



## FEEDBACK ON PROPOSED LEGISLATION

### *HBXXX Health Reform Amendments (Rep. J. Dunnigan)*

#### SUMMARY

The “Health Reform Amendments” draft legislation sponsored by Rep. Jim Dunnigan will be the most important vehicle for Utah’s health system reform in year four.<sup>1</sup> A product of the Implementation/Oversight Workgroup of the Health System Reform Task Force (“Task Force”), it includes proposed legislation centered on three themes:

#### 1. Transparency

- This legislation, if passed, requires that insurers post price and value comparisons of their policies and clear, accurate information about benefit packages on the Utah Health Exchange.<sup>2</sup>

#### 2. Utah’s Health Exchange (“Exchange”)

- The proposed bill requires that insurers use a simple, uniform application form and process electronic applications in a timely manner on the Exchange.
- It improves the operations of the Exchange, clarifying the basic benefit package, actuarial review of plans, and oversight for insurers and brokers using the Exchange.

#### 3. Governance + regulation

- The draft legislation clarifies roles and duties in state health reform, strengthens oversight of the state’s payment and delivery system reform process, and renews the Task Force for another year.
- It authorizes the state to regulate the insurance market in accordance with the Affordable Care Act changes, including dependent coverage, pre-existing condition exclusion for children, essential benefits, premium rate reviews and appeals, first-dollar coverage for preventive care, and lifetime and annual limits.

While the draft bill addresses the ACA requirement to increase transparency in the health system, it has federal health reform and state health reform moving mostly on separate tracks. As time goes on, these processes and standards might come into conflict.

This paper includes recommendations (in bulleted *italics* below) for strengthening the bill.

#### Key Provisions in the Draft Bill, by Section<sup>3</sup>

1. **Payment and delivery system reform oversight is moved to the Department of Health.**
  - *Develop metrics and milestones to measure results or bring these forward.*
2. **CHIP dental benefits benchmark is clarified.** This has been ambiguous since the benefit has been converted to the private market.
  - *Determine adequacy of dental provider network and utilization of benefits, by income, geographical area, etc.*
3. **Insurance laws in Utah are brought into conformity with new federal insurance laws**, for example, no pre-existing conditions exclusions for children, no rescission, etc. The Department of Insurance (DOI) is given authority to regulate these laws and may, but is not required to, publish notice of legal action against an insurer to protect the rights of the public.
  - *Strengthen the language to require that the Commissioner educate the public, clarify what this education will look like, including information about where and how to file complaints.*
4. Insurance companies must provide **price and value comparisons** of policies to the DOI and this information will be posted on the Exchange. Scope and oversight of this information is clarified.

<sup>1</sup> The most recent draft bill (version 10.0) is posted here: [http://www.healthpolicyproject.org/Publications\\_files/National/StateReformBillDraftDunnigan11-17-10.pdf](http://www.healthpolicyproject.org/Publications_files/National/StateReformBillDraftDunnigan11-17-10.pdf)

<sup>2</sup> Visit the Exchange at <http://www.exchange.utah.gov/>

<sup>3</sup> A new summary of the bill section by section and a spread sheet of the key provisions are posted here: <S:\Coverage Initiatives\Reform Proposals\2011\Section by section notes on Dunnigan.docx> and <S:\Coverage Initiatives\Reform Proposals\2011\Matrix of key issues addressed in Dunnigan.docx>

5. Clarifies oversight for health care delivery and payment reform **demonstration programs**.
6. Requires that a short and simple **uniform application form** be used by all insurers on the Exchange. Clarifies what insurers can ask applicants and what information insurers must post on the Exchange.
7. Amends **NetCare** (Utah's minimum benefit threshold) to comply with new federal standards and requires that insurers use the group rate factor tied to the previous employer in setting premium rates when **NetCare** is selected as the **COBRA** benefit. Most of the carriers are already doing this.
8. Clarifies regulations concerning **insurance brokers**.
9. Clarifies the scope of **customer service representatives** working at the new **Exchange Call Center**, disallowing them to sell, solicit, negotiate, or bind coverage.
  - *Include language that consumer service representatives should have training in cultural and linguistic competency.*
  - *In conjunction with the state Office of Health Disparities at the Utah Department of Health, arrange access to qualified interpreting and translation of materials.*
10. Clarifies that **brokers** may assist consumers and employers with enrolling in the Exchange and selecting health benefit plans offered there.
  - *Clarify circumstances under which broker or producer fees can be paid to community-based organizations that assist individuals or groups with enrollment and plan selection or associated difficulties;*
  - *Clarify that for some populations, community-based organizations are the better choice for assisting consumers.*
11. Definitions
12. Definitions
13. Defines the **applicability and scope** of the legislation: it applies to health benefit plans that offer coverage to individuals and/or small employers; individual conversion plans; and large employer defined contribution arrangement health benefit plans.
14. Requires OCHS to conduct an **actuarial review** of rates submitted by small employer carriers to verify that insurers are pricing similar health benefit plans and groups **the same in and out of the Exchange**.
15. Clarifies which benefit plans must be offered in the **defined contribution market** for small and large groups.
16. Defines the scope of the plan of operation for the **Risk Adjuster** with attention to the defined contribution arrangement market, **risk adjustment** (protections for insurers against adverse selection), and determination of premium rates for qualified individuals.
17. Establishes a **restricted account for actuary fees** charged by the DOI and makes funds non-lapsing.
18. Requires that information about and a **link to enrollment in public programs and premium assistance programs** be an integral part of the Exchange. Requires a mechanism on the Exchange for comparing and filtering plans based on consumer preferences. Authorizes the Office of Consumer Health Services (OCHS) to establish an Exchange **call center** and contract with private vendors.
  - *Develop affordability standards and allow seamless application and enrollment into private or public plans on the Exchange. This will ensure no applicant falls through the cracks and remains or becomes uninsured.*
19. Establishes OCHS's role in ensuring **insurer transparency** on the Exchange, including: establishing uniform electronic standards, promoting an efficient and consumer friendly Exchange, and assisting the risk adjuster board. Also requires membership on the **Exchange Advisory Board** to include two health producers, two consumers, one representative of a larger and one of a small insurer, one representative from the DOI and one from the DOH.
  - *Include a small business owner or representative on the Board.*
  - *Include language to ensure the Board is a vehicle for public input to the Exchange.*
  - *Define criteria for certain board positions, starting with: a consumer shall be someone who works directly with the un- and under-insured or is a consumer.*
  - *Include language to ensure no conflict of interest—that is, members should have no direct financial stake in the health system.*
  - *Strengthen the authority of the Board's recommendations to the Exchange.*
20. Reauthorizes the Health System Reform **Task Force** for another year.
21. Establishes **Task Force priorities for 2011**, including: recommendations on cost containment, transparency, and governance of the Exchange; and the **state's response to federal reform and whether or not the Utah Health Insurance Exchange should be in compliance with ACA**.
  - *Bring the individual market (where the need is greatest) into the Exchange this year.*

- *Develop affordability standards.*
- *Develop a marketing and outreach plan to educate employers and employees about the premium aggregator and ability to combine premiums from different employers or spouse's employer.*
- *Include a recommendation that an annual comprehensive vision and eye health exams and corrective eyewear for those under 18 years of age be part of basic vision services and that the Task Force include vision as part of their report (as recommended by the Utah Optometric Association).*

22. Clarifies that unspent dedicated credits received by DOI shall lapse into the Health Insurance Actuarial Review Restricted Account at the end of fiscal year 2010-11.

## **Recommended Additions to Strengthen Utah's Exchange (within the Legislation or not)**

### 1. Transparency

- *Standardize product choices to help consumers and employers select plans that meet their needs.*
  - *Actuarial Value:*
    - *Actuarial value is the percent of the cost of covered services that the plan will assume for the typical enrollee. Higher actuarial values translate to lower out-of-pocket costs. This is the best way to measure the true value of plans.*
    - *Publish on the Exchange website the actuarial values for each insurance product offered.*
  - *Bronze, Silver, + Gold:*
    - *Develop categories (like bronze, silver, and gold) over the next year to help consumers make comparisons among like plans.*
  - *Open Meetings:*
    - *The Exchange should have open, publicized meetings. The public should be notified 24 hours in advance, with information about the agenda, location, and time of meetings posted on the Exchange website.*
    - *Audio recordings and minutes of these meetings should be required and made available to the public on the Exchange website.*
  - *Data monitoring:*
    - *The Exchange should be collecting information on how well it is working compared to the outside insurance market AND should post this on the Exchange website for consumer use.*
    - *Data collected and posted should include:*
      - *Insurer measures such as quality measure of health plan performance; claims payment policies and practices; and periodic financial disclosures*
      - *Insurer data on enrollment, disenrollment, denied claims, and rating practices*
      - *Plan participation in the Exchange*
      - *The number and distribution of individuals and employers purchasing insurance through the Exchange*
      - *Premiums offered in the Exchange*
      - *Enrollee satisfaction with the Exchange*

### 2. Utah Health Exchange

- *Include subsidies*
  - *Exchanges will have no effect without subsidies, and we know this because 2/3 of Massachusetts' newly insured are using publicly funded subsidies and another ¼ have employment-based subsidies. Only 5% of the newly insured are not receiving any subsidies.*
  - *Subsidies are important for the role they play in minimizing adverse selection (where one market becomes a magnet for the sickest and highest cost individuals). Coverage must be made affordable to Utah's young and healthy population, or they simply will not participate.*
  - *35% of Utahns living in families with an annual income of less than \$24,999 are uninsured.<sup>4</sup> These families will simply not be able to maintain insurance coverage without subsidies.*

<sup>4</sup> Retrieved on Wed, 23 June 2010 13:09:31 from Utah Department of Health, Center for Health Data, Indicator-Based Information System for Public Health Web site: <http://ibis.health.utah.gov>

- *85.5% of Utah's small businesses are eligible for Premium Tax Credits<sup>5</sup>. Without subsidies, these businesses likely will not be able to offer health insurance to their employees.*

3. Governance + regulation

- *Establish the Exchange as an independent body to minimize conflicts of interest.*
- *Establish governance (not just advising) of the Exchange by an 8 member board appointed by the Governor and Legislature.*
  - *Both consumer representatives and insurers should be on the board (2 each).*
  - *Board members should not have a conflict of interest.*
  - *The board will represent and serve the interests of the individuals and small businesses seeking health care coverage through the Exchange.*
  - *All meetings should be public.*

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<sup>5</sup> [http://www.smallbusinessmajority.org/pdf/tax\\_credit/Helping\\_Small\\_Businesses.pdf](http://www.smallbusinessmajority.org/pdf/tax_credit/Helping_Small_Businesses.pdf)