

ARKANSAS SHOULD LOOK BEFORE IT LEAPS INTO A STATE HEALTH INSURANCE EXCHANGE



By *Dan Greenberg*

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Arkansas Insurance Commissioner Jay Bradford recently asked legislators to consider endorsing Arkansas's application for another federal grant to fund planning for a state health insurance exchange. As has been discussed, the Obama Administration's health care reform legislation (PPACA) may eventually require each state either to set up its own exchange or accept the imposition of a federally managed exchange—and several of Governor Mike Beebe's appointees, such as Commissioner Bradford and Surgeon General Joe Thompson, have in recent weeks advocated establishing a state exchange. Although Commissioner Bradford presents this request only as a way for Arkansas to keep its options open, political realities demonstrate that his approach has multiple defects. Numerous red flags suggest that lawmakers should be wary of echoing the governor's appointees' state-exchange advocacy:

- **The Obama Administration's attempt to persuade states to establish their own state exchanges continues to lag.** Thirteen of 50 states—barely one quarter—have established exchanges so far. By the end of 2012, the U.S. Department of Health and Human Services (HHS) must decide which state exchanges will be ready to operate in 2014. In reality, that means the HHS Secretary will have to make decisions about certifying states' exchanges in the second half of 2012—that is, in the context of a competitive presidential re-election campaign.
- **The Obama Administration almost certainly will not be able to establish federal exchanges on the timeline and to the extent that PPACA requires them.** It is true that if states refuse to establish exchanges, the HHS Secretary has the power to establish federal exchanges in those states. But just because the federal government has the theoretical power to do something, it does not follow that it possesses the practical capability. For the federal government to make any significant progress in establishing federal health insurance exchanges in huge states like Florida or Texas in the next year and a half would stretch the skills of the most competent public-sector managers. It is less than clear that the managers needed to do this job—both in terms of quality and quantity—can be found by the executive branch, or that the Obama Administration can build up this kind of capacity in such an abbreviated time frame.
- **Beyond the practical problems of administration involved in establishing a nationwide wave of federal exchanges, PPACA faces huge legal, political, and budget challenges.** Congress has authorized no funding for federal exchanges (in contrast to the capacious flow of taxpayer dollars that are available as grants to establish state exchanges), and HHS presumably doesn't have billions of dollars just sitting around in a bank account that establishing exchanges in half or two-thirds of the states would require. Furthermore, those states that participate in a federal exchange will not qualify for subsidies to purchase insurance (a legislative flaw that presumably arose from

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hurried PPACA drafting), a serious problem which itself could make the imposition of federal exchanges politically impossible. Because of partisan gridlock in Washington, D.C., it is highly unlikely that legislation that greases the skids so as to make PPACA more politically viable will be passed in the near future, especially by a Republican-dominated House of Representatives. Furthermore, the constitutional status of PPACA, after its likely review by the Supreme Court, is obviously uncertain.

- **The bureaucratic maneuvering by the Obama Administration in recent weeks demonstrates its understanding that the widespread refusal by states to adopt exchanges raises severe problems for the implementation of PPACA.** In light of the fact that state policymakers have repeatedly been told that their only two choices are a state exchange or a federal exchange, the newest proposal from the Obama Administration of a third possibility is noteworthy. Earlier this month, HHS announced a third PPACA alternative: to let states and the federal government form a partnership to establish a state exchange. Under this latest proposal, various functions of the exchange, such as plan management and consumer assistance, would be managed cooperatively by state and federal authorities. This proposal for a hybrid federal-state partnership—a "third way" to establish exchanges—is best interpreted as a concession that the first two alternatives are not seen as desirable by state policymakers in much of the nation.

Similarly, the level 1 grant that Commissioner Bradford wants Arkansas to apply for appears to be the latest in a series of efforts by the Obama Administration to sweeten the pot by making a state-level exchange more desirable to state governments. However, the rolling deadline for grant applications that it advertises (the end of every quarter in 2011) suggests that that deadline soon will likely be extended to some date in 2012. In short, the new options that the federal Administration continues to offer demonstrate its recognition of the politically weak negotiating position of advocates of state exchanges.

Lawmakers should be wary of governments bearing gifts, because the proffered grants may have strings attached. Currently, it seems imprudent for state policymakers to commit constituents and taxpayers to the obligations deriving from the creation of what will be, in effect, a new branch of state government. Furthermore, application for the grant that Commissioner Bradford advocates apparently commits the state of Arkansas to endorsement of some aspects of a state exchange: for instance, the grant application requires "a letter of support from the State Medicaid Director agreeing to collaborate with the Exchange on developing shared functionalities and ensuring coordinated approaches to shared or related functions, and briefly describing likely key areas of collaboration." The application also requires grant requestors to submit "a proposal that explains the approach the applicant is considering to establish" a state exchange. Lawmakers should ask Bradford what commitments the grant application itself will force the state to bear, especially because these commitments may later create large costs and highly uncertain benefits for Arkansas. Lawmakers should also explore whether postponing the decision that Bradford invites costs Arkansas anything at all.

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