



# UTAH'S EXCHANGE AT THE CROSSROADS

## Time to Bring Utah's Health Exchange up to Federal Standards

A Utah Health Policy Project Issue Brief (*Discussion Draft*)

October 18, 2010

### SUMMARY

The recently enacted Affordable Care Act (ACA) presents unique challenges to states like Utah that have health reforms already underway. Between now and 2014, when the most significant insurance laws and coverage expansions go into effect, these states must bring their plans into alignment with ACA standards. This is a tall order for Utah, where officials' free market idealism and absolute faith in consumer-driven health care may be in conflict with the fundamental goals of federal health reform, in particular...

- the need to make coverage affordable;
- the role of government in facilitating a responsive insurance marketplace;
- businesses' desire to share risk as a way to limit costs;
- a mandate to bring young people into coverage systems;
- Minimum benefit standards.

The irony in state leaders' continued hostility to the ACA is that only 3 years ago, 130 of Utah's most prominent civic leaders and stakeholders expressed overwhelming support for the changes that are now at the heart of the ACA.<sup>i</sup> More recently a scientific survey of Utah small businesses found strong support for health insurance exchanges that will allow them to share risk with all small groups.<sup>ii</sup> Despite this broad support for the general components of the ACA, Utah elected leaders are pushing back on federal requirements for exchanges and encouraging other states to follow their lead. This is a problem because the state's actions are based on false premises:

- that Utah's Exchange is a success;<sup>iii</sup>
- that state reform plans are headed in the right direction.

### It is time for health reform stakeholders to step forward...

1. to look objectively at the results of state reforms to date: have *any* of the original goals been met?
2. bring state reforms into alignment with ACA standards; develop metrics and milestones to measure progress along the way.
3. to create a mechanism to bring stakeholder expertise to bear on implementation of the ACA moving forward.

### Utah Officials Not Ready to Meet Federal Exchange (X) Standards

States have had 2 opportunities to weigh in on the new federal standards for Xs: the X Planning Grants and a recent opportunity to comment on ACA regulations for X. Utah has taken both steps, though in each the state has demonstrated intent to challenge the basic goals of federal reform.

### Utah Received X Planning Grant

Utah's list of proposed activities is unimpressive at best, and unresponsive to the need to bring Utah's X up to minimum federal X standards.

- Allow Utah to continue moving forward on current X efforts;
- Expand the X: research to better target potential consumers;
- Develop web-based tool for eligibility purposes;
- Fund additional and current staff.

Other states have proposed these activities:

- Establish governance structure for X;
- Convene stakeholders to gather input and leverage resources;
- Conduct economic and actuarial modeling to study policy issues that would impact the design of Xs.
- Integrate X with existing programs.
- Develop an outreach and communications strategy for 2011-2014 to guide the design of the X.
- Develop legislation to implement X under ACA standards.<sup>iv</sup>

These steps would have made sense for Utah. Moreover, all would have improved upon Utah's unique approach to X.

## Utah Officials Weigh in on Federal Exchange (X) Standards

Utah's response to the federal government's request for comment on the X regulations is must reading for stakeholders interested in bringing Utah's X up to the ACA standards. Opening with the false premise that the "Utah model is one of the leading models of state-designed health system reform," the 34-page document asks for special dispensation to effectively ignore basic ACA goals and continue on the state's reform path.

### Highlights & Most Troubling Comments

(in *italics* with UHPP's response in plain text)

- *Any attempt to standardize benefit designs tends to discourage competition and entry into the market and limits choice.* This and many other comments challenge the most fundamental of ACA changes.
- *States may find it difficult to comply with requirements regarding outreach... While the reform contemplates a navigator system to...accomplish that objective, it appears to also grow the role of state government in...organizing and implementing these programs.* In light of Utah officials' rejection of the Consumer Health Assistance grant opportunity (which could have been subcontracted to the private sector), the irony is too painful.
- *The true goal if health reform is to change the game when it comes to health outcomes. Where is the proof that shifting costs to employees, giving them more 'skin in the game,' improves health outcomes?*
- *Traditionally, working families could not pool resources from multiple sources. In the Utah mode, this has been changed. Has it? Not even the re-launch of the X brings in the premium aggregator. On Utah's timeline, this is delayed until 2012.*<sup>v</sup>

## HARD LESSONS FROM X PILOT LAUNCH

In September of 2009 small businesses seeking to offer employees a *defined contribution* health plan (where they can dedicate a fixed amount toward benefits) could apply for coverage on the Utah Exchange (X). At first, 136 employers (2,333 employees) registered for X. Of those original 136, 99 met the eligibility criteria (<50 employees). For underwriting purposes the next step was for all employees to complete the uniform health application or a waiver of coverage form. Of the 99 participating employers, 19 dropped out because they could not get their employees to complete the application – and no wonder: The application was 40 questions long, and many felt the questions were redundant, intrusive or both. Employers had to select a "default" plan for employees who fail to pick their own plan. Employees were then allowed to shop on the X for a plan.

Two related issues arose at this point. First, the application and enrollment process was not consumer friendly. Without a clear understanding of the prices, benefits, or provider networks offered by the plans, employees had difficulty shopping on the X. Further, employers selected default plans with similar benefits as their old plans under the assumption that in the new marketplace, costs would be similar or lower. But when the time came for employees to choose a plan, most opted for the default plan. The ability to select a plan to suit employees' needs and natural appetite for value was to be the hallmark of the Exchange and the new consumer-driven marketplace – the mechanism by which consumers would drive the market toward better value. Yet, because consumers could not see the actual prices, many had no way to compare costs relative to the value of the given product.

**Today only 11 of the original 99 employers remain in the X** – incidentally, in their comments on the federal X regulations (*see inset, at left*), state officials are proud of this. **The top reason for dropping out was cost.** In a survey by the Office of Consumer Health Services (Exchange staff), 77.5% of respondents said that prices quoted in the Exchange were "somewhat" to "much higher" than current premiums. The underwriters dealt the fatal blow: They assumed that if businesses were looking for new health plans, it must be because they employed an inherently riskier pool of employees. Given their charge to keep the X solvent and actuarially sound, the underwriters and insurers tried to pass this increased risk back onto the customer—the businesses and their employees.

## FEW LESSONS FROM X PILOT LAUNCH REFLECTED IN CURRENT RE-LAUNCH

Given the disappointing results of the pilot launch, it is surprising that so few of the lessons from the pilot launch are reflected in the re-launch. Under the re-launch of the Utah Health Exchange small businesses were given a 2-week window (September 1-15, 2010) to sign up for coverage if they want coverage to start on January 1, 2011. Between the failed pilot launch and the current ‘re-launch,’ state leaders made mostly superficial changes to the Exchange: mainly a statewide prospective risk adjuster and a simplified uniform health application. What leaders are forgetting is that small business owners want more for their employees than to simply get off the hook for premium costs. They want their employees to have decent benefits, reasonable cost sharing, and the ability to combine premiums from different employers or their spouse’s employers. None of these needs are addressed in the re-launch. Some are postponed to 2012 or later, as noted in the state’s comments on X regulations.

**It’s time to move on.** The ACA gives Utah small business owners what they have been clamoring for all along. If Utah officials want flexibility in how it implements the ACA, the state will digest the hard lessons from the pilot launch and meet the minimum ACA standards for Exchanges.

## ROBUST EXCHANGES ARE THE CENTERPIECE OF AFFORDABLE CARE ACT

The Affordable Care Act (ACA) is designed to strengthen the private insurance market so that it can serve as the platform for a fully functional and responsive health care coverage system. At the heart of the ACA are the state-based exchanges (Xs): new marketplaces for small businesses and the uninsured to shop for decent, affordable health benefits. States wishing to operate the Xs have a number of important design choices to make,<sup>vi</sup> but all decisions must meet minimum ACA standards, including:

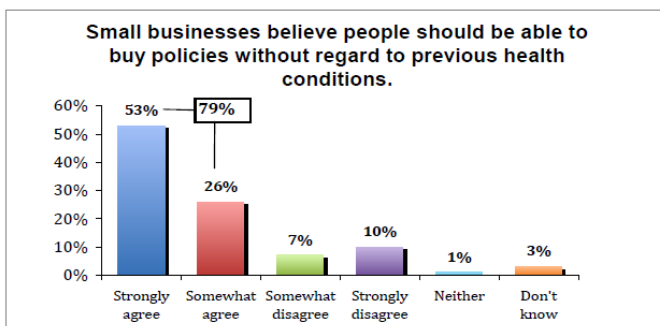
1. *Select health plans, based on federally defined standards (affordability, no preexisting conditions exclusions or rating on health status, etc.), for eligibility to participate in the Xs;*
2. *Assist people and small businesses in making informed decisions about their coverage options;*
3. *Develop and implement application and enrollment procedures, including determining applicants’ eligibility for premium tax credits and cost sharing subsidies;*
4. *Create seamless eligibility and enrollment linkages with Medicaid and CHIP;*
5. *Administer other features of the ACA, like individual and large employer responsibility requirements.<sup>vii</sup>*

Utah’s X is not equipped to meet *any* of these functions, though discussion is now underway to tackle 2-4. Other key differences between the federal X standards and Utah’s X are shown below.

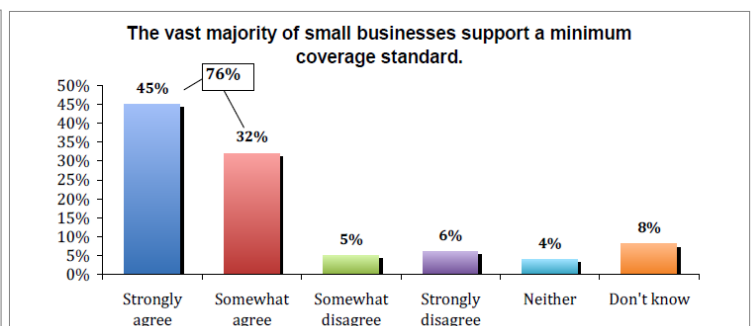
ACA Standards for Exchanges (X)	Utah’s X Standards
Certify health plans as “qualified” with defined actuarial tiers. Apply federal rating system.	Open to all interested carriers. Discussions are underway to create benefit tiers.
Oversee marketing, network adequacy, and quality. Require contracting with essential community providers.	Oversees these, but not necessarily meeting all federal requirements.
Assist in informed insurance decisions	Yes, but not operating across all required settings.

Determine eligibility, application, and enrollment procedures for Exchange coverage & premium and cost-sharing subsidies.	Eligibility for income-related subsidy program (UPP) is separate and disconnected from Exchange, though efforts underway to strengthen this interface.
Coordinating seamless eligibility for the Exchange, Medicaid/CHIP	Informing applicants of possible Medicaid eligibility but not operating seamless enrollment system.

The to-do list in Utah's planning grant is not adequate to the task of closing the gap between its X and the ACA standards. Stakeholders (and HHS officials) must hold Utah officials accountable to the full implementation process, starting with a stronger public input process and a detailed plan for bringing Utah's reforms into line with the ACA. The good news is that this is what small business owners (and providers and consumers) have wanted all along.



Small Business Majority (2009). Utah Small Business Healthcare Survey.



## CONCLUSION

As reflected in their recent comments on the X regulations (*see box, page 2*), Utah officials have allowed insurers and underwriters to dictate the direction of state health reform. The ACA follows a different drummer: the reformed insurance marketplace must balance the needs of *all* stakeholder: small businesses and their need for predictable health care costs; consumers' need for affordable health insurance that will be there at their time of need; insurers' need for ground rules to help them compete over the right things, like keeping people healthy, and not over the wrong things, like avoiding risk.

<sup>i</sup> United Way of Salt Lake (2009). *Four Pillars of Health Reform* (a product of the United Way Financial Stability Council Health Committee). [http://web.me.com/bcrim/CI\\_Health/Health\\_Reform\\_files/Four%20Pillars%20of%20Reform.pdf](http://web.me.com/bcrim/CI_Health/Health_Reform_files/Four%20Pillars%20of%20Reform.pdf)

<sup>ii</sup> Small Business Majority (2009). Utah Small Business Healthcare Survey.

[http://www.healthpolicyproject.org/Publications\\_files/Business/Utah\\_research\\_report\\_062209.pdf](http://www.healthpolicyproject.org/Publications_files/Business/Utah_research_report_062209.pdf); see Utah Health Policy Project's survey highlights: [http://www.healthpolicyproject.org/Publications\\_files/Business/UHPPSmallBizSurveySummary7-14-09postJK.pdf](http://www.healthpolicyproject.org/Publications_files/Business/UHPPSmallBizSurveySummary7-14-09postJK.pdf).

<sup>iii</sup> See House Speaker David Clark's testimony to the U.S. Senate H.E.L.P. Committee: <http://help.senate.gov/imo/media/doc/Clark.pdf>; Gov. Gary Herbert's press release on the X re-launch. State Representative Carl Wimmer's testimony on his anti-federal health reform bill, which passed in the 2010 legislative session: <http://le.utah.gov/~2010/htmdoc/hbillhtm/HB0067S01.htm>.

<sup>iv</sup> Department of Health and Human Services (2010). *Health Insurance Exchanges: State Planning and Establishment Grants*. [www.healthcare.gov](http://www.healthcare.gov).

<sup>v</sup> State of Utah (2010). Utah's Response to the Federal Request for Comments on Implementing Health Insurance Exchanges. Posted here: [http://www.healthpolicyproject.org/Publications\\_files/State/UtahCommentsOnExchangeRegulations10-10.pdf](http://www.healthpolicyproject.org/Publications_files/State/UtahCommentsOnExchangeRegulations10-10.pdf)

<sup>vi</sup> The Commonwealth Fund (2010). Health Insurance Exchanges and the Affordable Care Act: Key Policy Issues.

<http://www.commonwealthfund.org/Content/Publications/Fund-Reports/2010/Jul/Health-Insurance-Exchanges-and-the-Affordable-Care-Act.aspx>

<sup>vii</sup> Georgetown University Health Policy Institute (2010). *Health Insurance Exchanges: New Coverage Options for Children and Families*. <http://ccf.georgetown.edu/index/health-insurance-exchanges>.