



Health Insurance Exchange Governance Work Group

- 12 Members with varied expertise:
 - Corporate Governance Experts
 - Counsel for Health Plans and Providers
 - Employee Benefit Plan Legal Counsel
 - Rural County Labor Relations and General Attorney
 - Agency Staff with Legal and Healthcare Specialties
 - Healthcare Reform Legal Researchers
 - Current Members of the Minnesota State Legislature



Available Governance Models

1. State Agency
 - Existing State Agency
 - Creation of a New Agency

2. Quasi Public/Private Organization

3. Private Non-Profit
 - Under federal law, a public entity must conduct Medicaid eligibility determinations



Established or Anticipated Governance Structures for other States

GOVERNMENTAL	QUASI- GOVERNMENTAL	NON-PROFIT
Rhode Island Utah Vermont West Virginia	California Colorado Connecticut Maryland Massachusetts Nevada Oregon Washington	Hawaii Indiana



Exchange Functions

- Administration of Participation Process for Qualified Health Plans
 - Insurance Plan Review & Certification
 - Rate Review
 - Changes in Premiums and Plan Offerings
- Eligibility
 - Public Programs
 - Credits & Subsidies (individual/small group)
- Enrollment Support
 - Navigator/Brokers
- Service Support
 - Call Centers
 - Websites
 - Data Processing
 - Legal
 - Financial Management and Premium Aggregation and Payment
 - Comparative Information (cost/quality/satisfaction)



Identified Considerations For Governance

- Efficacy
- Sustainability
- Strategic Responsiveness
- Accountability/Credibility
- Operational Flexibility

1. Efficacy

- The Exchange's governance model must ensure that it can effectively:
 - Perform the functions of the Exchange, including public program eligibility;
 - Collaborate, communicate, and share data with governmental and private sector partners;
 - Operate cost-effectively

2. Sustainability

- The model chosen for the Exchange must facilitate its ability to sustain itself once established.

Considerations relating to sustainability include:

- Continuity of governance and leadership
- Protection from undue political influence
- Long-term financial viability



3. Strategic Responsiveness

- The Exchange must be responsive to a variety of different issues, including:
 - Market Changes
 - Regulatory Changes
 - Concerns of Customers and Stakeholders
 - Individuals
 - Small Employers
 - Units of Government
 - Health Insurers
 - Healthcare Providers
 - Navigators/Brokers

4. Accountability/Trustworthiness

•The Exchange must maintain accountability to, credibility with, and trust of, a variety of different individuals and groups, including:

- Public
- Appointing Authority
- Insurers
- Providers
- Individual Consumers
- Small Employers
- Legislators
- Navigators/Brokers



•Several Minnesota statutes address Accountability for existing state agencies, including:

- Minnesota Statutes Chapter 10A, Minnesota's Ethics in Government Act
- Minnesota Statutes Chapter 13D, Minnesota's Open Meeting Law
- Minnesota Statutes Chapter 13, Minnesota's Data Practices Act
- Minnesota Statutes Section 43A.38, Minnesota's Code of Ethics for Employees



5. Operational Flexibility

- The Exchange should have operational flexibility to operate within a public/private context. Within Minnesota, a variety of state statutes have an impact on operational flexibility for existing agencies, including:
 - Minnesota Statutes Chapter 14 on Rulemaking Procedures
 - Minnesota Statutes Chapter 16C mandating Procurement Policy
 - Minnesota Statutes Chapter 16E related to the Office of Enterprise Technology
 - Minnesota Statutes Section 43A.17, the State's Employee Compensation Statute

(1) Government Agency

	<u>Efficacy</u>	<u>Sustainability</u>	<u>Strategic Response</u>	<u>Accountability</u>	<u>Operational Flexibility</u>
Benefits	<ul style="list-style-type: none"> •Experience; systems in place •Access to necessary data •Familiarity among the public •Existing structure •Maximum public participation •Ease of interagency cooperation •Govt. already performs key functions, Medicaid (DHS), insurance policy certification (Commerce) 	<ul style="list-style-type: none"> •Ultimate singular accountability •Large infrastructure available for support •Deep bench of expertise •Ability to access ongoing public resources 	<ul style="list-style-type: none"> •Established relationship with federal government •Familiarity with market •Availability of national networks •Established mechanisms for dealing with consumer concerns •Most responsive to needs of state 	<ul style="list-style-type: none"> •Greatest transparency and direct accountability to governor, legislative auditor and policy makers •Strong record of information protection •Familiarity and established relationships by and with public •Purely public and direct oversight 	<ul style="list-style-type: none"> •Statutory procurement and rulemaking provide an existing, open process •OET resources an asset •Established Employee/Benefit Programs
Difficulties	<ul style="list-style-type: none"> •Inflexibility •Timeliness, cumbersome •Private stakeholder trust •Commercial insurance experience •Politics, administration change •General fund budgeting •Start up cost/time, if a new agency •May be challenge to hire talent •Potential conflicts between private/public sector roles 	<ul style="list-style-type: none"> •Subject to changing political priorities; greatest volatility •Inherent conflict between govt. as regulator and govt. as exchange operator 	<ul style="list-style-type: none"> •Cumbersome •Historical scope as limiting factor •Potential conflict if also regulator 	<ul style="list-style-type: none"> •Less private sector trust •Potential for less stakeholder involvement •Subject to political influence •Does not easily allow input from outside •May be perceived as big government •Possible confirmation requirements 	<ul style="list-style-type: none"> •Public procurement, rulemaking and information technology statutes can be cumbersome, technical, rigid, and time-consuming •State hiring and retention is inflexible •Difficulty customizing within state structure

(2) Quasi- Public/Private

	<u>Efficacy</u>	<u>Sustainability</u>	<u>Strategic Response</u>	<u>Accountability</u>	<u>Operational Flexibility</u>
Benefits	<ul style="list-style-type: none"> •More flexible; Market •Public/private partnership •Access to needed data •More public trust than private •Balance accountability and efficiency •Established governance models •Agency management agreements possible •Better ability to work with agencies •Ease of access to external resources 	<ul style="list-style-type: none"> •Greatest ability to design exchange-specific governance structure •Able to fully integrate Medicaid •Can be somewhat insulated from political influence and changing priorities 	<ul style="list-style-type: none"> •Potential to respond quickly •Could build in state agency support •Ability to build focus on public role •Consumers and vendors could be represented on board •More customer service focused •Can build a link to address state needs 	<ul style="list-style-type: none"> •Trust and confidence from private sector •Accountability structure may be tailored to fit goals of Exchange •Less subject to political influence •More trusted by public than private company •Tested and established structure 	<ul style="list-style-type: none"> •Ability to customize processes for policies and procedures •Speed and flexibility in procurement •Likely access to OET and IT resources •Additional flexibility in hiring •Existing similar state entities which work well to model from
Difficulties	<ul style="list-style-type: none"> •Startup •Process required to collaborate with state •Staffing depth •Need to create a framework •Less public input •Must install public data 	<ul style="list-style-type: none"> •Modified transparency and accountability •Difficulty attracting and maintaining qualified governance with time to dedicate 	<ul style="list-style-type: none"> •Less public input •Less credibility with federal gov't •Need to develop mechanisms for responding to consumer concerns •No experience dealing with served populations 	<ul style="list-style-type: none"> •Less accountable than government without legislative incorporation •No automatic established information security structure 	<ul style="list-style-type: none"> •Possibly required to build policymaking framework •Required to establish and interface with IT infrastructure •Employment subject to market pressures, possibly increasing costs

3) Private Nonprofit

	<u>Efficacy</u>	<u>Sustainability</u>	<u>Strategic Response</u>	<u>Accountability</u>	<u>Operational Flexibility</u>
Benefits	<ul style="list-style-type: none"> •Customer-focused mission •Market responsiveness •Private sector trust •"Newness" could energize staff •Highly developed governance •Fast reaction to marketplace needs •Ability to tailor to meet needs of private sector 	<ul style="list-style-type: none"> •Greatest flexibility to generate revenue •greatest reward •Potentially greatest long term credibility with business stakeholders •Most removed from political influence 	<ul style="list-style-type: none"> •Potential to respond quickly •Consumers and vendors could be represented on board •More customer service orientation •Vendors would have more trust in leadership 	<ul style="list-style-type: none"> •Confidence of private sector •Established accountability models •Flexibility to tap expertise 	<ul style="list-style-type: none"> •Ability to customize processes for policies and procedures •Speed and flexibility in procurement •Additional flexibility in hiring
Difficulties	<ul style="list-style-type: none"> •Necessary authority for tasks •Not the same public interest as government •Requires standards for collaboration with state agencies •Less influence with Legislature (than Agencies); •Less public oversight 	<ul style="list-style-type: none"> •Ability to take risk carries the potential for failure •Potentially attenuated transparency and accountability 	<ul style="list-style-type: none"> •Less public input •Least credibility with federal gov't •Less focus on government role •Need to develop mechanism for responding to consumer concerns •Conflicts of interest if vendors on board •Concern that won't attend to state needs 	<ul style="list-style-type: none"> ▪Assumes public responsibility without built-in accountability ▪Could drift from required exchange functions ▪Not subject to statutory framework assuring accountability ▪Difficulty self-regulating ▪Potential bias in board representation as compared to populations served 	<ul style="list-style-type: none"> •Required to build policymaking framework and IT infrastructure •Information privacy concerns •Less accountable •Employment subject to market pressures, possibly increasing costs

Considerations for a Structure with a Governing Board

- Board size
- Compensation
- Self-perpetuating vs. appointed (or hybrid)
- Representation of stakeholder groups/government agencies or legislature vs. selecting based on needed competencies
- Reserved/delegated powers
 - Accountability Structure
- Source of applicable board member fiduciary duties (non-profit law or government)
- Terms, staggering and term limits
- Appointing Authority-sole or shared
- Confirmation/Removal of Members

Conclusion

- Governance Work Group remains a ready and willing resource
- We are committed to providing sound advice through the establishment of the long-term governance structure

References

- The Kaiser Family Foundation
 - <http://healthreform.kff.org/the-states.aspx>
- Center on Budget and Policy Priorities
 - <http://www.cbpp.org/files/CBPP-Analysis-of-Exchange-Legislation-Establishment-and-Governance.pdf>
- Families USA
 - <http://familiesusa2.org/assets/pdfs/health-reform/Exchanges-Governance-and-Oversight.pdf>
- Minnesota House of Representatives Research Department
 - *Laws Governing Executive Branch Agencies*, Mark Shepard