



# Kansas Insurance Department

Sandy Praeger, Commissioner of Insurance

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TO: House Committee on Health and Human Services

FROM: Linda J. Sheppard, Director, Kansas Insurance Department

RE: Update on Implementation of the Affordable Care Act and Federal Exchange

DATE: January 17, 2013

Mr. Chairman and Members of the Committee, thank you for allowing the Department to appear today to provide you with an update regarding the implementation of the federal Affordable Care Act (ACA). In addition to the new health insurance market rules that go into effect on January 1, 2014 we also have up to date information regarding the federally facilitated health insurance exchange (FFE) that will begin operation in October 2013. The FFE will be offering major medical health plans and stand-alone dental plans for both individuals and small employers.

In recent months the U.S. Department of Health and Human Services (HHS) has published a number of proposed and final rules and regulations about the new market rules and the federal exchange. Additional informal guidance has also been provided through Q&A documents and webinar presentations for state officials. Through this information we are beginning to get a clearer picture of how these new market rules will impact the Kansas insurance market beginning in 2014 and how the federal exchange will impact the Department's workload over the coming months.

Beginning in 2014 health insurance companies will be required to issue health insurance policies to all individuals who apply for coverage. These policies will no

longer contain exclusions for services for an individual's pre-existing health conditions and an individual's health status will no longer be a basis for the premiums charged for a policy. Premium rates will be calculated based on four factors: age, within a 3:1 age band; use of tobacco products; geographic location, and family status. Since the implementation of these new rules will require health insurance companies to assume new and previously unknown risks, three new risk adjustment programs will be implemented to attempt to mitigate the potential impact on premium rates. A reinsurance program and risk corridors will be in operation for plan years 2014 through 2016 and a risk adjustment program will be ongoing. All three of these programs will be administered by HHS.

Beginning in 2014 all major medical health insurance plans issued in Kansas, both inside and outside of the exchange, must include the essential health benefits (EHB) stated in the ACA. Most of the ten categories of EHB benefits are already included in plans sold in Kansas. However, pediatric dental and vision benefits, along with habilitative services, must also be provided.

In EHB guidance issued in 2012, states were given an opportunity to formally select an EHB benchmark plan by October 1, 2012, or default to a plan created according to the procedure described in the guidance. A subsequent proposed rule providing additional information about EHB benchmark plans was issued in November. Since Kansas did not make an election by the October deadline the Kansas default benchmark plan will be based on the largest, by enrollment, small employer group plan currently issued in Kansas – the Blue Cross and Blue Shield of Kansas Comprehensive Blue Plan. In addition to the benefits in the Blue Cross plan, the pediatric dental and

vision benefits will be the those provided in the FEDVIP plan, a health plan issued to federal employees. The required habilitative services will be defined according to the procedure outlined in the guidance and proposed rule. Under this procedure insurance companies would be allowed to define the habilitative services they would offer, subject to HHS approval, or provide habilitative services in parity with the rehabilitative services offered in the default plan.

Even though Kansas did not elect a benchmark plan the Department submitted formal comments during the public comment period that ended on December 26th. In our comments we recommended that HHS replace the federal pediatric vision and dental benefits with the benefits provided through the Children's Health Insurance Plan provided by KanCare. Using the KanCare benefits would provide the potential for continuity of care and services for children who may move in and out of KanCare based on their parents' employment status. In addition, we recommended that the habilitative services provided by insurers mirror the rehabilitative services in the default Blue Cross plan.

Under an FFE, the federal government will perform all of the major functions of the exchange, including many functions that are typically performed by state insurance regulators. The handout we have provided summarizes a number of the activities included in the exchange and describes to what extent a state or the federal government will be responsible for these activities.

The deadline for a state to declare its intent to partner with HHS to perform some of these activities has been extended to February 15<sup>th</sup>. However, based on the direction we have received from the Governor and legislative leadership to date, we are

preparing for the operation of an FFE in Kansas, which is described in the far right column of the handout. For example, under the Exchange Marketing activity, HHS will be providing the Internet website and national call center that will be used by Kansans who choose to access the health plans offered on the exchange.

The Navigator program, which is intended to provide individual assistance to consumers enrolling on the exchange, will be managed by HHS, including the selection, training, certification, and oversight of the organizations and individuals who will be providing that assistance. The Department will have no role in the administration of this program or oversight of the navigators.

Kansas health insurance agents will be permitted to sell plans on the exchange and HHS will authorize, certify and train agents who wish to sell exchange policies. HHS will rely on the Department's records to confirm that agents applying to sell through the exchange are licensed and in good standing under the state's laws and regulations. Agents will continue to be compensated for their services through their direct contractual arrangements with insurance companies.

We have been advised that HHS will be rolling out a national consumer outreach and education program beginning in March. At this time we have no specific information about the content of the program or the types of media that will be used by HHS to reach individual consumers and small employers. We expect the information provided will be general in nature and not state specific. As stated above, there will be a federal call center. However, we anticipate an increase in calls coming into the Department's Consumer Assistance Division from Kansas consumers and businesses that have questions or concerns about the information provided by HHS, the operation

of the federal exchange, the health plan options offered on the exchange, or the coverage they purchase through the exchange. In addition, we expect that any state specific calls that cannot be addressed by federal call center representatives will be redirected to the Department. We are projecting that the number of calls to the Department will begin to increase in the spring and continue to grow as we move toward and through the open enrollment period beginning in October. We are anticipating the need for additional resources to handle this increased call volume.

Under the Company/Rate/Policy Approval activity HHS will determine which companies doing business in Kansas will participate on the exchange. HHS will also determine whether or not those companies are complying with the additional requirements for participating on the exchange and the plans sold through the exchange. However, only those companies authorized to do business in Kansas and in compliance with Kansas laws and regulations are eligible to participate.

The insurance plans sold on the exchange, and the rates associated with those plans, will be subject to a dual review and approval process and Kansas companies will be required to submit their policy forms and rate filings to both HHS and the Department. The format and process for submission of policy form and premium rates has been significantly revised and both insurers and the Department will experience challenges in adjusting to this new filing process. Based on preliminary discussions with Kansas insurers the number of new policy forms and rate filings that will be submitted to the Department for review and approval could be significantly higher than what we currently experience. Additional resources in the Department's Accident and

Health Division, which conducts the reviews of policy forms and rates, will likely be needed to respond to this increased workload.

Oversight of the business practices of the companies selling in Kansas will be performed by HHS. However, the Department will also continue to oversee the operations and market conduct of the companies consistent with its obligations under Kansas law.

With regard to the handling of consumer complaints, we understand there will be a process for consumers to file complaints with the FFE with referrals to the Department, as appropriate, according to HHS procedures. With the potential for large numbers of previously uninsured individuals entering the market, we anticipate an increase in the number of consumer inquiries and complaint filings received by the Department. This activity could cause an even greater increase in workload for our Consumer Assistance Division and further need for additional resources.

HHS has indicated that health insurers will be allowed to start submitting their new policy forms and premium rates in late March. All forms and rates must be reviewed and approved by both HHS and the Department by no later than July 30<sup>th</sup> in order to ensure that the companies' plans can be offered through the exchange. All benefit and rate data will be loaded on the exchange website and insurers will be permitted to review and verify their data during August and September. Open enrollment will begin on October 1, 2013 and run through March 31, 2014. All plans sold during the open enrollment period will have an effective date of on or after January 1, 2014.

Finally, we understand that HHS will be collecting from Kansas insurers 3.5% per month of the premiums received by the insurers to finance the required FFE activities and ongoing operation.

Additional details regarding the functions of the FFE are included in our handout and I would be happy to stand for questions at the appropriate time.

# State Exchange Model Choices



Exchange Activity	State-based Exchange	State Partnership Exchange	Federally-Facilitated Exchange
<b>1. Exchange Marketing, Assistance with Enrollment</b>			
1.1. Outreach and Education	Using federal grants, Kansas would locally supplement a national HHS* campaign.	Using federal grants, Kansas would locally supplement a national HHS campaign.	HHS will provide all services. There will be no state-specific outreach or education.
1.2. Call Center	Kansas would provide all services under federal grants.	Using federal grants, Kansas would locally supplement the federal call center.	Federal service with referrals to Kansas agencies. No clear source of funds for additional workload.
1.3. Internet Website	Kansas would provide all services under federal grants.	Dual HHS/state websites. Initial costs paid by grants.	Dual HHS/state websites. No grant money available.
1.4. Navigators	Kansas would provide all services under federal grants.	HHS selects, trains, certifies Navigators. State oversight, but limited state authority under federal grants.	State has no clear role.
1.5. In-Person Assistance	Kansas would design and administer program paid by federal grants.	Kansas would design and administer program paid by federal grants.	Not available.
1.6. Agents	State defines role and may define Exchange compensation.	HHS will authorize, certify and train agents to sell on Exchange under existing state law and company appointments.	HHS will authorize, certify and train agents to sell on Exchange under existing state law and company appointments.
<b>2. Exchange Eligibility and Enrollment</b>			
<b>2.1. Consumer Eligibility Determination</b>			
	Kansas would provide all services. Federal money available.	Dual eligibility systems. Two-way integration required of HHS/state systems.	Dual eligibility systems. Two-way integration required of HHS/state systems.
<b>2.2. Exchange Plan Selection and Consumer Enrollment</b>			
	Using federal grants, Kansas would provide all services.	Kansas: Medicaid enrollment; HHS: Exchange enrollment.	Kansas: Medicaid enrollment; HHS: Exchange enrollment.
<b>2.3. Exchange Post-Enrollment Consumer Communications</b>			
	Using federal grants, Kansas would provide all services.	HHS will provide all services. There will be limited state-specific communications.	HHS will provide all services.



Exchange Activity	State-based Exchange	State Partnership Exchange	Federally-Facilitated Exchange
<b>3. Company/Rate/Policy Approval and Consumer Complaints</b>			
3.1. Determine Companies Allowed to Sell on the Kansas Exchange	Kansas choice. Grants available.	Kansas recommends companies for HHS approval. Grants available.	HHS approves from companies licensed in Kansas. State role unclear.
3.2. Determine Insurance Products for Sale on the Exchange	Kansas choice. Grants available.	Kansas recommends products for HHS approval. Grants available.	Dual HHS/state approval process. State role unclear.
3.3. Insurance Company Support and Communication	Kansas would provide all services. Grants available.	Kansas would provide some services; HHS others. Grants available.	Federal service supplemented by KID*. No clear source of funds for additional workload.
3.4. Insurance Company Oversight	Kansas.	Kansas and HHS.	Federal oversight supplemented by KID. No clear source of funds for additional workload.
3.5. Quality Reporting Measures	Kansas chooses "quality" definition displayed to consumers using grants.	HHS chooses "quality" definition displayed to consumers.	HHS chooses "quality" definition displayed to consumers.
3.6. Consumer Complaints	Kansas would provide all services. Grants available.	Using federal grants, Kansas would have a primary role in Exchange complaint handling.	Federal service with referrals to Kansas agencies. No clear source of funds for additional workload.
<b>4. Employer-Based Insurance for Small Business (2-50 employees)</b>			
	Kansas would provide all services under federal grants.	HHS/state partnership in outreach and education using federal grants.	Federal outreach and education. No clear source of funds for additional workload.
<b>5. Finance &amp; Accounting</b>			
	Kansas sets method and amount of money to finance Exchange, established under grants.	HHS will charge insurance companies 3.5% of premiums.	HHS will charge insurance companies 3.5% of premiums.
<b>6. Legal Authority and Governance</b>			
	State supplements ACA with its own laws governing its Exchange.	HHS delegates some of its authority in governing Exchange to state through MOU*. MOU requires state advisory board.	Any state role is unclear.

\*HHS=U.S. Department of Health and Human Services, KID=Kansas Insurance Department, MOU=Memorandum of Understanding