

Building a Better Health Care Marketplace

Policy Brief #1: Ensuring Accountability

The opportunity to create a state exchange will allow Texas to increase competition and improve choices in our insurance market. However, to fully realize this opportunity, the exchange must be accountable to the public, and the individual and small business consumers who will buy their coverage through it.

The best way for the state to realize these goals is to make decisions about the exchange's structure and governance to ensure that this important new entity is transparent in its operations, and fundamentally accountable to the public interest. By following the recommendations below, Texas can ensure that its health insurance exchange reflects these principles.

A Clear Pro-Consumer Mission

The exchange should be operated for the benefit of individuals, businesses and their employees, not insurance companies and providers. This charge should be included in the exchange's legislative mandate and mission. A sample mission statement follows:

The exchange is established in the public interest, for the benefit of the

About this Series:

The creation of a new health insurance exchange offers states an opportunity to improve health care and lower costs by pooling consumers' bargaining power, creating economies of scale, and pushing insurers toward delivering lower costs and higher quality. TexPIRG's *Building a Better Health Care Marketplace* project provides recommendations to advocates and policymakers for how to create a strong, pro-consumer exchange. Support for the project is generously provided by the Robert Wood Johnson Foundation. For further information, and other policy briefs in the series, please visit <http://www.texpirg.org>.

people and businesses who obtain health insurance coverage for themselves, their families and their employees through the exchange now and in the future. It will empower consumers by giving them the information and tools they need to make sound insurance choices. The exchange works to improve health care quality and population health, control costs, and ensure access to affordable, quality, accountable care across the state.



Ensuring Accountability to the Public, Not the Special Interests

The exchange must have an organizational structure that makes it accountable to the public. That accountability can best be insured by creating the exchange as a strong, independent public agency, with a governing board. Allowing the exchange to be governed by a private non-profit organization runs the danger of making it unaccountable to the public or its representatives. At the same time, the exchange will need to have some degree of independence from the state's government; it must have the ability to set its operating rules, recommend needed legislation, and negotiate on behalf of enrollees. Otherwise it will not have the agility and power it will need to be an effective advocate for consumers. Housing the exchange in an existing government agency could deny it this needed independence.

A Governing Board that Represents Consumers and Small Businesses


The governing body for the exchange should consist of representatives drawn from across the state's consumer and business communities. Persons who are or will become enrollees should be selected for service on the board, as well as organizations that represent them. Policy experts and those with


detailed knowledge of insurance markets can also render important service. It may be appropriate for government officials, such as the state's health and human services Secretary, to serve in an ex officio capacity, but such ex officio members should not be allowed to dominate the exchange board.

The people's elected representatives in the state legislature and statewide elected offices should have the responsibility of selecting members of the exchange board through gubernatorial and/or legislative appointment. But to prevent undue political influence, the removal of members should only be possible in cases of misconduct or malfeasance. Direct election of exchange board members is not recommended, however, as the impact of special-interest spending could lead to the perverse result of privileging industry interests over those of the public in board member selection.

Strong Protections Against Conflicts of Interest

While the exchange will serve many functions, in large measure the most important is its role as a purchaser of insurance. For it to be effective at this task, it must be a zealous advocate for the interests of consumers, which





means that it must be free of influence from the insurance industry, brokers, and providers. Consumers need the exchange to deliver high quality, affordable coverage – when it comes to negotiating for a better deal, their interests are at odds with those of the insurers. Because brokers are usually paid by insurers on commission for the policies they sell, and pressure on insurers to lower costs might translate to cost pressure on providers, they also should not serve on the exchange board.

Industry stakeholder groups, including insurers, providers, hospitals, and others, should have opportunities for meaningful input into technical and workability decisions. When industry representatives serve in an advisory capacity, strong conflict of interest requirements should be in place to ensure that industry representatives – and others – do not influence decisions that might financially benefit them. An exception to these provisions should, of course, be made for consumers who will financially benefit if the exchange is able to deliver lower costs and higher quality.

Robust Public Participation

Broad public input should be solicited and considered, both in the process of forming the exchange and in its ongoing operation, to ensure that the exchange is meeting the needs of consumers and

accomplishing the goals of its mission. When setting rules and procedures, the exchange should provide opportunities for public comment, including open hearings and calls for written comments. A similar process should be followed as a state's legislature considers how to create and structure its exchange. Efforts should be made to solicit feedback from consumers, including individual and small business enrollees, and the consumer advocates who represent them. In addition, because in many states the exchange will serve populations with special health, cultural, and language needs, the exchange should take particular care to make sure that their decisions are informed by these perspectives as well.

Transparency of Budgets and Records

The public – and most importantly, enrollees – need to know that the exchange is working efficiently to promote their interests. The legislature and governor will also need to know the details of its operations, to inform their oversight and deliberations about possible reforms and changes. As result, transparency and public reporting are critical to allowing the exchange to build the trust it needs to do its job.

The exchange's yearly budget and details of its spending and revenue, including any contract agreements it



reaches with insurers or outside vendors, should be made available to the public. Transcripts of hearings and other public proceedings should also be public and easily accessible. Transparency should be the rule across the exchange's activities and records. With that said, the exchange will also engage in negotiations with insurers, which will sometimes require some information to be kept confidential in order to protect the exchange's ability to drive a good bargain on behalf of consumers. Material related to such negotiations should ordinarily not be open to public disclosure, except where the exchange board determines that disclosure would be in the interest of the public and of enrollees.

