

State Decision-Making in Implementing National Health Reform

The federal government may soon pass legislation that will significantly reform our health care system. The complexity and breadth of federal health reforms will pose a significant challenge to states. The preparation and planning will require a thorough review of the reforms and the impact—individually and combined—each will have on the states' health care systems.

There are major components to the bill that address health insurance and coverage, as well as some immediate actions and longer-term system reforms. Governors will have to plan strategically to implement these new programs and expansions—a process that will likely take several years and a great deal of effort and negotiation. Additionally, governors must prepare to ensure the immediate and ongoing coordination of agencies and other stakeholders, consider the timing and interactions among key components, and develop a plan for communicating with the public. This brief provides states with an initial guide on approaching critical aspects of decision-making in health reform implementation.

Reform Provisions Affecting States

The federal health reform bill includes provisions that affect major aspects of the health care system, including a Medicaid expansion, an insurance exchange, insurance market reforms, and delivery system improvements.

Medicaid Expansion

The Medicaid expansion will extend coverage to all individuals under age 65 up to 133 percent FPL by 2014. The expansion is fully federally funded for the first three to four years. The state matching portion is phased in over the following two to three years, ultimately resulting in state fund contributions of about 10 percent.

Exchange

Private health insurance exchanges, a mechanism for connecting individuals with insurance products, will be implemented by 2014. The current legislation calls for the creation of exchanges in each state that can be operated as a non-profit entity or as a quasi-governmental unit. States also have the option to establish regional exchanges both within and between other states.

Insurance Reforms

The bill includes changes to the small group and individual insurance markets such as, requirements for guaranteed issue and renewability; a prohibition on pre-existing conditions; the creation of a national program to fund state high-risk pools; and rating bands that include age (maximum of 3:1), family structure, geography, actuarial value of the benefit, and tobacco use (maximum of 1.5:1). States retain the authority to go beyond the measures.

Delivery System Reforms

The bill contains delivery system reforms to achieve better health outcomes through a more efficient system. The Obama Administration is supporting fully federally funded reimbursement of Medicaid primary care providers at 100 percent of Medicare rates, but this is not currently in the Senate bill. The legislation also provides grants to states for prevention and wellness initiatives.

The legislation creates a Federal Office of Dual Eligibles, as well as a Medicaid medical home option. The bill also includes multiple options for payment reform including accountable care organization pilot programs, bundled payments, and the establishment of a Federal Innovation Center to test payment and service delivery models. In addition, there are incentive payments for alternative medical liability laws and the option for chronic care medical homes.

Near-Term Federal Requirements

There are certain aspects of the federal health reform legislation that will go into effect immediately or shortly after enactment. Governors should review these specific requirements and make decisions quickly. The immediate issues that are likely to be most important to governors are:

- *High-risk pools.* If a state does not already have one in place, the state will need to set one up, use an approved alternative state health program to act as a high-risk pool, or the federal government will step in to run one. In many states, existing high-risk pools will need to accommodate more people.
- *Web portal for insurance options.* A national program will be established to provide standardized information on all insurance products being offered on the small group and individual markets. States will need to work with the federal government to provide the standardized information.
- *Medicaid maintenance of effort (MOE).* The legislation continues the MOE on Medicaid that was enacted by ARRA. As a result, states will be unable to decrease eligibility rates or benefits. They will have to remain at their current levels until the Medicaid expansion becomes law. As a result, states may need to revisit their Medicaid state plans and budget.

Implementation planning will be vital in moving forward with each reform effort and in ensuring coordination among the components. There will be several opportunities for states to receive federal money for implementing reforms, and it will be important to consider all options as governors are determining if and how to approach implementation.

State Preparations and Planning

If national health reform legislation is signed into law, states quickly should begin preparations for implementation. Due to the significant and varied roles states will play in making federal reforms operational, governors will need to develop a strategic plan for implementation. This is likely to be a substantial undertaking for states because of the extent of the reforms and the coordination that will need to take place.

As part of the strategic plan, governors must recognize the action steps they need to take to ensure success in implementing reforms. They will need to identify the immediate, short-term, and long-term steps in order to make the appropriate decisions in a timely matter. Specifically, governors should include the following in their strategic plans:

- Identify and organize their state leadership team to develop the strategic plan and establish coordination across state agencies on cross-cutting issues.
- Determine the gaps and resources that currently exist in state government as they relate to reforms to better plan for implementation.
- Evaluate their existing infrastructure to consider where new programs may be housed and consider establishing new offices or agencies for reform programs.
- Examine the timing of their legislative and regulatory processes to ensure ample time for both bill passage and the following regulations to meet federal deadlines for implementation.
- Develop a communications plan for stakeholders, the general public, and state agencies to educate these groups on the effects of health reform and the state's role in implementation.

Aspects of this strategic plan are discussed further in the following sections. Having such a plan will help states assess their current situation, as well as determine when and whether to adopt the federal reforms.

Identify and Convene State Leadership Team

One of the first steps governors need to take is to identify the appropriate state leaders that will guide national health reform implementation. Governors should form a health reform cabinet that reports directly to the governor, develops the strategic plan for reform implementation, and is held accountable for its recommendations. Specifically, the governor should give the cabinet responsibilities for the following activities:

- Articulating a clear purpose and operations plan for the cabinet;
- Oversee planning, development and implementation of reforms;
- Identify ways to build on existing infrastructures and programs, or to create a new entity within state government to house governance and oversight functions;
- Ensure appropriate coordination and collaboration across state agencies; and
- Engage with relevant stakeholders to get their buy-in and insight for implementing reforms.

States have used this cross-agency model to coordinate programs and improve on the existing system. Previously, states have created children's cabinets to improve the management of children's issues across health, education, and social service programs. Many of the same themes apply in creating a similar group of senior state officials to organize and manage federal health reforms. For example, Governor Jim Douglas of Vermont issued an executive order establishing a health care cabinet to improve the coordination of national health reform implementation.

Form a Public/Private Advisory Commission

It will be beneficial for governors to engage stakeholders in the planning and implementation processes to ensure success and broad-based support, as well as to solicit assistance and strategies for approaching reforms. To begin, the health reform cabinet discussed above should identify major, relevant stakeholders to participate in the commission, such as:

- Private insurance companies operating in the state;
- State medical society;
- State hospital group;
- Other direct service providers (i.e., community clinics);
- Major employers;
- Advocacy groups;
- Insurance brokers;
- Other private sector stakeholders; and
- State legislators.

As part of getting them invested in the process, the cabinet should work with the commission to establish the purpose and goals for the group. The commission may have the following responsibilities:

- Solicit experiences and advice on similar programs outside of state government;
- Provide strategies and feedback on implementation plans and establish networks for outreach;
- Create a communications and outreach plan to educate the public on the reforms;
- Discuss potential partnerships between the state and stakeholders for implementation; and
- Discuss potential financial support for aspects of implementation.

For example, Connecticut created an advisory group to respond to federal health reforms. The group consists of fifteen stakeholders from state government and the private sector. The group is charged with examining state-based delivery system reforms, emphasizing cost containment, and increasing access to coverage in the state.

States have used a similar model for other types of advisory groups that have public and private sector interactions, such as infrastructure projects, federal recovery project planning, climate change, and the development of statewide health information exchanges.

Determine Available Gaps and Resources

States are facing difficult financial situations, and their budget gaps are likely to increase before they begin to decline slowly over several years. It is important for governors to thoroughly analyze their states' situation and agency needs to understand how national reforms will further impact state budgets and their ability to integrate reforms.

If federal grants will be available for states to implement reforms, governors will need to identify existing state resources and where there may be gaps in funding to know which federal grant opportunities would suit their needs.

Governance and Oversight. States will need to examine existing state agency capacities, data resources, and leadership to determine what immediate and more long-term changes need to be made to ensure a smooth transition to a reformed system. It will be critical for governors to identify the governance and oversight needs of their state to find gaps that may exist as they approach implementation.

For example, there is likely to be a lack of personnel to not only complete new work associated with reforms, but also that have the professional experience and training necessary for some of the tasks required. It is important for the state to identify those areas and develop a plan for increasing personnel and leadership across these areas. Additionally, for the Medicaid expansion, states will need to develop an online application process and analyze the capacity of their eligibility system infrastructure to ensure compliance with the federal law.

A critical issue for governors to consider is the infrastructure changes that will be necessary within state government. States will need to establish where new programs will be housed and organize how they will be run within new or existing agencies and programs. This infrastructure planning will be a crucial step in phasing in the reforms and having the appropriate mechanisms, personnel and systems in place to incorporate reforms, especially as states already have reduced programs to a minimum and stretched personnel in an effort to balance their budgets.

Modeling the Distribution of Individuals' Insurance Status. Governors will also want to analyze current programs, such as Medicaid, CHIP, and insurance offerings, to determine the effects of increased enrollment across many insurance options. States will need to conduct a simulation of where they think people are going to enter the health insurance market – maintaining current coverage, enrolling in their employer's insurance, purchasing individual coverage, buying insurance through the exchange (including who qualifies for subsidies), qualifying for Medicaid or CHIP, or choosing not to purchase coverage.

This modeling will help states estimate their increased caseload for public programs and help to gauge the strength and resilience of existing insurance offerings in the individual and small group markets. It will also assist governors in determining the best ways to handle the influx of uninsured residents entering the system through public programs, the exchange, or into other private or employer coverage. Because budgets are already tight and Medicaid costs are continuing to rise, these estimates will be important in determining the potentially significant impact these reforms will have on the state budget.

Determine the Synchronization and Intersection of Reforms

The timing of launching various health reforms will play a large role in the success of reforms and the strength of the insurance market. Although the federal reform legislation will have deadlines for implementation, there are numerous factors of timing and synchronization that can ease the transition and avoid unintended consequences. It will be crucial for states to consider the structural and administrative outcomes of implementation, market impacts in existing and new insurance products, as well as their effects on existing state programs and private sector stakeholders.

Governors should consider timing and staging of reforms and their impacts on: the insurance marketplace, stakeholders, and state infrastructure and agencies. Gradual phase-in and transition periods will ensure adequate preparation and planning to redirect resources to address emerging needs. Unsynchronized implementation of reform components could result in a significantly weakened insurance market and major gaps in coverage for individuals. The order in which the reforms are implemented and how they are phased in will be a key factor to ensure that each reform has the support and functionality needed, and that reform efforts run in a complementary fashion.

Market impacts and timing of insurance reforms

It is vital that states' small group and individual markets remain strong and viable as new regulations are put into effect, and as exchange mechanisms become operational. Dramatic shifts could create market instability or consumer concern. By planning reforms in a synchronized manner, states can ease market pressures and alleviate consumer disruption.

Insurance Reforms. It will be important for governors to ensure that the timing of new insurance market regulations is given appropriate consideration. Governors may want to strongly consider phasing in the reforms to maintain the integrity of the markets. For instance, if a state with little existing regulation in its individual insurance market were to implement all of their insurance reforms simultaneously, it could dramatically increase participation by unhealthy, previously uninsured individuals, thereby driving up premiums and resulting in insurance carriers pulling out of the market. However, if the regulations are phased in and slowly change the market, the risk pool is likely to be more diverse and keep the markets stabilized.

Health Insurance Exchange. As states set up insurance exchanges for those in the small group and individual markets, it will be crucial to plan its creation and launch in concert with the other reforms being implemented. For instance, it will be important to the integrity of the exchange that the insurance regulations are substantially in place before the exchange is functioning. It will also be important to plan the set-up of the exchange so that those who qualify for Medicaid or federal subsidies are notified of their eligibility and given appropriate instruction. It will be the exchange's responsibility to be able to provide this information and the subsequent instructions to ensure people are enrolled. In most states, no current government entity exists to handle all of these responsibilities, and it will be crucial for governors to consider the structure of the exchange and linkages to other programs.

Individual Mandate. Requiring most residents to have health insurance is a critical piece in synchronizing among reforms. Because an individual mandate will bring more people into the market, particularly those who may be healthy and otherwise uninsured, it will be key to ensure that the market can handle all newcomers. The insurance reforms will need to be in place before the individual mandate takes effect, mainly to prevent people from being denied coverage when they are required to have it. In addition, people should have access to insurance through the exchange if they are not able to purchase it through their employer. The Medicaid expansion will also need to be in place to ensure those who are eligible receive Medicaid coverage. The system will also need to be in place to ensure those who are exempt from the individual mandate are identified and not penalized for not having insurance.

Intersection of Existing State Programs and New Functions

It will be vital that governors consider the intersection among aspects of the new law, as well as existing state programs and regulations. Several of the reforms are dependent on the implementation of others, and therefore their implementation will need significant planning. Governors will need to map out the reforms with state programs and other new initiatives to ensure a comprehensive view of the outcomes of implementing these changes.

Medicaid Expansion. The Medicaid expansion will take extensive planning to build on top of the existing Medicaid program. Governors will need to have their systems and personnel prepared and in place before the transition date. They should also consider in which Medicaid plans they are going to enroll newly eligible populations. In addition, states may want to consider expanding early to prevent a rush of enrollees. An important lesson learned from the federal government in implementing Medicare Part D was that a “turn-on” date for all beneficiaries at once was extremely problematic. States can use this experience to strategically plan and perform a “dry run” of their systems, phase in their expansion, or prepare local staff to assist in enrollment as the deadline approaches.

Coordination within state agencies. Because of the complexity and many components of the reforms, governors will need to assign designated roles to state agencies. They will also need to make certain that agencies are coordinating across state programs, and internally within each division to maximize the efficacy of programs and the use of state personnel and funding. Governors will need to involve state programs, such as:

- **Budget and Tax.** Income eligibility determinations for Medicaid and federal subsidies may involve the state’s budget and tax office. In addition, this state office may participate in income exemption determinations for the individual mandate.
- **Medicaid.** The state’s Medicaid agency will no doubt lead the Medicaid expansion. The agency may also play a role in income eligibility determinations with the exchange.
- **Insurance.** The department of insurance will likely have a large role in oversight and certification of plans in the exchange, as well as the regulation of rate bands.

- **Public Health.** Involvement by the health department will be important for the development of benefit designs, workforce issues, the interaction of reforms with community health centers, and delivery system reforms.
- **Health Information Technology.** Those overseeing health information technology initiatives should be closely involved in the development of the reform infrastructure, as well as coordinating with the state's electronic health record implementation.
- **State Employees/Retirees.** The state's office of personnel management may need to analyze the reforms to determine what requirements they have to meet as a large employer. They may also need to examine the actuarial value of state employee benefits to determine whether they would be considered a "high-cost plan," and therefore would place a fee on the insurance carrier who would pass the cost along to the state.

Establishing Programs. Action steps and timing for establishing a new program, such as an exchange, should be thoroughly analyzed and the impacts on existing programs and reforms efforts assessed. The placement of new programs or offices should also be examined, in addition to whether they are needed at all. If a similar program in the state exists or an office is responsible for the same health policies, it may not be necessary to set up a new program. Rather, the existing office's mission could be transformed to meet the needs of the new reforms while also maintaining its previous purpose.

However, some of the reforms may be significantly unique so that the only option for the state is to set up a new program or office. For instance, most states do not currently operate an exchange or have any similar programs. Thus, a new program or office will likely need to be created to meet the federal guidelines for running an exchange. However, existing responsibilities will still play a role in the new entity. Insurance commissioners, for examples, will likely play a significant part in certifying plans that can be offered through exchanges.

In addition, the timing and interaction of reforms, including when new state government offices become operational, will be a key element in successful implementation. It will be necessary for governors to task their state leaders with mapping out the infrastructure of the reforms, as well as the timing to ensure that the systems that need to work together and depend on each other for data, benefits information, and consistent messaging to the public are able to meet their goals.

There will be many instances of key timing and interaction factors that will have to be considered. One example is the interaction of the exchange, increased Medicaid enrollment and the individual mandate. Due to the Medicaid expansion, as well as the enforcement of an individual mandate, there will be an increase in Medicaid enrollment. Medicaid systems must be ready to handle the increase in beneficiaries. In addition, the exchange is likely to see a significant increase in usage when the individual mandate goes into effect, and the exchange will need to be fully equipped to handle the increased enrollment. It will also need to be ready to process those individuals who come to the exchange to buy health insurance, but are instead eligible for Medicaid. The timing and

interplay of these various aspects of reform are crucial and will need to be thoroughly examined prior to implementation.

Incorporating Existing Delivery System Reforms

Governors can use their experiences from previously enacted state-based delivery reforms to incorporate new reforms into their existing system. Identification of initiative overlaps (e.g., states that already operate a medical homes system) will help states to further their efforts and to advise other states on best practices and lessons learned from these pilot programs.

An example of this is governors working with their public health departments to identify and implement prevention and wellness initiatives. States can also partner with insurance commissioners and attorneys general to revise their medical liability laws.

Impact on Relevant Stakeholders

While there are several changes that will occur within state government, it is also important for governors to understand and monitor the impact federal reforms will have on relevant stakeholders in their states. Through the creation of a public/private advisory commission discussed earlier, stakeholders will be able to provide feedback and strategies for approaching reform. States should also educate their stakeholders to ensure they have the knowledge they need to make informed decisions on reforms. As part of the initial strategic planning process, individual stakeholder impacts include:

- *State Legislators.* Because the reforms will require some dramatic changes, legislation will be required to implement the reforms on the state level. Governors will have to engage legislators to get their input on developing a plan for implementation. Political challenges may make legislative relations difficult. However, it is important for governors and legislators to realize that in order to meet federal deadlines in 2014, the state will have to pass legislation by 2012 at the latest to allow for timely implementation.
- *Employers.* It appears likely that the employer community will continue to play a large role in providing their employees with health insurance. There will be tax credits available for some small businesses that offer coverage. It will be important to track the levels of employer-sponsored insurance. For instance, benefit requirements may influence employers' offerings. Small and large businesses may have different perspectives on these reforms, and governors should engage with a broad range of employer representatives.
- *Insurance Companies.* With new insurance regulations and the establishment of an exchange as part of the larger reforms, it will be crucial to immediately engage with private insurance companies. The new insurance regulations in the small group and individual markets will have an enormous impact. Governors will need to engage with the private insurers to ensure that the transition is as smooth as possible and that the insurers do not decide to abandon the market, leaving few plan options. The establishment of an exchange will also create significant changes for the private

insurance markets, and states should communicate with the carriers to encourage a seamless transition. While these reforms will not be implemented immediately, the planning and legislation to create them will have to be determined in the near future.

- *Medical Providers.* An early impact on medical providers will involve interactions with their patients. Patients are likely to inquire with their providers about the changes and how it affects their treatment and insurance. It will be important for governors to engage with medical providers to enlist their assistance in helping patients understand how the federal reforms affect them and their insurance coverage. Involving providers in preparations and planning will be a key factor throughout implementation.
- *Community Groups.* The groups that will have the most interaction with individuals in explaining the reforms will be the community organizations – faith-based, grassroots, advocacy, and other groups where citizens generally get their information. Individuals may require help in understanding how the law affects them, and community groups will be important in providing this type of guidance. Thus, states should engage with these organizations to ensure they have the information and resources needed to be able to appropriately help individuals understand what the federal reforms mean to them. Outreach is going to be a crucial part of implementation, and the states should look to the community groups for their buy-in and support in educating the public.
- *Other stakeholders.* There are other important stakeholder groups that may be impacted by these reforms, including insurance brokers. In many states, insurance brokers play a major role in providing small businesses with their insurance options. Many of the federal reforms leave the role of the brokers undecided. It will be important for governors to have conversations with the brokers as a strategic plan for implementation is developed, especially in states where brokers play a large role in the small group market.

Other sectors may also be touched, such as the local health departments. It will be important for governors to reach out to these constituencies in the local areas to get a better sense of the issues that are likely to occur on the ground as people are seeking care.

Implications of Opting In or Opting Out of Programs

States may have choices in deciding if and how they will participate in federal reforms. Governors need to weigh the consequences of opting in or opting out of certain programs to enable them to make decisions on what actions they will take.

There is an option in the legislation that allows for states to opt out of reforms while addressing the same issues through alternative state-based programs. They are permitted to use similar pathways to addressing the main issues in the bill without having to adhere to the federal guidelines. The benchmarks that states would have to meet and guidelines

they would have to follow are likely to be stringent. States are not permitted to exercise this option until after most of the reforms are to be implemented.

If governors decide not to implement federal reforms, the bill provides for the federal government to step in to implement those reforms in the state. At this time, it remains unclear as to how and when this default would take place. However, it will most likely involve preempting many state laws currently in existence. In addition, the state is likely to lose certain state authorities and responsibilities, which will be turned over to the federal government in administering reforms, or be splintered from existing authorities and oversight.

Health of Programs and Markets

When deciding whether to opt out of reforms, governors should review their current landscape and programs to determine what is best for their state. Important factors that could influence their decisions include (but are not limited to): budgetary, administrative and political impacts of opting in/out, population size, number of private insurers in the small group and individual markets, number of lives covered in the markets, existing state regulation of the marketplace, willingness of private insurers to work with the state, existing state programs, and past experiences with purchasing pools and regulations. All of these will influence a state's decision-making process and should help governors determine whether reforms are right for their state.

For example, states with fewer residents, fewer insurance options and a smaller risk pool may decide to default to a federally-run insurance exchange to be able to offer more options at a lower rate than if they set up their own exchange. If they make this choice, states will then be responsible for coordinating state programs with the federal exchange, which could prove to be arduous.

Financial Impacts

There will be funding available for states to assist with development and implementation efforts. States will need to consider whether the funding is sufficient to meet the needs of the state when implementing the reforms. In some states, it may take a significant effort to meet the standards of the federal reform requirements; and therefore will require increased spending for direct services and personnel to administer and operate certain programs, oversight, and other efforts. While it is assumed that states are going to have to pay a part of the federal reforms, governors will need to determine whether federal funding is sufficient and does not require state resources beyond what the state is willing and able to pay.

If a state decides to opt out of reforms, the governor should consider the financial penalties for doing so. The state should consider what penalties might be assessed as part of foregoing participation, including funding tied to already existing programs in the state. The governors will need to determine whether the penalties tied to non-participation, along with potential funding lost for existing programs, are significant enough to opt in or opt out of reforms.

Coordination with Federal Government

If a governor is considering opting out of implementing federal reforms, it will be important to review the program coordination that would need to take place. The federal government and the state will have to coordinate existing programs run by the state with those the federal government is setting up. This may prove to be challenging for the state, as their existing programs may not be in a position to communicate with those the federal government is setting up and cannot be built on existing state systems. In addition, the federal government may have standards that the state will have to meet to ensure appropriate coordination between the programs and the systems on the federal level. Thus, governors will want to weigh the coordination issues and their impacts on the state when considering whether to opt out of federal reforms.

For instance, if a state decides not to set up an exchange and the federal government steps in to run an exchange for the state, the state will likely have to conform to the federal exchange's guidelines for Medicaid eligibility and low-income subsidy determinations, while the state is accustomed to using its existing eligibility determination system. This may pose some difficulties and extra processes for the state.

Conclusion

Federal health reform will have a major effect on states' public insurance programs, the private insurance marketplace, and other health programs. It is vital that governors understand the reforms to be able to make the significant decisions that will be necessary in planning for implementation of national reforms.

Regardless of the level of a state's participation in these reforms, governors will need to begin planning for reform implementation shortly after the bill passes. Therefore, states' decisions as to whether to participate and the discussions that will need to take place with legislatures will be crucial to planning.

With state budgets already in dire shape and health care costs continuing to rise, governors need to make the decisions that are right for their states and will help improve the health of their states' residents while strengthening the health care system.