial value (the amount of total medical costs paid for by the plan) as either bronze (60%), silver (70%), gold (80%), or platinum (90%) plans;
- Allow employers to limit employee selection of plans to a single acturial value category, or to not limit employee selection at all;
- Enable employers and employees to browse plans and review price quotes *before* applying for participation in the exchange.

Though Avenue H will soon become an ACA-compliant exchange, it will remain under the immediate control of state policy makers and subject to further refinements and modifications reflecting *their* priorities and *their* efforts to implement meaningful state-based health care reform.

ADDITIONAL INFORMATION

Additional information about the implementation of health insurance exchanges in Utah pursuant to the Affordable Care Act is available from the Office of Legislative Research and General Counsel, the Legislature's Health Reform Task Force, the Utah Insurance Department, and Avenue H. Information on the implementation of other aspects of the ACA in Utah is available from the same offices, the Office of the Legislative Fiscal Analyst, the Utah Department of Health, and the Utah Department of Workforce Services.

Another briefing paper by the Office of Legislative Research and General Counsel, "Implementation of the Affordable Care Act: Medicaid Expansion Options and Their Impacts," highlights conclusions that may be drawn from a recent study of five options for expanding Medicaid eligibility in response to the ACA.